



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.134 OF 2013

REPUBLIC - - - - PROSECUTOR

VERSUS

MARY MONG'INA OMWERI - - - - - ACCUSED

SENTENCE

1. The accused herein **MARY MONG'INA OMWERI** 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 on 16th 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 are that on 8th December, 2013 at Bonyakwanga Sub-location in South Gucha Sub-county within Kisii County in the Republic of Kenya unlawfully caused the death of **ZAPEDEO OMWERI KENYANYA**.
4. The accused pleaded **guilty** to the said lesser charge of **manslaughter** and was accordingly convicted on her own plea of guilty.
5. The circumstances surrounding the offence were that the deceased and the accused were husband and wife respectively. On 18th December 2013, the deceased had an argument with the accused in which he told the accused to leave his home, threatened to kill the accused if she did not heed his warning. At around 11.00 p.m., on the same day, after eating supper prepared by the accused, the deceased who was drunk and still in a foul mood following the earlier disagreement, started abusing the accused after which he armed himself with a panga but the accused managed to disarm him by grabbing the panga from him.
6. The accused then grabbed the deceased with the collar of his shirt and dragged him out of the house where he lay till morning. That following morning, the accused found the deceased dead whereupon she raised alarm by calling his relatives.
7. A post mortem examination performed on the body of the deceased established the cause of death to be asphyxia due to strangulation secondary to assault.
8. In mitigation, Mr. Bigogo counsel for the accused submitted that the accused who was aged 51 years had been in a turbulent and abusive marriage with the deceased, but that on the material day, she had no intention of killing him.

9. According to Mr. Bigogo, it was the deceased who wanted to kill the accused by arming himself with a panga which the accused grabbed from him. Mr. Bigogo pleaded for a non-custodial sentence on behalf of the accused.
10. An impressive, favourable and detailed social inquiry report about the accused was filed by the Probation Officer who recommended non-custodial sentence in respect to the accused herein.
11. After due consideration of all the above, I find that the accused is suitable for a non-custodial sentence since her family members and community have forgiven her in recognition of the fact that the death of the deceased was accidental. I also note that the accused has been in custody since December 2013 which period is adequate punishment for her.
12. I hereby sentence the accused herein, **MARY MONGINA OMWERI** to six (6) months probation during which period she will be supervised by the Probation Officer of her area.

Dated, signed and delivered in open court this 11th day of December, 2015.

HON. W. OKWANY

JUDGE

In the presence of:

- Imbali for the State
- Moseti for Bigogo for the Accused
- Ogega: court clerk