



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 33 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

MARGARET MWENDE KWETA.....ACCUSED

RULING

1. The Accused **Margaret Mwende** is charged with **Murder** Contrary to **Section 203** as read with **Section 204 Penal Code Cap 63** in that on **20.9.2018** at **Mwengea village, Kibwea location, Mutomo sub-County Kitui County** Murdered **Kweta Kioko**.
2. She was taken to Court on **31.10.2018** and after mentions on **30/12/2018, 14/1/19, 29/1/2019, 1/2/2019** a plea was taken where she pleaded not guilty to the charge.
3. There a further mention was fixed on 28/3/2019. The hearing dates were fixed on 2nd and 3rd July 2019 and 2/7/2019.
4. The Prosecution sought time to engage the deceased family over the charged offence. The matter was adjourned to 1/10/2019 when a further date was fixed on 15/10/2014.
5. On **15/10/2019** the matter appeared before me and then both sides in the matter sought further date to conclude the talk. Thus I gave them 18/10/2019.
6. On this date the State via Mr Okemwa sought to address court and filed affidavit and a hand written agreement all crystallising the end product of the talk between the deceased and accused family over reconciliation. The same is based on Provisions of Articles 107 (6) (k) (7) (8) Article 159 (2) (c) and d and (3) Constitution of Kenya. And also Section 25(1) ODP Act. The circumstances of commission of the offence charged is that on **20/9/2018** while the accused was **7 months pregnant** was doing laundry, the deceased who was her husband and a drunkard without any provocation attacked the accused whereof she fell on ground where there was a piece of wood which had nails.
7. She picked same and struck him once and he bled to death. She was highly provoked and taking into account her body conditions due to the 7 month pregnancy she heated up rather faster than normal.
8. She had been in custody since **20/9/2018** for **over 1 year and 1 month**. She and deceased had **7 issues** with the eldest being 18 years and she was the sole bread winner. Those in school at the time of the incident dropped from school as they were left with nobody to take care of them. The families have tried but they have failed.
9. On **20/6/2019** the members of the 2 sides of the families of deceased and Accused met and entered into a reconciliation agreement. There are also affidavits filed by both sides relatives.
10. The Counsel has informed court that both sides have reconciled and have agreed to have the state withdraw charges as they have reconciled.
11. The Counsel informed court such an arrangement is not inconsistent with **Article 159 (c) of the Constitution of Kenya** nor does it contravene principles of human rights, and he relied on **Garissa HCR. NO. 2/2016 Republic Vs. Musili Ivia & Another** which relied on **NRB HCRC 86/2011 Republic vs. Mohammed Abdan** as well. Other matters **Garissa HCRC 36/2012 Republic versus Omar**, the State Counsel concluded by asking court to allow request of the prosecution for discontinuance of the criminal proceeding herein.
12. **Ms Mwatha** for the accused person stated that the accused does not oppose the request and that her client is agreeable to the same. That the both sides families have agreed and reconciled and have agreed and are ready to receive the accused home to enable her take care of her 7

children including the baby she is living with in prisons.

13. From the reconciliation agreement of **20.6.2019** the Affidavits of **Joseph Kasina** elder brother of accused, **Dominic Kioko Kienga** elder brother to deceased and family head of deceased side the affidavits of **Kasumuni Mwandikwa** elder sister of the deceased, the families have agreed to make peace with accused person. They have agreed to forgive her. They plead with the court to allow discontinuance of the proceedings to enable the accused go home and take care of the 7 young children who require close parental attention.

14. The court has considered the provisions of the constitution, cited written law and international conventions and the effect of such settlement will have on the interest of the victims' relatives, victims, local community and public at large.

15. In the circumstances of this case I don't find the settlement agreement to be inconsistent with the spirit and purpose of **Article 159 (2) and (3) of the Constitution of Kenya**.

16. I am also not aware of any written law or international convention that prohibits the amicable settlement proposed. The victim is already dead and close relatives agree to the settlement. I have not been told that there is any objection from the community or the Public at large. I will therefore accord the both sides settlement consideration in this matter under **Article 157 (6) (f) Constitution of Kenya**. The DPP has requested to discontinue criminal proceedings subject to the permission of the court. He has now asked for such discontinuance of the criminal proceedings on above settlement. He has said that as a result of reconciliation reached almost all witnesses were in court and all the relatives are part and parcel of the reconciliation.

17. The court takes Judicial Notice that to find witnesses who have been part of reconciliation to come to court would be a daunting task of bringing them to court to testify against accused.

18. In my considered view this court is obliged to promote reconciliation as requested and thus allow the request of the DPP and order:

(a) The proceedings herein against accused for Murder be and are hereby discontinued.

(b) No witness has testified, the Accused person is hereby discharged and released forthwith unless otherwise lawfully held.

Dated, Signed and delivered at Kitui this 18th day of October 2019

C. KARIUKI

JUDGE