



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO.37 OF 2015**

REPUBLIC - - - - PROSECUTOR

VERSUS

G N M - - - - ACCUSED

**SENTENCE**

1. The accused person herein **G N M** was at first 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 **19<sup>th</sup> November 2015**, between the accused and the State, the 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 **14<sup>th</sup> May 2015** at *[particulars withheld]* in Kisii Central District within Kisii County unlawfully caused the death of **PATRICK ATEMBA NYANGAI**.
4. The circumstances surrounding the case are that on 14<sup>th</sup> May 2015, at 1.00 a.m., the deceased sneaked into the accused's bedroom while pretending to be the accused's husband and raped her. On discovering the deceased's trick the accused got enraged screamed and hit the deceased on the head with a piece of timber and he fell down.
5. The accused then doused the deceased with paraffin and set him ablaze. Members of the public who came to the scene rescued the deceased and put out the fire after which the deceased went back to his home with serious burns that caused his death 3 days later.
6. The post-mortem examination disclosed the cause of death to be cardio-pulmonary arrest secondary to hypovolemic shock secondary to burns by a very hot substance. The accused was also medically examined and found to have been raped whereupon she was put on ARV drugs to forestall any HIV infection.
7. In mitigation, Mr. Bigogo advocate for the accused submitted that she was very remorseful for what had transpired and stated that the accused was provoked beyond control by the deceased's despicable and abominable act of raping her in her own matrimonial bed. Mr. Bigogo pleaded for leniency on behalf of the accused whom he said was a fairly young lady aged 36 years with 6 children aged between 16 years and 2 ½ years who solely depended on her as her husband was a drunkard who had even chased away the children in the absence of their mother.
8. Mr. Bigogo added that the accused's children were therefore forced to live with their aged

maternal grandmother. The pre-sentence and victim impact assessment report filed by the Probation Officer on 25<sup>th</sup> November 2015 recommended the accused's suitability for a non-custodial sentence.

9. I have considered the very disturbing circumstances under which the deceased met his death. The deceased was truly a sex predator who showed no respect to common decency and had the nerve to stray into another man's bedroom and rape his wife in the hope that he would get away with it.
10. I note that the accused was provoked to act in the way she did. I also note that even though the accused admitted the offence, the post mortem report produced as exhibit 2 shows that the ***"deceased was lynched by irate members of the public after he raped a neighbour's wife."***
11. I also note that the accused has been in custody for 6 months while awaiting her trial. I consider her 6 months stay in custody as sufficient punishment for the part she played in the death of the deceased.
12. I will therefore treat the period she has been in custody as aforesaid as prison term served with the consequence that the accused shall forthwith be set free unless otherwise lawfully held.

**Dated, signed and delivered in open court this 11<sup>th</sup> day of December 2015**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Imbali for the State.
- Moseki for Bigogo for the Accused
- Ogega: court clerk