



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**MURDER CASE NO. 15 OF 2014**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**SABINA NJERI WANYOIKE.....ACCUSED**

**JUDGMENT**

1. **SABINA NJERI WANYOIKE**, the accused herein is charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that on the 29<sup>th</sup> June, 2014 at Makutano Trading Centre in Mwea West District within Kirinyaga County she unlawfully murdered **James Kabui Kinuthia** (hereinafter referred to as the deceased) who was her husband.
2. When the accused person was first brought to court on 13<sup>th</sup> August, 2014 to take plea, she denied the charge and the matter was fixed for trial on 30<sup>th</sup> October, 2014. The matter could not however, proceed on 30<sup>th</sup> October, 2014 as the State sought an adjournment on grounds that an exhibit had been taken to Government Chemist for analysis and that the report was not ready at the time.
3. The accused person subsequently applied to be released on bond pending trial which was allowed but for some unknown reason could not raise the bond terms. When the case came up for hearing on 1<sup>st</sup> July, 2015, the defence counsel informed the court that the accused person had a change of mind and requested for time for plea bargaining. The same did not yield any fruit and when the matter came up for hearing on 18<sup>th</sup> January, 2016, the defence counsel informed the court that the accused person wanted to change her plea and requested for the charge and the particulars of the offence to be read afresh to her which was done. She pleaded guilty to the charge despite caution from this court about the consequences of pleading guilty to the charge that faced her.
4. This Court adjourned the matter for purposes of enabling the prosecution get the murder weapon and also avail comprehensive facts of the case to be read over again to the accused person. The adjournment was also necessitated by the need to give more time to the defence counsel to consult his client.
5. The facts and the murder weapon were brought to court on 15<sup>th</sup> February, 2016. The Court was told by the defence counsel that the accused still maintained her plea of guilty to the charge. This Court then directed the facts to be read afresh in detail to the accused in Kiswahili language, a language the accused said she understood well. Again she pleaded guilty and confirmed that the facts read and exhibits produced were a true reflection of what happened.
6. The Court has however, considered the facts read and the response made by the accused person and the submissions made by Mr. Abubakar, counsel for the accused and it is apparent that the incident that led to the death of the deceased herein occurred at the spur of the moment. The accused and the deceased lived as man and wife at Makutano Trading Centre. The facts presented to court showed that there was a domestic quarrel between the accused and deceased which led to

- a fight. In the ensuing fight, the deceased grabbed a knife but the accused snatched the knife from him and stabbed him on the chest killing him instantly.
7. The accused person then called a family friend by the name Samuel Gitau Gathei and requested him to rush quickly to the scene owing to an emergency. This action by the accused perhaps explains her state of mind during the incident. Her actions do show that she could not have been harbouring malice against the deceased aforethought. She made no attempt to run away or hide the murder weapon after the incident. She willingly accompanied the said Samuel Gitau to the Police where they reported the incident after which she was arrested and placed in custody.
  8. This Court has considered the facts and the evidence adduced in totality. The post mortem report produced as P. Exhibit 1 showed or noted one penetrating injury on the left side of the chest. This according to the doctor's report caused severe internal haemorrhage which caused the death of the deceased. No other injury was noted on the deceased and this is consistent with what the accused told this Court.
  9. This Court finds that from the facts presented and the submissions made by defence counsel, the accused is guilty of manslaughter rather than murder for which she is charged before this court. There is no evidence to suggest that the accused and the deceased had previous altercations which could have led to the accused developing or harbouring malice aforethought. In this case there was clear absence of malice aforethought. Consequently under **Section 179(2)** of the **Criminal Procedure Code** and in view of the plea of guilty made by the accused person, this Court finds her guilty of manslaughter under **Section 202** of the **Penal Code** and she is convicted accordingly.

*Dated and delivered at Kerugoya this 16<sup>th</sup> day of March, 2016.*

**R. K. LIMO**

**JUDGE**

16.3.2016

Before Hon. Justice R. Limo J.,

State Counsel Sitati

Court Assistant Willy Mwangi

Accused present

Interpretation English/Kiswahili

Sitati for State present

**COURT:** Judgment signed, dated and delivered in the open Court in the presence of Sitati for State and Abubakar for the accused person.

**R. K. LIMO**

**JUDGE**

16.3.2016