



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 118 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VS.**

**CHRISTOPHER KIBII KIGEN.....ACCUSED**

**SENTENCE RULING**

1. Christopher Kibii Kigen (the “Accused Person”) was originally charged with murder of Dorcas Jebichi Koech (“Deceased”) contrary to section 203 as read together with section 204 of the Penal Code. He was first arraigned before Mulwa J. on 25/11/2014. He pleaded not guilty to the charge. The case was set down for hearing

2. The hearing took off on 18/08/2016. Six witnesses testified at that and subsequent hearings. Thereafter, the Prosecutor announced to the Court that he had reached a Plea Agreement with the Accused Person.

3. By a Plea Agreement dated 23/05/2018, the Accused Person pleaded guilty to the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. After due caution, and after satisfying myself that the Plea Agreement was entered into knowingly and voluntarily, I recorded a conviction and called for pre-sentencing report and victim impact statements (if desired) and set the case for a sentencing hearing.

4. The agreed facts of the case lay out the circumstances and context in which the offence was committed. They are as follows:

*On the 14<sup>th</sup> day of November, 2014, at Kapyemit village, Koitumet sub-location within Mogotio sub-county, the Accused Person and the Deceased are husband and wife came home at about 5:00pm. At home a quarrel between the two ensued over unknown matter. The quarrel continued in the presence of their children, the eldest (being) 13 years and another girl who had accompanied them from Mogotio town. In the course of the quarrel, the Deceased took a panga from the Deceased and cut the Deceased on the neck and died instantly. The Accused surrendered to the Area Chief, the panga was recovered from the Accused before [he was arrested and handed [over] to the Police. The Police from Mogotio DCI visited the scene before the body was transferred to Nakuru Municipal Mortuary.*

5. The Prosecutor informed the Court that the victim’s family’s views are contained in the Probation Report which was filed in Court. Mr. Chigiti was of the view that considering the circumstances of the case, a custodial sentence of five years should be imposed. The Prosecution had recommended as much in the Plea Agreement.

6. On his part, Mr. Orege offered mitigation on behalf of the Accused Person. He prayed for leniency in sentencing. He outlined the circumstances of the offence – in particular that the Deceased was the aggressor and that she had threatened to kill the children. Mr. Orege also urged the Court to consider that the Accused Person is now left as a single parent to their children aged 15, 9, 7 and 6. Finally, Mr. Orege asked me to consider that the Accused Person has been in custody since 14/11/2014.

7. I have carefully considered the circumstances surrounding this case. In particular, I have considered the following factors which I treat as mitigating circumstances:

a. The Accused has demonstrated genuine remorse;

b. The circumstances of the incident show that the Deceased was the aggressor and that he not only threatened the Accused Person with a *panga* but also threatened to inject some noxious substances into their children;

c. Both the Accused Person and the Deceased were drunk at the time of the commission of the offence;

- d. The Accused Person has pleaded guilty to the offence of manslaughter saving the Court much judicial time;
- e. The Accused Person is a father of four children and will now be a single parent;
- f. The Accused Person is a first offender;
- g. The Accused Person has been in custody for a little more than three years and seven months first been arraigned on 14/11/2014 and having been in custody since then;
- h. The Accused Person is pursuing reconciliation with the Victim's family; and
- i. The Pre-Sentence Report is favourable and recommends non-custodial sentence.

8. I have not been able to find any aggravating circumstances.

9. Looking at all these factors and considering that the Accused Person has been in custody for almost for four years, I am persuaded that this is an appropriate case of a non-custodial sentence. **In the circumstances, I sentence the Accused Person to serve a Probation Sentence for a period of two years under the supervision and direction of the Probation Office, Nakuru County.**

10. Orders accordingly.

**Dated and Delivered at Nakuru this 7<sup>th</sup> day of August, 2018**

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**JOEL NGUGI**

**JUDGE**