



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KENYA AT KISII**

**CRIMINAL (MURDER) CASE NO. 5 OF 2021**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ALICE NYABONYI ONDIBA.....ACCUSED**

**SENTENCE**

1. **ALICE NYABONYI ONIBA** hereinafter referred to as the accused person was charged with the offence of murder contrary to section 203 as read section 204 of the Penal Code. After a plea bargain the charge was reduced to one of Manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence are that, on the 16/1/2021 at Kanyimbo Sub-location in Gucha Sub-County in Kisii County the accused unlawfully caused the death of Joseph Ondiba Orwongo.

2. She pleaded guilty to the charge of manslaughter and after the facts were read she admitted that the facts were true and correct and I convicted the accused person of the charge of Manslaughter as charged.

3. The brief facts are that the deceased is her husband. On the 15/1/2021 they received visitors their in-laws. They had celebrations throughout the night. The accused and the deceased continued to drink until the next day. That the next day at 10.00am an argument arose between the deceased and the accused over some 2000/- which the visitors had left. The argument generated into a physical fight between the 2 and the deceased hit the accused on the head. The deceased ended up being stabbed by the accused on the head and he fell down unconscious. He was rushed to hospital and he died. The post mortem report produced indicated that the cause of death was a head injury due to a penetrating force trauma due to assault. The accused was thereafter arrested and charged with murder which was reduced to manslaughter after a plea bargain.

4. The accused person is a first offender. The probation report dated 17/6/2021 indicates that the accused and the deceased had 10 children, 6 died and 4 are alive. She is said to be hardworking but drinks alcohol. That she has no formal employment she is a pleasant cum an avocado vendor. It is stated that her children miss as she is the one who gives direction on family matters and that the homestead without both parents will not be stable. The children indicated that they love their parents but the only problem was that alcohol caused frequent fights between the 2. They have requested the court to give the accused a non-custodial sentence.

5. On community attitude, a report from the area chief is that the said family has had issues emanating from their drinking habits and that he has handled most of their cases without much success. The chief pointed an accusing finger to the deceased as an aggressor in most cases that he handled. That the accused has been a victim of gender violence but because she did not report her cases to the police. That at one time the public intervened and the deceased was arrested. It is recommended that the accused is suitable for a non-custodial sentence.

6. In mitigation Mr. Gichana told the court that the accused is a first offender that she is remorseful and that she has been a victim of gender violence. He requested the court to give her a non-custodial sentence.

7. I have considered the following factors that the accused has pleaded guilty to the offence of manslaughter, her age, the family background and what led to the unlawful killing and the manner it happened and also that she is first offender. She is said to be remorseful. It is apparent that the accused and the deceased had a drinking problem. On the day she stabbed the deceased her husband they had been drinking most of the night. She promises not to drink again. The maximum sentence for manslaughter is life imprisonment. Though the probation report is favourable to the accused though provoked choose to take a knife and stab the deceased. Her actions were indeed unlawful. Considering the circumstance of the case I find that the accused deserves a custodial sentence. I therefore sentence the accused **ALICE NYABONYI ONDIBA** to two (2) years imprisonment. She has a right of appeal within 14 days.

**DATED, SIGNED AND DELIVERED AT KISII THIS 17<sup>TH</sup> DAY OF JUNE 2021.**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

**Alice Nyabonyi Ondiba Accused Person**

**Mr. Gichana For the Accused Person**

**M/s Kibungi State Counsel ODDP**

