



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIIAYA

CRIMINAL CASE NO. 9 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

COLLET THABITHA WAFULAACCUSED

SENTENCE

1. The accused herein **COLLETT THABITHA WAFULA** was initially facing a charge of **Murder contrary to Section 203 as read with Section 204 of the Penal Code.**
2. By plea bargain agreement entered into on 24.10.2016 between the accused and the State, the charge was reduced to **Manslaughter contrary to section 202 as read with Section 205 of the Penal Code.**
3. The particulars of the charge are that on 7th day of May 2016, at Ugunja Sub-County within Siaya County, the accused unlawfully killed **LUKAS ODUOR ABOK**
4. The facts of the prosecution case are that on 7th May, 2016 at 1.30 a.m. at Uholo Village, Ugunja Sub-Location, Uholo Location, within Ugunja Sub-County, within Siaya County, the deceased, one Lukas Oduor Abok, returned home drunk and engaged in a domestic quarrel with his wife, namely Collet Thabitha Wafula, the deceased accusing his wife of infidelity, and accusing her of having extra marital affair with another man. The two engaged in an argument for a while which turned violent, a fight ensued between the two, and in the process the accused proceeded to another room, picked a kitchen knife, returned to where the deceased was and stabbed him at the back once and as a result thereof she went into a state of panic and started screaming saying “*I have killed my husband*” She was crying for help from the neighbours who came to the scene. The accused remained at the scene and when Police came she admitted that she was responsible to what had happened to the deceased. The accused was arrested and escorted to Ugunja Police Station and charged with this offence. The deceased died immediately after he was stabbed, his body was transferred to Segu Mission Hospital Mortuary. The Post Mortem was conducted and a report prepared. The Prosecution produced the postmortem Report as P exhibit 1, indicating the cause of death, was due to massive left sided hemothorax secondary to a left sided posterior stab wound. The prosecution produced P 3 form as P exhibit 2 indicating the accused is fit to plead to the charge of Murder.
5. M/s. Kibet learned defence Counsel appearing for the accused in her mitigation urged that the accused is a young mother now aged 24 years with three young children aged 5, 3 and 1 year respectively, that the offence was committed at the heat of the moment, that the accused was hurt, unhappy and angry after her husband accused her of being unfaithful whereas it was her husband who was unfaithful. She was greatly hurt by the false accusation because she knew she was faithful and that the only option, she had, was to fight back and protect her reputation. M/s. Kibet stated the accused is remorseful and prayed for

leniency in view of what happened and the fact that she has now three young children to take care of. She stated the loss of her husband and having three fatherless children is enough punishment and this will be a constant reminder to her that she killed her husband. She stated the accused is a first offender and that the family of the deceased had forgiven her. She prayed for non-custodial sentence stating the accused has 1 year old child who is still breast feeding whereas the other two children stay with the accused's brother-in-law, thus brother to the deceased.

6. The pre-sentence and victim impact assessment Report filed in Court on 27.10.2016, reveals that the victim's family led by the deceased's brother have forgiven the accused and are willing to help her in raising the victim's children. That the people at her marital home have no issue against her being released and they admit the accused was a victim of domestic violence, though she committed a serious offence. That the accused is remorseful and willing to reform.

7. I have taken into account the circumstances surrounding the commission of this offence and the fact that the accused is wife to the deceased, that the incident arose out of domestic violence after the deceased accused the accused herein of being unfaithful and having an affair with another man. The deceased picked a quarrel and a fight with his wife. The deceased was drunk at the material time and the aggressor, the deceased used excessive force and unjustified means of solving the problem affecting his marriage with the accused. I have taken into account that the fight was provoked by the deceased and the accused was acting in self-defence, but used excessive force. I have considered the pre-sentence report filed by the Probation Officer, which supports the accused being granted non-custodial sentence. I have also noted that the victim's family have forgiven her and their willingness to help her in raising the victim's children. That the accused is a young mother of three children aged between 5 and 1 year. That she is remorseful and regrets the circumstances that lead to the commission of the offence. That the community have no issue with the accused serving probation sentence and that they are willing and ready to welcome her back to her matrimonial home and that the Probation is willing to intervene and empower her with anger management skills and advise her on alternative means of dispute resolution and give her guidance and counsel her.

8. I have taken into account that the accused was in custody for 2 months before being released on bail and that she is a widowed young mother of three children one of which is breast feeding and that she is remorseful and that the death of her husband would haunt her for the rest of her life knowing that it was due to her acts that she is now a widow. I note that she is both a victim and the accused in this matter and that her immediate family members and the community have forgiven her. The accused needs counseling to overcome the trauma and as such I find that she needs community based rehabilitation and as mother this will help her in raising the victim's children. I have also taken into account that she was a victim of domestic violence and that in this case she is both a victim and an accused person as she caused death of her own husband.

9. I shall therefore sentence the accused to non-custodial sentence. I therefore sentence the accused to three (3) years non-custodial sentence during which period she is placed under probation. She will be supervised by the Probation Officer of Siaya County

DATED AND SIGNED AT SIAYA THIS 31ST DAY OF OCTOBER, 2016.

J. A. MAKAU

JUDGE

DELIVERED IN THE OPEN COURT THIS 31ST DAY OF OCTOBER, 2016

IN THE PRESENCE OF:

M/S. KIBET FOR ACCUSED

M/S. ODUMBA FOR THE STATE

ACCUSED: PRESENT

C.A. 1. K. ODHIAMBO

2. L. ATIKA

J. A. MAKAU

JUDGE