



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

HIGH COURT CRIMINAL CASE NO.23 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

JOAN CHEMUTAI KIRUI.....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 manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code following a successful plea bargain agreement signed on 15/12/2020.
3. The particulars of the charge were that on 5/10/2018 at Kipwastuiyo village in Techoget Location in Bureti Sub-county within Kericho County, the Accused Person unlawfully killed MERCY KIRUI.
4. The facts of the case were as follows:-

The Accused Person is married to one Kiprono Kirui.

In the month of July, 2018, Kiprono Kirui's elder brother Richard Cheruiyot Kirui passed away leaving behind Mercy Chepkemoi Kirui (the Deceased) and three children.

Kiprono Kirui was then mandated to look after Mercy Chepkemoi (Deceased) and her three children although it was not clear who mandated him.

On the 5th day of October, 2018 at around 2000hrs, the Accused left her house and went to a nearby shopping centre to buy vegetables.

She shut the door and left it unlocked so that her husband could get access to the house when he gets home.

The Accused stayed for about an hour as she was with her friends chatting while waiting for her vegetables (sukuma wiki) to be sliced by the vendor.

The Accused Person went back to her house and on getting inside, she found her husband and Mercy Chepkemoi having sex. Mercy had folded up her skirt while the Accused Person's husband unzipped the fly of his long trouser as they were engaging in sexual activity.

On noticing that he was caught unexpectedly, the Accused Person's husband ran outside leaving behind Mercy.

A fierce fight ensued between the Accused and Mercy.

Mercy overpowered the Accused causing her to fall down on her back while Mercy fell on top of her biting her mouth.

As they were wrestling on the ground, the Accused Person stretched her hand and reached for a knife which she gripped and used it to stab Mercy on her stomach. Mercy was by then still on top of the Accused pinning her down.

Mercy cried in pain while the Accused let herself loose and ran away fearing that her husband will come and assault her.

The commotion attracted neighbours who went to the scene and found Mercy lying down helpless bleeding from her injured stomach.

They took her to a nearby dispensary at Kibwastuyo where first aid was administered and referred to Kapkatet Hospital.

She was treated and discharged but the following day her condition worsened and was taken back to the same hospital and admitted but passed away two days later while undergoing treatment. The body of the deceased was then taken to Kapkatet Sub-County Hospital Mortuary where postmortem was performed by Dr. Nickson Mutai who formed the opinion that the cause of death was Septicarmia/peritonitis due to assault.

Meanwhile the Accused Person had fled to her grandmother's home at Kaplelagi where the Police from Litein Police Station traced her and arrested her after a report was made of Mercy's death.

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

5. In mitigation, Counsel for the Accused Person said the Accused Person did not intend to kill the deceased and further that she found the deceased making love with her husband.
6. Further, that the Accused Person has been languishing in custody yet her husband who was the cause of the fight is a free man.
7. The Court was also told that the Accused Person is a young mother with three children who need her care and further that she has been in custody since the incident occurred in 2018.
8. The Probation Officer filed a Pre -sentence Report which I have also taken into account. The deceased and the Accused Person were married to blood brothers and the deceased was found making love with the Accused Person's husband when a fight ensued and the Accused Person stabbed the deceased with a knife inflicting fatal injuries.
9. This case is appropriate for a non-custodial sentence taking into account that the Accused Person has been in custody since 11/10/2018 when she was arrested.
10. The Accused Person is placed on Probation for a period of two (2) years on condition that she complies with the requirements of the Probation Officer.
11. The County Probation Officer, Kericho County to organize for Counselling Sessions during that period.

Delivered, dated and signed at Kericho this 1st day of October, 2021.

A. N. ONGERI

JUDGE