



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CRIMINAL CASE NO. 13 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VRS**

**JCT.....ACCUSED**

**SENTENCE**

1. The accused was charged with murder but convicted of manslaughter contrary to section 202 of the Penal Code after entering into a plea bargain agreement with the State.
2. After the conviction on 11<sup>th</sup> July 2019, the court asked for a pre-sentence report from the Probation Officer, Kericho. Same was prepared by Caroline Tonui a Probation Officer, Kericho and dated 11/11/2019. It is stated in the report that family members of the deceased are still hostile, and that a non-custodial sentence is not suitable as the accused was almost lynched on the day of the incident.
3. However, the State asked the court to treat the accused as a first offender, which I hereby do. In mitigation, the Learned Counsel for the accused stated that the deceased and the accused were wife and husband and that they were both drunk that fateful night. Both had domestic quarrels previously, and the accused infact had an impaired arm inflicted during such fights. Counsel stated also that the accused had two HIV positive grandchildren whom she cared for, and was 64 years old.
4. I have taken the above factors into consideration. The accused and the deceased were a wife and husband who had the habit of quarrelling and fighting, in which the accused had suffered injuries to her arm in the course of those frequent fights. She says she has two HIV positive grandchildren to take care of. It is not clear as to who provoked the fight. Though the accused has asked for leniency, it is clear from the facts narrated, that she first attacked the deceased with a knife, then a hammer. The attack was vicious, and it is clear that excessive force was used. I find that a non-custodial sentence is not suitable. The accused has been in custody since April this year, which is about eight (8) months now. She is old at 65 years.
5. Having taken all the above factors into account, I sentence the accused to imprisonment for five (5) years.

**Dated and delivered at Kericho this 13<sup>th</sup> day of November 2019.**

**George Dulu**

**JUDGE**