



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

HIGH COURT CRIMINAL CASE NO.14 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

GEORGE KUNGU KAMAU.....ACCUSED

J U D G M E N T

1. The Accused Person was charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The charge was reduced to one of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code following a successful plea bargain agreement signed by the Accused Person.
3. The particulars of the charge were that on 16/6/2017 at Kahuhura Village in Londiani Sub-County within Kericho County, the Accused Person unlawfully killed PRISCAH WAMBUI KAHATO.
4. The facts of the case were as follows:-

On the 16th day of June, 2017 at Kahuhura Village in Londiani Sub-County, the Accused was in the house with his wife (the deceased) at around 19.00 hrs. They were both taking alcohol in the house.

Both the Accused and his wife sold changaa in their home from the house.

Their customer by the name Joseph Njehia joined them and bought changaa for himself, the Accused and his wife (the Deceased).

After they finished consuming the changaa that Joseph bought them, the Accused left with Joseph and went to Londiani Town where they continued consuming alcohol upto around midnight when they both went to their respective houses.

The Accused reached his house and woke his wife and started quarrelling her asking her why she had not prepared for him food. The Accused started assaulting her but she managed to run outside to go and hide.

The Accused then armed himself with a panga and went to the house of Joseph Njenga and started banging his door asking him to open the door. The Accused suspected that his wife had gone there to hide.

Joseph who was already asleep woke up and opened his door.

The Accused threatened to assault him using the panga that he had if he does not tell him where he has hidden his wife in his house.

Joseph, fearing for his life, ran away leaving the accused looking around his house if his wife was there.

After failing to find his wife in Joseph's house, the Accused went to an empty house next to Joseph's house and found his wife hiding there.

The Accused then assaulted his wife severally using the panga and left her lying down unconscious with injuries on her fore head.

The Accused then went to sleep. The following morning, neighbours found the deceased's body lying down naked and in a pool of

blood with visible deep cut head injuries.

The neighbours went and woke the Accused informing him of the same.

The neighbours went and confirmed that the deceased's body was lying down naked with visible injuries on her head.

With the request of the women neighbours, the Accused took one of her dresses and dressed the deceased then informed his brothers what has happened.

The Accused then called the Area Chief who went to the scene then reported the incident to the Police.

The police arrived and took the body to Molo District Hospital Mortuary while the Accused was taken to Police Custody.

Post Mortem was conducted by Dr. Nthenya Mbithi who formed the opinion that the cause of death was head injury secondary to assault.

The Accused was later charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code which has now been reduced to the offence of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.

5. The Defence Counsel said in Mitigation that the Accused Person is a young man aged 32 years with three young children who are now destitute since the Accused Person has been in Custody.

6. It is further said in mitigation that the Accused was intoxicated at the time of the commission of the offence and further that he believed his wife was having extramarital affairs.

7. It was said in mitigation that the Accused Person has been in custody since 2017 and while in custody he has resolved not to drink. He asked for leniency in sentencing.

8. I have considered the Pre-sentence Report filed by the Probation Officer dated 21/7/2021. The Accused Person was legally married to the deceased at the time of the offence. They were staying together and they had one child.

9. I find that a none-custodial sentence is not appropriate in the circumstances of this case as the Accused Person inflicted fatal injuries on the deceased for no apparent reason. Justice Joel Ngugi in *Benson Ochieng' & Another Versus Republic, (2018) eKLR* stated as follows: ***“Re-phrasing the Sentencing Guidelines, there are four sets of factors a Court looks at in determining the appropriate custodial sentence after determining the correct entry point (which, as stated above, I have determined to be fifteen years imprisonment). These are the following:***

a. Circumstances Surrounding the Commission of the Offence: The factors here include:

i. Was the Offender armed? The more dangerous the weapon, the higher the culpability and hence the higher the sentence.

ii. Was the offender armed with a gun?

iii. Was the gun an assault weapon such as AK47?

iv. Did the offender use excessive, flagrant or gratuitous force?

v. Was the offender part of an organized gang?

vi. Were there multiple victims?

vii. Did the offender repeatedly assault or attack the same victim?

b. Circumstances Surrounding the Offender: The factors here include the following:

i. The criminal history of the offender: being a first offender is a mitigating factor;

ii. The remorse of the Applicant as expressed at the time of conviction;

iii. The remorse of the Applicant presently;

iv. Demonstrable evidence that the Applicant has reformed while in prison;

v. Demonstrable capacity for rehabilitation;

vi. Potential for re-integration with the community;

vii. The personal situation of the Offender including the Applicant's family situation; health; disability; or mental illness or impaired function of the mind.

c. Circumstances Surrounding the Victim: The factors to be considered here include:

i. The impact of the offence on the victims (if known or knowable);

ii. Whether the victim got injured, and if so the extent of the injury;

iii. Whether there were serious psychological effects on the victim;

iv. The views of the victim(s) regarding the appropriate sentence;

v. Whether the victim was a member of a vulnerable group such as children; women; Persons with disabilities; or the elderly;

vi. Whether the victim was targeted because of the special public service they offer or their position in the public service; and

vii. Whether there been commitment on the part of the offender (Applicant) to repair the harm as evidenced through reconciliation, restitution or genuine attempts to reach out to the victims of the crime.

10. I have taken into account the fact that the Accused Person is a first offender and the fact that he pleaded guilty and saved the Court's time. The offence of manslaughter is a serious one that has a maximum sentence of life imprisonment.

11. Taking into account, the mitigating circumstances in this case, I sentence the Accused Person to 10 years imprisonment.

12. The period the Accused Person has been in custody will be removed from the period of 10 years during computation.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 1ST DAY OF OCTOBER, 2021.

A. N. ONGERI

JUDGE