



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 07 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ELIAKIM OMBATI alias DENNIS OMBATI.....ACCUSED

SENTENCE

1. **ELIAKIM OMBATI alias DENNIS OMBATI**, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** which charge, was by a plea bargain agreement dated 24th May 2016 reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
2. The particulars of the offence were that on 29th February 2016 at Onseka Sub-location in Ibencho Location Kenyena Sub-county within Kisii County unlawfully caused the death of **Everlyn Mokera Kemunto**.
3. The accused pleaded guilty to the charge of manslaughter and was consequently convicted on his own plea of guilty. The facts of the case were that the deceased and the accused were wife and husband respectively and that on the material day, the couple was involved in a bitter quarrel over allegations that the deceased had stolen the accused's money. The quarrel escalated and ended when the accused cut the deceased with a panga on the head, neck and right hand thereby killing her instantly before fleeing from the scene.
4. A postmortem examination of the body revealed that the deceased died due to Cardio respiratory arrest Secondary to massive external hemorrhage caused by the cut wounds following an assault.
5. Mr. Magara advocate mitigated on behalf of the accused and submitted that he was a young man aged 22 years, was a father of two children and had a troubled marriage with the deceased. Mr. Magara added that the accused was remorseful, repentant and was a first offender. He pleaded for leniency so that he could go back home to fend for the two children who had been left without a parent.
6. This court called for a Probation Officer's pre-sentencing report to assist it in arriving at the most appropriate sentence which report favours a non-custodial sentence for the accused.
7. I have considered the circumstances surrounding this case the Probation Officer's report and the mitigation tendered by the accused's counsel. My attention is drawn to the very young age of the accused and it bothers me that at the tender age of 22 years, he can exhibit such vicious and barbaric behavior towards his own wife whom he ought to have protected from any harm or danger in the first place.

8. This case clearly shows that there is indeed a total breakdown in family and societal values not to mention the total lack of respect for human life.

9. The Kind of injuries that the accused inflicted on the deceased portrays him as a heartless man who does not deserve the leniency of this court.

10. In view of the above observations and considerations, I come to the conclusion that a custodial sentence would be the most appropriate sentence in this case. The offence of manslaughter which attracts a maximum sentence of life imprisonment but taking into account the mitigation tendered by the accused's counsel, I sentence he accused herein to 7 years imprisonment.

Delivered, dated and signed in at Kisii on **14th** of **July**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Magara for the Accused
- Omwoyo court clerk