



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 15 OF 2010**

REPUBLIC.....PROSECUTOR

VERSUS

JOSPHAT KIPKEMOI NGETICH.....ACCUSED

**SENTENCE**

The accused person herein, **Joseph Kipkemoi Ngetich**, was initially arraigned before this court to face a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that on the 2nd day of September 2010 at Kapcherire Village in Sotik District within Bomet County, it is said the accused murdered **Mercy Ngetich**. However, before the trial commenced, the accused executed the plea agreement dated 27th November 2013 in which the accused instead pleaded guilty to the lesser charge of manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code** and was subsequently convicted. This court invited the defence to submit facts in mitigation and also called for a probation report on the accused to be filed.

I have considered the factors submitted in Mitigation and the Probation officer's report. The accused is not a first offender. Mr. Ongany, learned advocate for the accused stated that the accused is remorseful with young children aged between one (1) year and eleven (11) years. It is also argued that the accused committed the offence under the influence of alcohol and that he lost his father at a very early age. According to the probation officer's report the accused had separated with his wife (deceased) due to domestic quarrels. The community and the family aver that the accused was rude and violent hence he was nicknamed "*Osama*". He regrets the offence which he claims he committed under extreme provocation by the deceased. The process of reconciliation between the victim's family and the accused have begun. It is said both sides together with the community at large are ready to forgive the accused hence ready to welcome him back to society. It is further stated that the deceased's family are still bitter but are supportive of any positive decision that will allow the traditional cleansing ritual and compensation to take place. The probation officer recommended a non-custodial sentence be meted out. After a careful consideration of all the relevant factors, I am convinced the appropriate sentence should be non-custodial. The home environment is not hostile. If the accused is given a non-custodial sentence, it will hasten the process of reconciliation between the affected families. I hereby order that the accused be set free from custody and immediately thereafter to serve two (2) years probation under the supervision of Probation Officer, Sotik District.

**Dated, Signed and delivered in open court this 20th day of March, 2014.**

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**J.K.SERGON**

**JUDGE**

**In the presence of:**

Mr. Ongany for Accused

Mr. Lopkoyit for Director of Public Prosecutions