



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 20 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

ALFRED KIPLAGAT SAMOEL.....ACCUSED

SENTENCE

1. The accused person herein **ALFRED KIPLAGAT SAMOEI**, was charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** but by a plea bargain agreement made on 15th January 2018, the said charge was reduced to a lesser charge of manslaughter.
2. The particulars of the offence were that on the night of 15th September 2017 at around 9 p.m. at Nyakweri forest in Sitoka Location in Transmara West Sub-county within Narok County, unlawfully caused the death of **Michael Samura**.
3. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.
4. The facts of the case, as narrated by Mr. Edwin Otieno state counsel, were that on the material night, the accused went to the deceased's house and requested for a place to sleep since his polythene house had been burnt down and he was thus planning to rebuild his house the next day. The deceased, who was with his girlfriend, agreed to host the accused for the night and in fact left his bed for him while he slept on the floor with his girlfriend but no sooner had the accused fallen asleep, than the deceased started having sex with his girlfriend, an act which annoyed the 'guest', (the accused) who complained and asked the deceased not to make love to his girlfriend in his presence more so, considering that the accused and the deceased's girlfriend had a love affair barely 2 weeks from the date in question.
5. The deceased however failed to heed to the accused's complaints and verbal argument ensued which later degenerated into a fierce physical confrontation in which the deceased overpowered the accused, but in a quick turn of events, the accused managed to grab a knife from the deceased and stabbed the deceased in the stomach before running away from the scene.
6. The deceased's said girlfriend was left holding her bleeding boyfriend who died soon thereafter and a postmortem examination report established the cause of death to be internal haemorrhage due to a stab wound.
7. In mitigation, Mr. Okenye for the accused pleaded for leniency and a non-custodial sentence on his behalf while stating that the circumstances leading to the killing were unfortunate, regrettable as the accused did not intend to kill the deceased. He added that the accused was provoked by the fact that the deceased was having sex with his ex-girlfriend in his presence.
8. Mr. Okenye observed that the deceased would have killed the accused since he (the deceased) had the knife first before the accused grabbed it from him. He added that the accused was widower aged 75 years with young children who solely depended on him.
9. The probation officer's report filed in court on 7th March 2018 shows that the accused may benefit from a non-custodial sentence.
10. Be it as it may, I have considered the circumstances under which the deceased met his untimely death and at best, I can say that the facts of the case fit the script of a twisted stranger than fiction movie category. I say so because what started as a kind act of accommodating the accused for the night following an inferno that razed down his polythene make shift house ended tragically when the guest turned on his host with a lethal weapon and killed him on the spot. On the flipside, one wonders why the deceased, who out of courtesy and respect had left his own bed for the accused to sleep on, could choose to have sex with the said girlfriend in the full view of the accused.
11. The strange twist in the story is that the deceased's said girlfriend turned out to have been the former girlfriend of the accused barely 2 weeks before the fateful night and this explains why the accused may have felt offended or jilted to see his ex lover having sexual intercourse with his host. In the circumstances, one can easily say that the accused had several options at his disposal including moving out of the deceased's house, however, in the heat of passion, the accused may not be able to contain his anger and only realized his folly long after the

damage has been done. I find that the accused, the deceased and the unnamed lady at the centre of controversy were victims of a deadly lone triangle.

12. The deceased's death can however be wholly attributed to the fault of the accused since it is the deceased who first armed himself with a knife ready to attack the accused whom he had already overpowered before tables turned when the accused managed to disarm him and use the same weapon to stab him. This scenario can best be described as the case of the deceased falling on his own sword after the accused acted in self defence.

13. Taking into account all the mitigating factors in this case and especially the fact that the accused is an old man who is already well inside his sunset years as he was reported to be 75 years, coupled with the extreme provocation that he was subjected to by the deceased and the girlfriend, I am satisfied that this is a case where a non-custodial sentence would be appropriate punishment for the offence. I am convinced that the accused acted purely in self defence and that the circumstances of the case were such the deceased could have killed the accused had he not been swift enough to grab the knife from him (deceased).

14. Consequently, I sentence the accused herein to 2 years probation during which period he will be supervised by the probation officer of his area.

Delivered, dated and signed in at Kisii on 7th of **March** 2018.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Otieno or the State

Accused in person

Omwoyo court clerk