



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

HIGH COURT CRIMINAL CASE NO. E015 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

PAUL KIPKEMOI KOECH.....ACCUSED

J U D G M E N T

1. The Accused Person in this case was initially charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code and 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 on 2nd March, 2021.

2. The particulars of the charge of manslaughter were as follows:-

On 12th November, 2020 at KIMOLGIT Village in KIPSEGI Location Kipkelion Sub-County within Kericho County, the Accused Person unlawfully killed CAROLINE KOECH.

3. The facts of the case as given by the Prosecution were as follows:-

On the 12th day of November, 2020 at around 2130 hrs, the Accused Person was from a circumcision ceremony and found his wife, the deceased, drunk and his children were sleeping.

The Accused went to the kitchen and found that the deceased had not cooked food and children had slept hungry.

The deceased had just arrived from a drinking spree while the Accused was away.

The deceased was milking their cow at that time yet she usually milk the cow at around 6.00 pm.

The Accused Person was very annoyed with what the deceased had done but tried to control himself because it was a taboo among the Kalenjin to quarrel or fight during the circumcision period.

The deceased and accused previously had domestic problems caused by the character of the deceased of drinking alcohol and becoming irresponsible. They had resolved that the deceased will change from her bad habits and become disciplined especially around the circumcision period.

The accused slowly went to where the deceased was milking the cow and asked her why and where she had gone.

The deceased responded by telling him that she had gone to look for money somewhere.

The Accused knew that she was lying to him and this angered him even more. They started quarreling and the deceased threatened to leave him and go to her parent's home.

The Accused who was now boiling with anger grabbed the deceased and slapped her. She fell down and started screaming for help. The Accused was pressing her on the ground when his two sisters arrived, he stopped assaulting her.

The Accused left them and went to the house. While he was in the house, he could hear the deceased throwing insults at him saying that she will kill the Accused.

This annoyed the Accused who grabbed a panga from the house and went outside assaulted the deceased using the panga on her head and fell down, he continued assaulting her inflicting deep cut wounds on her head and other body parts and fled from the scene leaving her lying in a pool of blood.

The Accused person's sisters who were around there started screaming and neighbours went to the scene and found the deceased lying down dead in a pool of blood.

One of the neighbours called the Police and informed them of the incident. Police later arrived at the scene and collected the body of the deceased and took it to Kericho County Referral Hospital Mortuary.

Postmortem was conducted by Dr. Koech who formed the opinion that the cause of death was severe head injury secondary to trauma with sharp object.

Meanwhile later that night at around 3 a.m., the Accused Person in his hideout called his brother Simeon to go to where he was.

Simeon went to where he was hiding and he disclosed to him what he had done. He then gave Simeon Kshs.1,000/= and his mobile phone then told him to take care of his children because he is going to surrender himself to police.

The Accused then went to Kipkelion Police Station and surrender himself.

After the completion of investigations, the Accused was charged with the offence of Murder Contrary to Section 203 as read together with Section 204 of the Penal Code.

This has now been reduced to the offence of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.

4. The Defence Counsel gave mitigation on account of the Accused Person as follows:-

(i) THAT the Accused Person is a first offender and he is remorseful for the offence he committed.

(ii) THAT the Accused Person has two children and the Deceased was his wife.

(iii) THAT the Accused Person is seeking the discretion of the Court for a non-custodial sentence.

5. The Probation Officer filed a pre-sentence Report dated 19/7/2021 recommending a non-custodial sentence.

6. I have considered the circumstances of this case and especially the fact that the deceased was the wife of the Accused Person.

7. Domestic violence is not a solution for family differences. The Accused Person should have separated with the deceased instead of cutting her up with a panga because of her drunken behavior.

8. It is the duty of this court to say "NO" to domestic violence by metting a deterrent sentence.

9. The sentencing objectives as per the Judiciary Sentencing Policy Guidelines are :-

1. Retribution: to punish the offender for his/her criminal conduct in a just manner.

2. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.

4. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.

5. Community protection: to protect the community by incapacitating the offender.

6. Denunciation: to communicate the community's condemnation of the criminal conduct.

10. Several courts have highlighted the principles of sentencing. One such case is the High Court Criminal Appeal decision in **DAHIR HUSSEIN VS. REPUBLIC [2015] eKLR**, the High Court held that the objectives of sentencing include :-

“... deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”

11. The Court has taken into consideration the mitigating circumstances and especially the fact that the Accused Person pleaded guilty to the lesser charge of manslaughter and saved the Court’s time for trial and also the fact that the Accused Person is a first offender.

12. The charge of manslaughter carries a penalty of life imprisonment; the Accused Person is sentenced to Five (5) Years imprisonment.

13. The period the Accused Person has been in custody to be taken into account when computing the sentence.

14. Right of Appeal against sentence 14 days explained to the Accused Person.

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

A. N. ONGERI

JUDGE