

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

MURDER NO. 11 OF 2019

REPUBLIC.....PROSECUTOR

-VERSUS-

HENRY KOSGEI CHEBII.....ACCUSED

RULING ON SENTENCING

1. The accused was charged with offence of **Murder** contrary to **Section 203 as read with Section 204 of the Criminal Procedure Code Cap. 63 Laws of Kenya**.

2. Particulars are that on 18/06/2019 at Mikima Village, Kiambogo Sub-Location, Nyahururu Sub-County, Laikipia County, murdered Mercy Talam.

3. He pleaded not guilty. However, a plea bargain exercise was entered into and an agreement was reached, signed and filed herein on 08/06/2021. The court allowed the substitution of charge of Murder with that of Manslaughter. The accused was called to answer to the charges afresh in which he pleaded guilty.

4. After convictions facts were read to him which he admitted to be true. In summary the fact read indicate that the deceased who was wife to the accused borrowed accused money for "Chama". He told her he did not have money leading to her hurling insults at him, quarreling and throwing stones at him. The accused went towards her while deceased was holding a piece of timber whereof upon arrival she slapped him and held him by his neck.

5. The accused pushed her away and she fell on the ground that was covered by stones injuring her forehead. The blood oozed from same spot of injury. The accused tried to help her up but in vain and he called for help. Upon being taken to hospital she was pronounced dead. The cause of death upon postmortem exercise was revealed to be severe head injury following penetrating trauma. Postmortem was produced as P-Exhibit 1.

6. Upon the reading of the said facts, the accused admitted same as true and the prosecution indicated that the accused was a first offender as there was no previous record.

7. In mitigation, the accused's Advocate tried to reconstruct and moderate the facts which were not congruent with what his accused/client admitted as narrated by the prosecution. The Advocate advanced the accused's case of provocation relying on the case of **Yovan v Uganda 1970 EA at page 405** on the basis of the deceased provocation to the accused.

8. Accused was also said to have been in custody for a year prior to release on bond. He was left with 2 minor children by the deceased and there is no other person who can take care of them in event he is awarded a custodial sentence. He is the sole breadwinner to the same children. He has saved court's time by pleading guilty to the charges and he is a first offender. The deceased provoked him exceedingly on the basis of the facts narrated and admitted.

9. However, he seems to have exerted extreme force in retaliation to the deceased's provocation thus occasioning her fatal injuries. The court appreciates that he did not use any weapon but just pushed her down as she had slapped him and held him by his neck.

10. However, as he never retreated when she was throwing stones to him and insulting him but went straight to her nor did he wrestle her down before pushing her violently to the ground, he cannot get the absolute discharge. Thus the court in all the circumstances of the case awards accused makes the following orders in sentence;

(i) The accused having been in custody for about a year prior to release on bond, same is converted to be part of his sentence and on top of that he will serve 2 year suspended sentence so at if he commits any other offence in the next two years he will be arrested and handed over to prisons to serve two more years' imprisonment for offence herein.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 14TH DAY OF JULY, 2021.

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CHARLES KARIUKI

JUDGE