



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 87 OF 2014

BETWEEN

1. PAMELA AOKO MAGAKA

2. LUKIO ODINDO MAGAKA ACCUSED

AND

REPUBLIC RESPONDENT

JUDGMENT

SENTENCING

1. The accused herein PAMELA AOKO MAGAKA and LUKIO ODINDO MAGAKA were charged with the offence of murder contrary to Section 203 as read with 204 of the penal code the particulars of which were that on 22nd day of August 2014 at Nyamariba village Sikonge sub-location in Marini District within Kisii County the jointly with another not before the court murdered GEDION MAGAKA ACHIENG.
2. On 23/9/2014 a plea of not guilty was entered for the accused persons who had indicated that they killed the deceased but did not intend to do so.
3. On 21.5.2015 pursuant to a plea bargain agreement, the accused persons pleaded guilty to the lesser charge of manslaughter contrary to section 202 as read with Section 205 the facts of which were that the 1st accused found the deceased GEDION MAGAKA ACHIENG slashing down and clearing a banana plantation belonging to his son on William Okello who at the time was away from home.
4. He then proceeded on to his own farm and cleared his own banana plantation together with paw paw trees before proceeding to a changaa den for a drinking spree. Infuriated by the deceased who was her husband's berserk conduct, the 1st accused together with her two sons, the 2nd accused and one William Okello whose banana plantation was cleared launched a manhunt for the deceased armed with pangas and rungas and when they found him at the changaa den gave the deceased thorough beating before tying both his hands with a rope before cutting him on the head with a panga thereby occasioning him severe injuries from which he died.
5. When invited to mitigation the 1st accused submitted that she has been sickly and pleaded for forgiveness to enable her to back home and take care of her children who have now become street children. The 2nd accused pleaded to be forgiven so he can go back to school.

6. The court invited the probation officer to present pre sentencing report in which it was recommended that the accused persons be granted a chance to serve non-custodial programme given the fact that the family members were not happy with the acts of a person they looked upto for moral guidance and with whom the first accused had been married for 29 years.

7. Having taken into account the accused persons mitigation and the circumstances leading to the circumstances of the offence as the fact that the accused persons have been in custody from the last one (1) year, I am satisfied that the appropriate sentence herein should be non-custodial so as to give the accused persons a second chance to be integrated in society.

8. I would therefore order the accused persons PAMELA AOKO MAGAKA and LUKIO ODINDO MAGAKA to be set free from custody and proceed to serve three (3) years probation under the supervision of the probation officer in charge of Kisii County.

Delivered, signed and dated at Kisii this 22nd day of July 2015.

J. WAKIAGA

JUDGE

In the presence of:

Mr. Majale advocate for the state.

Mr. Okenya for accused persons.