



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 12 OF 2016.**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JAMES MARUBE KINARO alias MOI.....ACCUSED**

**SENTENCE**

1. **JAMES MARUBE KINARO alias MOI** was initially brought before this court on a charge of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. Pursuant to a plea bargain agreement executed on 7<sup>th</sup> June 2016, the accused instead pleaded guilty to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**. The accused was convicted for manslaughter.

2. Before pronouncing the sentence, the court invited the Prosecution to outline the facts of the case, accused's past criminal record, if any, and further asked the accused to present his mitigation. This court also requested the Probation Officer to prepare and file a Probation Report on the accused. At the time of writing this decision, the probation report had been filed. Mr. Otieno learned counsel for the prosecution, urged this court to treat the accused as a first offender. Mr. Okenye learned advocate for the accused beseeched this court to pronounce a non-custodial sentence on the accused to enable him to take care of his two children who were reported to be of very tender age. The Probation Officer confirmed that said children are currently under the care of the accused elderly father. The accused has been in custody since April this year. The facts outlined by the prosecution show that the accused had been provoked by the deceased's conduct to the extent that he acted unreasonably. The accused was not justified to act in the manner he did and his action took away the life of his wife. The accused and deceased had been involved in a domestic disagreement after which the deceased went to her matrimonial home intending to take away their children with her. The accused on getting wind of the deceased's intention, traced the deceased at a neighbour's house, dragged out of the said house while armed with a rungu and a whip. He (accused) then assaulted the deceased repeatedly thereby causing injuries to her right leg, hand and a blunt injury to her head that led to a cracked skull. Upon noticing that the deceased was unconscious, the accused then made efforts to look for a motorcycle taxi (boda boda) to take the deceased to hospital, but then she died upon arrival at Tabaka Mission Hospital. The deceased body was then taken for post mortem and the cause of death was established to be head injuries, to wit, intra cranial bleeding.

3. It is clear from the facts outlined hereinabove that the accused did not intend to cause grievous harm or death upon the deceased. The probation report indicates that the victim's family has already reconciled with that of the accused as dowry for the deceased has already been paid by the accused's family to legalize their marriage. Furthermore, plans are underway to conduct a traditional cleansing ceremony to appease the evil spirits and the sharing of meals as a sign of peaceful co-existence between the two families. The probation officer also recommends a non -custodial sentence.

4. After considering all the relevant facts and circumstances surrounding this case, I am convinced that a non -custodial sentence is the appropriate penalty, more so, considering the plight of the accused's young children and the fact that the home environment is conducive and receptive to the accused's return.

5. It is clear to me that the accused acted in a fit of rage only to realize the folly of his actions shortly thereafter and made efforts to take the deceased to hospital, but unfortunately she succumbed to her injuries.

6. Consequently, I hereby order that the accused be released from custody to serve two years probation sentence under the supervision of the Probation Officer Kisii County.

Delivered, dated and signed in at Kisii on **26<sup>th</sup> of September, 2016.**

**W.A. OKWANY**

**JUDGE**

**In the presence of:**

- Mr. Otieno for the State
- Mr. Okenye for the Accused
- Omwoyo court clerk