



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO.95 OF 2008**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**SAMUEL WAINAINA KARUKI.....ACCUSED**

**SENTENCE**

1. Samuel Wainaina Karuki (the accused) was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 5<sup>th</sup> October 2008 at Orkinas Farm, Kajiado District in Rift Valley province murdered Anne Naisho Wainaina. He denied the charge when arraigned in court on 28<sup>th</sup> October 2008 before Apondi J. His trial however did not commence until 23<sup>rd</sup> November 2011 before Ombija J.

2. From my perusal of the record the delay was occasioned by a constitutional application made by the accused seeking not to be tried because of what he deemed was violation of his constitutional rights. His application was heard and determined by Ochieng J in a ruling dated 29<sup>th</sup> September 2009. Subsequently the trial began before Ombija J on 23<sup>rd</sup> November 2011 when he heard one witness. He thereafter ceased to hear the matter. The trial started *de novo* before me on 12<sup>th</sup> February 2014. Unfortunately the trial was dogged by challenges of legal representation and failure of witnesses to attend court. I heard 2 witnesses before the defence opted to plea bargain with the State. Subsequently the parties filed a plea agreement on 28<sup>th</sup> November 2016.

3. Following the plea agreement, the accused was charged with the lesser offence of manslaughter contrary to section 202 of the Penal Code to which he pleaded guilty.

4. The facts of the case as read by the prosecution counsel were that the accused and the deceased lived as husband and wife in Kisaju Kajiado County they were blessed with a biological son. The accused and the deceased both frequently indulged in taking alcohol and constantly fought. On the 5<sup>th</sup> day of October 2008, the accused was heading home and passed by Njeri bar where the deceased was but was informed that she had headed home. He also headed home and that after briefly playing with the children the accused took the deceased to an empty house in the compound. D1 Rosemary Wanjiru did not see the accused hit the deceased she only heard the deceased scream until she stopped. The accused left the homestead and later returned with neighbours who saw blood all over the floor close to the deceased and also confirmed that the deceased was dead. The post mortem was conducted on the 14<sup>th</sup> October, 2014 where it was established that the deceased's cause of death was head and abdominal injury due to blunt force trauma. The accused person was thereafter presented before the Police Surgeon at Nairobi Area for mental assessment who confirmed that at that time he was mentally fit to stand trial. The accused person was initially arraigned before court on the offence of murder which has now been reduced to that of manslaughter. The accused person knowingly, voluntarily, and truthfully admits the facts contained therein.

5. The accused accepted the facts and was convicted on his own guilty plea. In mitigation Mr. Ongaro for the accused submitted the accused had been in custody for nine years and that during the long period he had undergone counseling and acquired training and skills in various crafts. He submitted that the accused was remorseful and regretted the circumstances of the case. Counsel submitted to the court 19 certificates to demonstrate the training that the accused had acquired while in custody. He prayed for a

non-custodial sentence. Ms. Ikol for the prosecution submitted that the accused could be treated as 1<sup>st</sup> offender.

6. I called for and received a pre-sentence probation report. The report state that both the accused and the deceased were accustomed to alcohol abuse and that the accused used to beat the wife regularly. The report also states that the accused is now remorseful and that his family was supportive. On the other hand the victim's family is said to be bitter and vengeful against the accused.

7. I have considered the mitigation and the probation report. I have also considered the period served in pre-trial custody by the accused as well as the purposes of sentencing. The accused has spent 8 years in pre-trial custody. He has shown remorse for his actions and seems from the testimonials presented to the court to have been sufficiently rehabilitated. I have also considered the victim impact statement and noted that no attempts have been made by the accused and his family to reconcile with the deceased's family. While it is desirable for family and community harmony that active steps at reconciliation be undertaken by the accused and his family, it would be unlawful for the deceased's family to attempt to seek vengeance as indicated in the probation report.

8. I sentence the accused to serve 3 years' probation during which time he shall make every lawful effort to reconcile with the deceased's family. He is released from custody to serve the probation term unless otherwise lawfully held.

**Sentence delivered and dated at Nairobi this 30<sup>th</sup> day of January, 2017**

**R.LAGAT-KORIR**

**JUDGE**

**In the presence of:**

.....: Accused

.....: Court clerk

.....: For the Accused

.....: For State