

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 14 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

OKEMWA OMINGO.....ACCUSED

SENTENCE

1. Following a plea bargain agreement made on 6th March 2018, the accused herein, OKEMWA OMINGO, who had initially been charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** had his charge reduced to a lesser charge of manslaughter.
2. The particulars of the case were that on the night of 13th June 2017 at Gitono village in Goochi Sub-location in Gucha Sub-County within Kisii County unlawfully caused the death of **TERESIA BINSARI OKEMWA**.
3. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.
4. The facts of the case were that the accused and the deceased were husband and wife respectively and on the night of 13th June 2017, the accused came home late and engaged in a bitter exchange with the deceased when she asked him where he had been. Following the bitter exchange, the accused armed himself with a panga which he used to hack the deceased several times on the head and back before escaping to a nearby maize plantation. The deceased later died while undergoing treatment and the post mortem report established the cause of death to be cardio pulmonary failure due to multiple deep cuts and head injury secondary to assault.
5. In mitigation, Mr. Okenye for the accused submitted that the accused was an elderly man aged 60 years and that he attacked the deceased because he was angered by her unfaithfulness in their marriage.
6. The probation officer has in his report filed before this court on 21st March 2018 recommended that the accused may benefit from non-custodial sentence based on the accused's advanced age and his past good conduct.
7. I have carefully considered the very disturbing circumstances under which the deceased, then aged 50 years met her cruel death at the hands of her own husband.
8. This court notes that the deceased and the accused were a fairly old couple and grandparents who must have been married for quite a long time before the fateful day. It is therefore difficult to fathom what could have prompted the accused to fatally attack the deceased who had been his long term partner.
9. Having regard to the totality of the circumstances of this case and the recommendation of the probation officer, this court is of the view that a non-custodial sentence is merited in this case taking into account the advanced age of the accused and the fact that he is a first offender. Consequently, I hereby sentence the accused to 2 year probation sentence during which period he will be supervised by the probation officer of his area.

Delivered, dated and signed in at Kisii on 21st of March 2018.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Gachoka for the State
- Mr. Okenye for the Accused
- Omwoyo court clerk