



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL CASE NO. 14 OF 2011**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**NAOMI WOTHAYA KIHARA.....ACCUSED**

**SENTENCE**

1. The accused NAOMI WOTHAYA KIHARA was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. She pleaded not guilty to the said charges.
2. On 12th February 2014 a plea agreement was entered into between the accused and the state wherein the charge of murder was reduced to that of manslaughter contrary to section 200 of the Penal Code as read with section 205 of the Penal Code and the accused pleaded guilty to the said charges.
3. The facts of the offence stated that the accused aged 25 years old was married to the deceased with three children aged between 3 months and 6 years. The accused and the deceased had marital problems as a result of cruelty and adultery on the party of her husband.
4. On the night of 14th January 2012 the deceased came home drunk in the company of another woman who he wanted to spend the night with and an argument ensued between the accused and her husband who thereafter left home with the other woman and on 15th January 2011 the accused husband went back to his house and carried all his clothes deserting the accused together with three (3) children and later called and informed her that he had abandoned them without any financial assistant.
5. Having been so abandoned the accused on the night of 19th January 2011 at around 9.00 pm decided to commit suicide together with her three children by jumping into a nearby dam, but was rescued together with her three year old daughter and three month old son while the deceased was not lucky.
6. In mitigation Miss Mwai for the accused stated that the accused person herein had been charged and sentenced to life imprisonment in criminal case No. 14 of 2011 for attempted murder the subject matter of criminal appeal No. 210'B' of 2011 pending before this court and that in this particular case it can not be said that the accused did murder deliberately since Dr. Owino's Report stated that she had undergone a lot of depression.
7. It was stated that the accused was 25 years at the time of the offence and having a child aged 6 years meant that she must have given birth at the age of 19 years and that her condition had put her under a lot of pressure and that her surviving children will be better off with her.
8. The accused having pleaded guilty to the lesser charge of manslaughter this court is therefore called upon to determine the appropriate sentence having taken into account the facts as stated and the mitigation of the accused person. It should be noted that the maximum sentence in respect of a charge of manslaughter is life imprisonment and in the principles set out in CHARO NGUMBAO GUGUDU v R CR. APPEAL NO. 3581/2008 NAIROBI unreported maximum sentence should

- only be meted out to the worst offenders under particular section of that offence.
9. In the case of R v MERCY NYAMBURA WANJIKU CR CASE NO. 6 OF 2011 this court was confronted with a like situation of a young girl who found herself abandoned by all including her boyfriend. In the case before me the accused was not only abandoned by her husband but was shown the greatest hight of disrespect any woman can undergo her husband coming home with another woman with intention of sleeping with her in their matrimonial bed.
  10. Having taken into account the fact that she had undergone a lot of depression to punish her for her action will be doubt punishment. I would therefore agree with the submission by Miss Mwai that the accused is better of being let out of prison to take care of her surviving children and to pick up her life.
  11. I have taken into account the fact that the accused has been in prison for a period of three (3) years which to my mind is enough punishment and would therefore sentence the accused a a probation period of one year under the supervision of the children department.

Dated and delivered at Nyeri this 6th day of June 2014.

J. WAKIAGA

JUDGE

Miss Mwai for the accused.

Mr. Njue for the state.

Sentence read in open court in the presence of the above named.

J. WAKIAGA

JUDGE