



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CRIMINAL CASE NO. 92 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**INNOCENT MOMANYI ANDEREA.....ACCUSED**

**SENTENCE**

1. The accused person herein, **INNOCENT MOMANYI ANDEREA** was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** which charge, was by a plea bargain agreement struck between the accused and the state on 22<sup>nd</sup> July, 2015 reduced to the lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
2. The particulars of the charge are that on diverse dates between 19<sup>th</sup> June, 2012 and 24<sup>th</sup> June, 2012 at Masosa slums in Kisii Central District within Kisii County, unlawfully caused the death of **EUNICE MORAA MAKORI**.
3. The accused pleaded guilty to the lesser charge of manslaughter and was as a consequence thereof convicted on his own plea of guilty.
4. The circumstances surrounding the case, as narrated by the prosecution's counsel Miss Sempele, were that the accused and the deceased lived as husband and wife for over 4 years and that due to frequent domestic squabbles, the deceased left her matrimonial to her parents' home at Sameta sometime in June, 2012.
5. On the 16<sup>th</sup> June, 2012, the accused visited the home of the deceased's parents with the aim of reconciling with his wife which visit did not bear any fruits whereupon the accused took off with their 2½ year old son.
6. On 19<sup>th</sup> June, 2012 the deceased left her parent's home after assuring her parents that she had reconciled with the accused, however, on 23<sup>rd</sup> June, 2012 her parents received information that the deceased had taken poison and was admitted at Kisii Level 5 Hospital only to learn later that the information was a hoax when the decomposing body of the deceased was recovered at the accused's home.
7. Post mortem examination of the deceased's body revealed that the cause of death was cardio respiratory arrest due to probable head injury and strangulation from gagging.

8. In mitigation, Mr. Sagwe for the accused submitted that the accused was a young man and the husband to the deceased with whom they had a son. He added that the deceased had differences with the accused but the two had reconciled. Mr. Sagwe pleaded for a non-custodial sentence for the accused to enable him raise his child with the deceased.

9. I have taken due consideration of the circumstances surrounding this case and the mitigation tendered by Mr. Sagwe advocate for the accused. This court had directed the Probation Officer to prepare a victim impact assessments and pre-sentencing report to provide this court with a guide to what would be the most appropriate sentence to mete out for the charge of manslaughter. Unfortunately however, to-date almost 10 months after the probation report was called for, the probation officer has not filed any such report thereby prompting this court to prepare this sentence, the probation officer's report notwithstanding.

10. I have taken note of the fact the accused killed his own wife and mother of his only son whom he ought to have protected from any harm or danger in the first place.

11. The post mortem report which was produced as Prosecution's exhibit1 shows that the deceased was aged only 20 years and that her decomposing body was found lying on the bed inside a locked house, 3 days after she had been killed.

12. It would appear that the accused killed the deceased in cold blood and thereafter left the body inside a locked house to rot away.

13. The cruel actions of the accused led to the loss of the life of a young mother and this court cannot even begin to imagine what could have prompted the accused to be so cruel to his own wife.

14. Even though the accused has pleaded for leniency, this court finds that his unlawful and callous actions are inexcusable and cannot go unpunished.

15. I also note that the accused was in custody for only one year while awaiting his trial before being released on bond in July, 2013.

16. In view of the above observations and considerations, I hereby sentence the accused to 7 (seven) years imprisonment.

17. It is so ordered.

Delivered, dated and signed in at Kisii on **23<sup>rd</sup> day of May, 2016.**

**Hon W.A. OKWANY**

**JUDGE**

**In the presence of:**

- Mbelete for the State
- N/A for the Accused
- Omwoyo court clerk