

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.2 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

DAVID KIPKURUI SOI..... ACCUSED

SENTENCE

On the information of the Director of Public Prosecutions dated 17th October 2012, David Kipkurui Soi, the accused herein, pleaded guilty to the charge of Manslaughter contrary to section 202 as read with Section 205 of the Penal Code. Initially the accused was arraigned before this court to face a charge of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The aforesaid charge was withdrawn and substituted with that of Manslaughter pursuant to the plea agreement entered between the accused and the prosecution dated 13th February 2013. The accused was convicted by the Honourable Mr. Justice Mutava who thereafter called for a pre-sentence report from the District Probation Officer. The honourable Judge is not in a position to sit at the moment and pronounce the decision on sentence hence I am enjoined to step in by dint of Sections 200(3) and 201(2) of the Criminal Procedure Code.

I have taken into account the facts in mitigation and the Probation Officer's report. The facts leading to the commission of the offence appear to be straightforward. On the 7th January 2011 at **[particulars withheld]** in Kericho County at around 1.00 p.m., the accused drove his animals to the nearby river. On the way he overheard some people talking in low tones in the nearby bush. He tip-toed whereupon he saw his wife, the deceased having s** with another man. He rushed to where they were. The deceased and her companion fled when they saw the accused approach them. The accused gave a chase and caught up with his wife (*deceased*), while the deceased's companion managed to escape. The accused beat the deceased senselessly until she was rescued by members of the public who had responded to her distress calls. The deceased was taken to Kericho District Hospital for treatment where she died while undergoing treatment. A post-mortem report on the deceased's body indicates that the cause of death is cardio-pulmonary arrest due to epidural haematoma and multiple ribs fractures. When called upon to mitigate, the accused said he was very remorseful. He also prayed to be given a non-custodial sentence to enable him take care of his four children who are currently under the care of his aging parents. It is pointed out that the period in which the accused has been in custody should be taken into account. It is also clear that the accused is a first offender. In the Probation report, it is recommended that the accused should be given a non-custodial sentence to enable him take care of the children. In the same report, it is stated that the deceased's brother - is not averse to the accused being released on probation. The area chief, does not have any objection if the accused is placed on probation save that he wanted the accused should be warned not to repeat his mistake.

Having considered all the relevant factors, I am convinced that a fair decision is to pronounce a non-custodial sentence against the accused in view of the fact that the offence was committed on the spur of the moment due to love passion. I order for the accused to be released from custody and be placed on Probation for 3 years under the supervision of the Probation Officer, Kericho. The accused should be of good conduct during this period.

Dated, signed and delivered in open court at Kericho this 18th day of July 2013.

J. K. SERGON

JUDGE