



## **REPUBLIC OF KENYA**

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

#### **CRIMINAL CASE NO. 31 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VS**

**J K N.....ACCUSED**

#### **SENTENCE**

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 17<sup>th</sup> September 2016 in Kericho West Sub-county, the accused murdered W C N.
2. He pleaded not guilty to the offence and the case was scheduled for trial, and indeed hearing commenced. However, pursuant to a plea agreement with the state dated 17<sup>th</sup> May 2018 he has pleaded guilty to the lesser offence of manslaughter a contrary to section 202 as read with section 205 of the Penal Code.
3. The fact of the case as presented by the Learned Prosecution Counsel, Ms. Keli, are that the accused and deceased were husband and wife, married with 3 children, 2 sons and a daughter. On 17<sup>th</sup> September 2016, at about 6.00 p.m. the accused differed with the deceased after she returned home after being away for 3 days. She was drunk. The accused asked her where she had been but she failed to disclose where she had been and instead started to abuse the accused stating that she was free to go wherever she wished. The accused requested the deceased to prepare a meal for the family but she refused and went on insulting the accused. The accused told her he would teach her a lesson and discipline her. He picked up a cane and started beating her on the head till she fell on the ground. The deceased tried to protect herself from the assault by the accused and in the process sustained bruises on the arms and chest.
4. The second born son of the couple aged 10 years tried to intervene and stop the accused from assaulting the deceased but the accused insisted that he had to discipline his wife. The deceased pleaded with the accused to let her prepare dinner for the family. She stood up and tried stepping on a stool so that she could get firewood from the ceiling of the house and make fire. Unfortunately, due to the fact that she was drunk, she stumbled and fell from the stool and was hit on the head as she fell on the kitchen floor. The second born son rushed and called his elder brother aged 15 years who was at a neighbour's homestead. When they got back home they found the accused standing at the kitchen door, crying and uttering words in regret that he could not imagine what had happened.
5. The two boys tried to ask their father what had happened but he was very emotional so they went to the kitchen where they found their mother lying on the kitchen floor with bruises on the forehead and upper limbs. They tried calling her but she was unresponsive. The children started screaming for help which prompted the accused to ran and lock himself up in the main house.
6. Members of the public responded to the distress call by the children. They went to the homestead where they found the lifeless body of the deceased in the kitchen with bruises on the forehead and upper arms. The area Chief and police from Sosiot Police Station were informed of the incident. They went to the scene, arrested the accused and began their preliminary investigations.
7. The deceased's body was moved to Kericho District Hospital Mortuary where a post mortem was conducted on 21<sup>st</sup> September 2016 by Dr. Gilbert Langat. The post mortem report indicated that the cause of death was severe head injury secondary to blunt trauma. The prosecution produced the post mortem report dated 21<sup>st</sup> September 2016 as exhibit 1.
8. The accused was arrested and charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. He was also taken to hospital for an examination which established that he was fit to stand trial.
9. The charge of murder has, however, been reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code pursuant to the plea agreement.
10. The accused confirmed that the facts presented to the court were correct, and he was convicted on his own plea of the offence of manslaughter. The state indicated that he was a first offender. However, Ms. Keli urged the court, in considering its sentence, to take

cognizance of the fact that a precious life was lost and that the children of the deceased will grow up without their mother due to actions that were contributed to partly by the accused person. A family was left without their daughter and the society lost a member who would have contributed positively.

11. In mitigation on his behalf, Ms. Chelimo submitted that the accused person is quite remorseful and prays for forgiveness and the court's leniency. He was the sole bread winner and care giver of the three children left in his hands. She submitted that if he is imprisoned, the children will suffer from lack of basic needs and the love of both parents. While acknowledging that a human life was lost, Ms. Chelimo was of the view that the loss of the deceased's life was also contributed to by the deceased's own acts. She urged the court to consider that the accused is a first offender and should be given a non-custodial sentence in order to provide for his family.

12. A social inquiry report was prepared in respect of the accused by the Probation Office Kericho. The report, which is undated but was filed in court on 11<sup>th</sup> June 2018, notes that the accused is a 41 year old man, who had been married to the deceased since 2000 and they had three children. The report notes that the accused was trying to "discipline" his wife who had gone home in the evening while drunk and refused to cook for the children. He regrets killing her and states that he had no intention of killing her.

13. The Probation Officer notes that the accused is a responsible person of good character. He recommends a non-custodial sentence, noting that the children of the accused may have no one to take care of them as their grandparents abuse alcohol.

14. I have considered the facts and circumstances of this case, as well as the mitigation offered by the accused and the report of the Probation Officer. I note that the accused and the deceased had three young children, now in class 8, 7 and 3 respectively at [particulars withheld] Academy.

15. The accused pleads for a non-custodial sentence, while the state urges the court to bear in mind that a precious human life was lost. I agree with the state on this point. However, from the facts presented to the court, it seems to me in this case that the death of the deceased, while contributed to by the acts of the accused, may have been due to an intervening factor-her fall from the stool to the kitchen floor where she hit her head. The accused had no right to purportedly seek to 'discipline' his wife - the message must be heard loud and clear that women are not children to be disciplined- indeed, even corporal punishment of children as a form of discipline is prohibited. Further, any form of violence against women cannot be countenanced, and the belief that women must be forced to perform domestic chores must be buried and forgotten. That he not only beat her around the head with a stick until she fell down, then saw her get on a stool after such a beating and in a drunken state demonstrates an unacceptable level of callousness towards the deceased's well-being.

16. The accused in this case left an indelible mark on his children, particularly the two young children who were present when he was beating his wife, one of whom testified before this court. While it is in their interest that the accused gets a non-custodial sentence, it is also in their interest to see that their father does not get away scot free with the actions that resulted in the death of their mother. I believe that a brief term of imprisonment will serve to meet these two interests.

17. I therefore hereby sentence the accused to serve a term of imprisonment for one year. He has a right of appeal against the sentence to the Court of Appeal.

18. Orders accordingly.

**Dated, Delivered and Signed at Kericho this 13<sup>th</sup> day of June 2018.**

**MUMBI NGUGI**

**JUDGE**