



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.9 OF 2014

REPUBLIC - - - - - PROSECUTOR

VERSUS

BENARD ONDIGI RIAGA - - - - - ACCUSED

SENTENCE

1. The accused herein **BENARD ONDIGI RIANGA** was 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 between the accused and the State on 17th July 2015, the said charge was reduced to that of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
3. The particulars of the charge are that on 14th January 2014 at Bomariba Location in Kisii South within Kisii County unlawfully caused the death of **MARGARET KWAMBOKA**.
4. The accused pleaded guilty to the charge of **Manslaughter** and was accordingly convicted on his own plea of guilty.
5. The circumstances surrounding the commission of the offence are that the accused and the deceased who were husband and wife respectively on 13th January 2014, traded accusations against each other over unfaithfulness in which the deceased confirmed to the accused that she had another lover because the accused himself was also having an affair with another woman.
6. A fight ensued following the verbal exchange and the accused hit the deceased on the head, back and neck with a piece of wood. The deceased succumbed to her injuries the following day being 14th January 2014. The post mortem report produced in court as an exhibit determined the cause of death as cardiopulmonary arrest due to the head injury.
7. In mitigation, Mr. Bigogo counsel for the accused submitted that the accused was very remorseful for causing the death of his own wife with whom they had lived for just one year and with whom they had a 3 ½ year old child.
8. Mr. Bigogo added that the accused was a young man aged 28 year and his actions were actuated by the love affair that his wife admitted that she was involved in.
9. The pre-sentence and victim impact assessment report filed by the Probation Officer on 12th October 2015 favoured the accused and recommended his being given anon-custodial sentence in view of the fact

that his family and community had forgiven him and were willing to accept him back home.

10. The Probation Officer's report did not capture the views of the victim's family members.

11. I have considered the circumstances under which the offence was committed, the mitigation by the accused's counsel and the Probation Officer's pre-sentencing report. I note that this was a crime of passion committed by the accused who felt jilted after his wife's confession to an affair.

12. I also note that the accused acted in a very cruel and vicious manner against his own wife who he was supposed to protect from any harm. The actions of the accused clearly demonstrate his lack of respect not only for women but also for human life and he must therefore not go unpunished. The reckless actions of the accused led to the early death of a young lady whose age was estimated to be 18 years during the post mortem examination.

13. Accordingly, I sentence the accused herein **BENARD ONDIGI RIANGA** to 7 (**seven**) years imprisonment which prison term shall run with effect from the date of his first appearance in court being **15th January 2014**.

14. It is so ordered.

Dated, signed and delivered in open court this 24th day of November, 2015

HON. W. OKWANY

JUDGE

In the presence of:

Otieno for the State

Nyagwencha for Bigogo for the Accused

Ogega: Court clerk