



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

HIGH COURT CRIMINAL APPEAL NO. 63 OF 2014

BETWEEN

REPUBLIC RESPONDENT

AND

E M N..... ACCUSED

SENTENCE

1. The accused E M N was charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code, the particulars of which were that on 20/5/2014 in Kenyeny District within Kisii County in the Republic of Kenya murdered D KM.
2. He pleaded not guilty to the said charges and by a plea agreement entered into between the accused and the State on 17/3/2015 the charges were reduced to manslaughter to which the accused pleaded guilty and was convicted on his own plea of guilty.
3. The sad facts leading to the commission of this offence were that the accused had gone to seek casual employment as a tree seedling planted at [particulars withheld] Nyahururu regional office and while there received information that his wife of 14 years was involved in extra marital affairs (adultery) with several men within the locality causing the accused to return back home.
4. On the material day the deceased received a telephone call while in the house together with the accused and she went out to answer the call. The accused followed her and listen to the conversation which he suspected to be from her alleged lover and a heated argument ensued over the same which led to a domestic fight in the process of which the accused hit the deceased on the forehead, back of the head, chest, hip and legs with a metal bar leading to fatal injuries.
5. In mitigation through his advocate Mr. Sagwe the accused pleaded with court for a non custodial sentence so that he could assist their five (5) school going children who have now been rendered destitute. It was stated by the advocate that the accused did not intend to kill the deceased as evident by the fact that upon realizing that the deceased had been badly injured he carried her on his back to the hospital to seek medical attention.
6. To assist the court in arriving at an appropriate sentence, the court ordered for a pre-sentencing report which has been filed and in which is is stated that the family of the victim do not hold any grudge against the accused since they understand the circumstances under which the offence was committed and have since forgiven the accused.
7. It is therefore recommended that the accused be given non-custodial rehabilitation programe to

enable him to reform while in the community as he fends for his young family since he is the only one who is now left.

8. This offence was caused by a breakdown in the family values noting that the deceased who had been married to the accused for the last 14 years and a mother of five (5) children was not only accused of engaging in adulterous relationships with local men and as per the probation officers report was caught red handed with one villager in a tree plantation.

9. This action must have injured the dignity of the accused person and lowered his standing in society at a time when he was in Nyahururu trying to secure means of support for his said family and must have felt provoked and betrayed beyond any measure of understanding.

10. Whereas it is not right to take the life of another, in the circumstances of this case the deceased had the option if she felt that the accused was not man enough to leave him for her many village lovers but she opted to carry her immoral activities within the comfort of the accused home. Any sentence which this court must give should be one that serves to restore the honor of the accused while at the same time sending a warning out there that there are very many available means of settling domestic dispute.

11. I have noted that the accused person has been in custody since 20/5/2014 and would therefore sentence the same to one (1) year imprisonment backdated to 05/06/2014 when he took his plea. Since he has already served the sentence herein the accused should be set free forthwith unless otherwise lawfully held.

Delivered, signed and dated at Kisii this 23rd day of July 2015.

J. WAKIAGA

JUDGE

In the presence of:

Miss. Boyon advocate for the state.

Mr. Okenye for Sagwe for the accused.