



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 11 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STEPHEN MUTHUI KYALO.....ACCUSED**

**SENTENCE**

1. The accused stands convicted for manslaughter.
2. In mitigation, his counsel Ms. Ndindi Ng'ang'a stated that the accused actually did not intent to kill and that though the maximum sentence is life imprisonment, there were several mitigating factors. Though the court in the judgment found that there was no provocation, counsel felt that there was still an element of provocation because this was a crime of passion and there was a strong emotional feeling which drove the accused to do what he did.
3. Counsel submitted that, that midnight the accused found his wife of 30 years in bed with another man in the matrimonial house. This led him to strong passion that actually amounted what can be called provocation as this was a man who had cared for his wife and six children for many years.
4. Counsel submitted that after the accused found his wife in bed with the deceased, a fight ensued after which the accused personally proceeded to report the incident to the police, and unfortunately the deceased died. She stated that the fact of the accused reporting to the police meant that he had realized that what he had done was wrong. Counsel submitted that the accused was a married man for 30 years, a faithful husband who did not get into trouble in the law. He was honest and hardworking.
5. Counsel also submitted that the accused having now being in custody from 2013 had paid for his actions and would be of good behavior as there was no indication that he had any issue or fights with inmates or authorities. The accused was remorseful and eager to join his family, some of whom are grandchildren he had never seen.
6. Mr. Okemwa the learned Principal Prosecuting Counsel submitted that indeed the accused had an emotional feeling. He felt however that he should have exercised self-control, specifically so as an example to his children. Counsel felt that there were aggravating factors such as, use of a weapon, intricate planning to commit the offence which justified custodial sentence. Counsel felt that this being a felony with a maximum sentence of life imprisonment, the court should nevertheless consider the period that the accused has been in remand. He felt that a message should be sent to the community through the sentence imposed by this court.
7. I have considered the circumstances of this case. I have considered the mitigation factors as well as the aggravating factors. The accused is a first offender as he has no previous criminal record. He is not a young man by any standards. He met the deceased in his matrimonial home with his wife at night. There was a fight and the accused was also injured and a P3 form filled. He reported the incident to the police through his own initiative. This case has taken more than 5 years till now and the accused has been in custody all that time.
8. Indeed, people should know that though they are subject to emotions, there are also capable of controlling those emotions.
9. It is unfortunate that a person has died. However, the deceased was too bold to go into the house of the accused and share a bed with his wife therein and it appears that he was also warned against it but he ignored those warnings.
10. In the circumstances of this case, I find that the period of slightly more than 5 years that the accused has remained in custody since July 2013 is adequate punishment. I thus order that the accused be released from custody as he has been already in custody for more than 5 years.

**Dated and delivered at Garissa this 7<sup>th</sup> day of November, 2018.**

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**George Dulu**

**JUDGE**