

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 27 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

B KK.....ACCUSED

SENTENCE

B K K, the accused person herein is 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 8th day of June 2011 in Bureti District of the Rift Valley the accused is said to have murdered his wife **J C**. Before the case could be heard, negotiations to have the accused plead guilty to the lesser charge of manslaughter began culminating to the execution of the plea agreement dated 18th March 2014. This court approved the plea agreement and proceeded to convict the accused for the offence of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code.

Before pronouncing the sentence, this court invited the learned State counsel to give a brief on the accused's past criminal record. I also invited the defence counsel to submit the facts in Mitigation. A probation report on the accused was further requested to be filed.

Mr. Kirui, learned advocate for the accused beseeched this court to be lenient to the accused arguing that he was remorseful from the beginning. After committing the offence the accused fled and surrendered himself to Litein Police Station where he acknowledged his mistake which he claimed was not intentional. Mr. Kirui also submitted that the accused regrets the loss of his wife who was survived by three children of tender age. It is also submitted that if the accused is given a non-custodial sentence it will allow the Kipsigis traditional cleansing ceremonies to be conducted making it easy to integrate the accused to society. Mr. Lopokoiyit, learned Prosecution Counsel urged this court to treat the accused as a first offender since the state did not have the accused's past criminal record.

The facts outlined by the prosecution in support of the charge indicates that the deceased who was the accused's wife deserted the matrimonial home and left for her parents together with her children after the couple quarrelled over financial issues. It is said that the accused called his mother in-law threatening to kill the deceased if she (deceased) did not return home. The accused appears to have executed his threat on 8th June 2011 by stabbing the deceased while she was on her way home from church. The accused thereafter surrendered himself to the police. It would appear the accused was psychologically affected by the deceased's departure from the matrimonial home to her parents.

The probation report prepared by the Bureti District Probation Officer shows that the accused's clan are ready to take back the children of the couple, pay dowry and compensation after the cleansing ceremonies have taken place. It is said that the family and clan members of the offender are willing to forgive the offender but the victim's family and clan members are not yet ready for any negotiations. It is clear from the probation report that no serious and meaningful process of reconciliation has taken place to reintegrate the accused to society if given a non-custodial sentence. The home environment is still very hostile. The report paints the accused as a person who easily gets annoyed and goes violent with the slightest provocation or when under the influence of alcohol. It may not be safe for the accused to serve a non-custodial sentence. There is no doubt that the accused inflicted a single stab wound in a feat of anger which fatally injured the deceased. The accused has been in custody for two years. After a careful consideration of the facts in mitigation and the Probation Officer's report, I think the appropriate sentence in the circumstances of this case should be custodial. I hereby sentence the accused to ten years

imprisonment.

Dated, Signed and delivered in open court this 4th day of April, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Kivali for Director of Public Prosecutions

N/A Mr. Kirui for Accused