



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT ELDORET**

**Criminal Case 36 of 2004**

**REPUBLIC:.....PROSECUTOR**

**VERSUS**

**DAVID KIPCHRICHIR KUTTO:.....ACCUSED**

**JUDGEMENT ON SENTENCE**

The accused was initially charged with the offence of murder contrary to the provisions of section 203 as read with section 204 of the Penal Code. It was alleged that on the 21<sup>st</sup> day of June,2004 at Kipken village, Kipsem sub-location within Nandi South District of the Rift Valley Province, he murdered one Grace Jepkorir Kutto, his wife.

When this matter came before me for hearing on 9<sup>th</sup> November,2006, the Prosecution applied for substitution of the charge of murder with that of manslaughter contrary to the section 202 as read together with section 205.

When the new charge was read to him, the accused pleaded guilty. The facts were then read to him. He accepted the correctness and truthfulness of the facts as outlined by the prosecution.

The facts were that on 21<sup>st</sup> June,2004 the accused went to a neighbor's house at 7:30 am to buy a goat for rearing. At his neighbors, he found 2 goats which he negotiated to purchase. He settled to buy one for Shs.700/= and to exchange a sheep for the other.

The accused's wife, the deceased, then came to him and informed him that she was going to the market and needed some money from him. The accused directed her to go back home and get Shs.500/= from his jacket. He said that there was Shs.2000/= in the jacket. He then drove his 2 goats home and tethered them.

The accused then went for a walk and later took changaa until 12 noon. He thereafter returned home but his wife had not come back from the market. He made lunch for the children. When the children came from school, they all eat lunch. The accused then went to rest under a tree.

While resting a neighbour's girl came to him and told him to call his daughter Rose so that she could help her mother (his wife) to carry the items she had bought from the market. The little girl said that his wife was not able to walk home as she lay on the ground, drunk.

The accused went to find out for himself regarding his wife's condition. He found his wife lying on the side of the path. Besides her there were 2 paper bags containing the items she had bought. The deceased

became abusive and violent when he asked her to go home. She threatened to go to her parents. In anger, the accused took a stick and whipped her in an attempt to stop her from abusing him.

This did not deter the deceased who continued to abuse him. Seeing that she was very drunk, he went and fetched some water and poured on her. He then took the shopping she had done and went home. The next morning, he discovered the accused had taken the entire Shs.2000/= when she had gone to the market the previous day. The deceased did not come back home.

The accused prepared the children for school and then went to his mother's house to have some chang'aa. Later he was told that the deceased had slept in his cousin's house. His cousin's name was Samuel Langat.

The accused was arrested by Administration police from the Chief's camp at Chemase. He was told that his wife had died as a result of his assaulting her. He was taken to Chemase Police post and then to Songhor Police station where he was charged with the offence of murder.

The deceased body was taken to Nandi Hills Hospital where the postmortem was conducted on 24<sup>th</sup> June,2004 by Dr. Kalya. The doctor determined that the death was due to a severe head injury with extradural and inter cerebral hemorrhage.

In mitigation, the accused stated that he was remorseful. He is traumatized due to the loss of his wife whom he loved. He said that there was no intention to kill her. He had been provoked by the actions and conduct of his wife. This led him to hit her. He said that she had abused him and became violent. In the heat of passion, he hit her using a stick. He said he tried to sober her up by pouring water on her. He said he had no ill motive.

The accused added that he was 42 years old and has 7 (seven) children. He is the sole bread-winner in his family. He said most of the children are school-going.

I have considered the facts of the case and the submissions in mitigation by the accused. The accused was angered by his wife's conduct and particularly the abuses she hurled at him. It was of course wrong that he should beat up his wife. He knew she was drunk and was not herself. The accused aggravated the situation by taking a stick to whip his wife. He hit her on the head. These are quite unfortunately common incidences between husband and wife in our society. Domestic violence is prevalent in Kenya and this one is one such incident.

The accused conduct was deplorable as he ought not have used a stick to hit out at his wife and particularly on the head. The type and degree of violence here is what led to the death of the deceased. This was totally unnecessary and could have been avoided.

I have taken into account that the accused is still a young man. However he has seven children who have already lost their dear mother. The mother died at the hands of their own father. This is a double tragedy for the children. It must be devastating to the accused as he certainly did not intend to kill his wife. By his action he has lost a wife and the mother of his children.

The accused shall always carry that responsibility and guilty conscience in the eyes of his children and community. The accused has been in custody for about 2 ½ years. If he is incarcerated longer he will be of no use to his seven children. The children will grow up without both parents.

I think that it will be in the interest of the accused's, children, the family and society at large if the accused is allowed to rejoin his family. In this way he should be able to mend his life and look after the seven children. His only attainment lies in his dedicating his life to his children so that the loss of their mother is a little bit bearable. He owes this to his dead wife.

I see no purpose in any long custodial sentence. I hereby sentence the accused to serve one day's imprisonment.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 24<sup>TH</sup> DAY OF NOVEMBER,2006**

**M.K. IBRAHIM**

**JUDGE**