



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE 87 OF 2010**

**REPUBLIC**

**VERSUS**

**BONIFACE KYALO NGEMU ..... ACCUSED**

**SENTENCE**

I have considered the surrounding circumstances of the case, the mitigating factors, as well as the report of the Probation Officer. The accused was living with the deceased as husband and wife. They had three children. He came back at night and was suspicious that the deceased had a love affair with someone else, and there was a quarrel and he hit her, causing her death.

The accused is a first offender in his thirties. He currently has two living children who have to live with relatives. His parents have already died. The Probation Report recommends a non-custodial sentence.

Having taken the above factors into consideration, I am of the view that a non-custodial sentence is not appropriate. There was not fight between the two. It was merely an exchange of words. From the contents of the postmortem report, the force used was excessive and the injuries were not only in one area as there were bruises on the legs and multiple bruises on the upper limbs. In my view, a custodial sentence is called for. I appreciate that the accused has been in custody since 2010. I sentence him to serve six (6) years imprisonment. Right of appeal explained. Same can be filed within 14 days.

Dated and delivered at Machakos this **12<sup>th</sup>** day of **October** 2012.

**George Dulu**

**Judge**

**In presence of:-**

Mr Mukofu for State present

Mr Kimeu holding brief for Mr Makundi for Accused

Accused present

Mutinda – Court clerk