



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO.56 OF 2013**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**GEORGE KIMANI MWAURA.....ACCUSED**

**RULING**

The accused **GEORGE KIMANI MWAURA** was originally charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

An offer of plea bargain was made to the Director OF Public Prosecution that the the accused be charged with a lesser offence of **manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**.

The offer was accepted and the original charge of murder was withdrawn and substituted with that of manslaughter to which the accused pleaded guilty to.

The facts of the case are that on the fateful day, the deceased Nancy Ochieng' came home drunk. The accused who was her husband confronted the deceased and demanded why she had left their six (6) month old child unfed and unattended. A fight ensued and the deceased collapsed and later died.

The facts of the case were read out to the accused who confirmed that the facts were correct and also true. Thereafter, the accused was convicted on his own plea of guilty and counsel was invited to mitigate before sentence was passed.

In mitigation, Mr. Kamau submitted in mitigation that the deceased had lived together with the deceased as husband and wife and were blessed with a six (6) month old child.

On the fateful night, the deceased had left the child unfed and unattended and upon being confronted, instead of offering an explanation, the deceased took the baby and threw him, onto the floor and this angered the accused and a fight ensued.

Counsel stated that the accused was remorseful and asked the court to treat him as a first offender and urged the court to prefer a non-custodial sentence. That he was also the sole breadwinner and that there was also the six (6) months old child that needed to be taken care of.

Prosecuting counsel for the State, Mr. Chebii concurred that the accused be treated as a first offender.

This court ordered that a Probation Officer's Report nbe availed to enable the court to decide on the sentence to pass.

Upon perusal of the Probation Officer's Report dated 18/7/3014 tendered into court on 21/7/2014, the court finds that it is favourable to the Accused as it recommends a non-custodial sentence to enable the Accused take up the duties of raising his children.

The factors that are favourable to the Accused are that the deceased's mother has forgiven him and has been looking after all his children throughout the period of the Accused's incarceration.

Taking into consideration, the circumstances of the case, this court finds that the accused had no "*mens rea*" and had no intention of killing the deceased. The accused is a first offender and is remorseful and needs to look after his young family, therefore this court has opted to be lenient.

This court sentences the accused to a three (3) year suspended sentence.

The accused to serve the term in his home area and be of good conduct and shall report to the Area Probation Office on the last working day of each and every succeeding month for a period of one (1) year. If the accused fails to abide with the above terms he shall be re-arrested and serve the remainder of the term in prison custody.

It is so ordered.

**Dated, Signed and Delivered at Nakuru this 29th day of September, 2014.**

**A. MSHILA**

**JUDGE**