



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.45 OF 2013

REPUBLICPROSECUTOR

VERSUS

BARONGO KENYANYA.....ACCUSED

SENTENCE

1. The accused person herein **BARONGO KENYANYA**, was initially charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code.**
2. By a plea bargain agreement entered into on the 15th July 2015 between the accused person and the State, the said charge was reduced to **Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.**
3. The particulars of the charge were that on 17th April 2013 at Bomanyara Location, in Gucha District within Kisii County in the Republic of Kenya unlawfully caused the death of **MARGARET BARONGO.**
4. The accused person pleaded guilty to the said charge and was consequently convicted on his own plea of guilty.
5. The facts leading to the commission of the offence pleaded to were that on 17th April 2013, the accused found his wife red-handed while engaging in sex with a man called **BENSON** on his matrimonial bed. The accused and the wife's lover fought. The accused was armed with a jembe and the intruder a knife. The accused threw the jembe at the intruder who ducked and instead the jembe hit the deceased who was right behind her lover. The lover ran away stark naked leaving behind his clothes with the accused in hot pursuit. Upon returning home, the accused found his wife's body lying lifeless on the floor.
6. A post mortem examination conducted on the body revealed the cause of death as cardio-pulmonary arrest secondary to severe head injury due to blunt trauma.
7. In mitigation, Mr. Bigogo, counsel for the accused submitted that the deceased death was accidental as the jembe was aimed at the intruder who had trespassed into the accused's bedroom. Mr. Bigogo stated that the accused acted under extreme provocation. He stated that the accused was married with four children aged between 15 years and 3 years who have now been left without a parent in the absence of the accused. The accused pleaded for leniency and stated that he was remorseful for what had happened on the fateful day.

8. The Probation Officer, in his pre-sentence and victim impact report which was filed on 14th August 2015 observed that a non-custodial sentence would be suitable sentence for the accused in view of the fact that his family members and community had forgiven him and were willing to welcome him back home.
9. I have taken into account the disturbing chain of events that led to the death of the deceased. I note that the accused acted spontaneously out of provocation and anger and clearly he had no intentions of killing his own wife. I note that the over 2 years period that the accused has been in custody is adequate lesson to him to tame his anger. I further take note that the accused has young children to take care of.
10. Accordingly I sentence the accused person herein to one (1) year non-custodial sentence during which period he will be supervised by the Probation Officer of his area.
11. It is so ordered.

Signed, Dated and Delivered in open court this 27th day of October, 2015.

HON. W. A. OKWANY

JUDGE

In the Presence of:

Mr. Majale for State

Mr. Bigogo for Accused

Omuga: court clerk