



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KIAMBU**  
**CRIMINAL CASE NO. 35 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MARGARET WANJIKU NJUNGE.....ACCUSED**

**SENTENCE**

1. Margaret Wanjiku Njung'e (the "Accused Person") was originally charged with murder of Peter Kaboya Ng'ang'a contrary to section 203 as read together with section 204 of the Penal Code. She was first arraigned at the High Court in Milimani on 12/04/2016. She pleaded not guilty to the charge. The case was later on transferred to this Court since the alleged murder happened in Kiambu County.

2. By a Plea Agreement dated 01/11/2017, 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.

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

*[O]n the 25th day of March, 2016 at around midnight, the Accused's husband who is the Deceased in this case went home while drunk and knocked on the door to their single roomed house and when the Accused opened the door for him she realized that the Deceased was carrying some meat which he placed on the table, The Accused then asked the Deceased whether she could serve him with some rice and stew which was reserved for him for supper but he declined and ordered the accused to cook for him the meat he had come with. The Accused declined to cook the meat and explained to him that it was late and if she started cooking at that late hour she could disturb the children who were already asleep. This angered the Deceased and he started quarrelling and threatening to beat [up] the Accused. The Accused then went and sat on their bed and the Deceased also followed her and sat next to her and continued quarrelling and when he realized the Accused was not taking the orders of cooking the meat he reached for a kitchen knife and confronted the Accused with it. In the process, the Accused disarmed him and in self-defence unconsciously stabbed him on the stomach. The Accused was later arrested and charged with the offence of murder.*

4. The Court invited the Victim's family, who had participated in the Plea Agreement negotiations, to address the Court or file Victim Impact Statements if they so wished. The family sent a representative,

Michael Gitau Ng'ang'a, to address the Court on their behalf. Mr. Ng'ang'a is the brother of the Deceased. He reported that he had been sent on behalf of the family of the Deceased. He stated that as a family that they had resolved to urge the Court to release the Accused on non-custodial sentence. This is because, he said, the children of the Deceased were suffering and needed at least one parent to bring them up since the Accused Person has been in custody. The children, Mr. Ng'ang'a said, are currently with the Deceased's mother who cannot fend for them due to old age. He explained that as a family, they have forgiven the Accused and wish for her to come back home and take care of her children.

5. On her part, Ms. Maari for the Prosecution requested the Court to consider non-custodial sentence and filed reports to show that the Accused Person is a first offender.

6. Mrs. Omung'ala appeared for the Accused Person and informed the Court that the Accused Person was born in 1989 and has two children aged four and nine. She is an orphan. She has been the sole bread winner for the family. Mrs. Omung'ala emphasized that the Accused Person has fully reformed and that she has already gained two Certificates from a Correspondence Bible Study School while in custody.

7. On her part, the Accused Person expressed remorse for the unfortunate events leading to the death of her husband and acknowledged her role in it. She expressed sorrow that the father of her children is no more because of the quarrel they had that night and sought forgiveness. She reminded the Court that she has been in remand for two years. During that period, she told the Court, she has come to know God better. She pleaded with the Court to allow her to go home and bring up her kids through a non-custodial sentence.

8. 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 remorse and I am persuaded that she is genuine;
- b. The circumstances of the incident show that it was the Deceased who was the aggressor and attacked the Accused Person. The Accused Person could probably have acted with less deadly force – but her reaction was in the split of a second;
- c. The Accused Person has pleaded guilty to the offence of manslaughter saving the Court much judicial time and the Deceased's family much anguish;
- d. The Accused Person is a young mother of children who are four and nine years old – and will remain their sole parent. The grandmother of the Accused's children is unable to fend off for them;
- e. The family of the Deceased urged the Court to commit the Accused Person on a non-custodial sentence and expressed how traumatic it will be for the family if the Accused Person is committed to prison;
- f. The Accused Person is a first offender;
- g. The Accused Person has been in custody for roughly one and a half years having first been arraigned on 12/04/2016 and having been in custody since then.

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

10. Looking at all these factors, I am persuaded that this is an appropriate case of a non-custodial sentence. I have taken particular note that the Prosecution called for a non-custodial sentence and that the Probation Report similarly recommended it. Similarly, the sentiments and needs of the Victim's family are paramount in this case. They have been unanimous in calling for a non-custodial sentence.

**11. 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, Kiambu County.**

Delivered at Kiambu this 21<sup>st</sup> day of December, 2017.

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JOEL NGUGI

JUDGE