



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL CASE NO. 13 OF 2013**

**REPUBLIC .....RESPONDENT**

**VERSUS**

**MDOE DEWA KOMBE .....ACCUSED**

**JUDGMENT**

**MDOE DEWA KOMBE** hereinafter referred to as the Accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars are that:-

***“On the 4th day of October, 2011 at 4:00 pm at Majengwani village, Werani Location – Kwale County he murdered KWEKWE NYANJE”.***

**Brief facts for the prosecution case:**

The Deceased is the wife of the Accused. A misunderstanding had arisen between the two. This prompted the Deceased to go back to her parents home.

The Deceased father (PW 1) testified to the effect that on the 4th day of October, 2011, the Accused went to him for purposes of solving marital problems between him and his wife. When the father of the Deceased left to call elders to settle the dispute, he was called back by his wife who informed him that the Accused had stabbed the Deceased killing her there and then. When he went back, he did not find the Accused but his daughter was lying on a pool of blood with a huge cut wound on the neck. The matter was reported to police, the Accused was sought for and arrested.

Dr. Gitau performed the post mortem examination. The report was produced by her colleague Dr. Ndegwa (PW 4). At the time of her death the Deceased was pregnant. She had an 11cm cut wound across the back of her neck and a superficial wound above the left shoulder. He formed the opinion that cause of death was as a result of severe head injury.

PW 1 had testified in Court to have been called by his wife who informed him that the Accused had cut his wife with a panga.

However, his wife was not called to testify on what she saw.

PW 3 and PW 5 went to mortuary Msabweni Hospital to identify the body of the Deceased for post

mortem examination purposes only.

However, in his defence the Accused did not deny killing the Deceased but maintains that he was provoked. He did testify to the effect that his wife had told him to pass by her parents house for some discussion. While on his way to her parents he heard some murmurs in the bush. Upon checking he saw a man having sexual intercourse with his wife. He chased the man and upon returning he found that the wife had escaped to her parents house. He followed her there. He interrogated her in the presence of her mother and she told him that she was not about stopping committing adultery soon. He became mad picked a panga and cut her and later after regaining his senses regretted why he had done what he did.

A perusal of the record of proceedings does show that there had been attempts at plea bargaining but the state did not appear to favour the reduction of the charge of murder to that of manslaughter.

It is not in dispute that there were domestic wrangles between the Accused and his wife. It is these wrangles which were to be discussed on that day. The Accused maintains that he had caught his wife having sexual intercourse with another man on the day in question and when he confronted her on the issue she did not appear remorseful but instead said that she was not going to stop the practice and this angered him greatly.

There is no evidence from the prosecution side to contradict this assertion.

Section 207 of the Penal Code provides,

***“When a person who unlawfully kills another under circumstances which but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined and before there is time for his passion to cool, is guilty of manslaughter only”.***

In the absence of evidence to the contrary, I do find that there was provocation on the part of the Accused as alleged. The Accused is found guilty of the offence of manslaughter contrary to section 202 of the Penal Code and he is Convicted accordingly under section 322 of the Criminal Procedure Code.

Judgment delivered, dated and signed this **30th** day of **October, 2015**.

.....

**M. MUYA**

**JUDGE**

**30TH OCTOBER, 2015**

**In the presence of:-**

Mr. Mushelle holding brief Lewa

Learned Counsel for the prosecution

Learned Counsel for the defence Mr. Ochola

Court Assistant Musundi

**MUYA – JUDGE**

**Mr. Mushelle:**

**Mitigation:**

The Accused is first offender. He is remorseful. The Accused and Deceased is husband and wife. The wife died. The Accused is a single parent. He has suffered while in custody. He is remorseful. We pray that the Court exercises utmost leniency.

**Court:**

Probation report and Sentencing on *9th November, 2015.*

.....

**M. MUYA**

**JUDGE**

**30TH OCTOBER, 2015**