



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO.63 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH GAKIO MUTUA.....ACCUSED

RULING ON SENTENCE

The Accused, JOSEPH GAKIO MUTUA was initially charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

Pursuant to a Plea Bargain Agreement dated the 10th day of October, 2014, the original charge of murder was withdrawn and the Accused was charged with the offence of **Manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**.

The accused and the deceased were husband and wife. On the 10th day of August, 2012 at about 11.00p.m., the deceased Margaret Rodan Roppae arrived home late and found her husband Joseph Gakio Mutua at home. The accused then asked the deceased why she had arrive home late and drunk. A quarrel then ensued between the accused and the deceased. The accused then started beating the deceased with a stick. The beating resulted to her death.

The Postmortem Report was produced into court and was marked as “**P Exb.1**” and the cause of death was established to have been severe head injuries caused by a blunt object

The above particulars of the offence were read out to the Accused who confirmed the facts to be correct and true. This court proceeded to convict him on his own plea of guilty and invited mitigation on behalf of the Accused by his counsel, before sentence was passed.

In mitigation, counsel submitted that at the time of the incident, the deceased had come home drunk and in a fit of anger, the Accused had beaten her with a stick. It was counsel's submission that there was no “**malice aforethought.**”

The accused is a young man, a first offender, remorseful and is capable of reforming. Counsel therefore pleaded for a non-custodial sentence to enable him to be of better use to society and also to consider the plight of the Accused's children.

The State submitted that the Accused be treated as a first offender.

Before passing sentence, this court requested for a Probation Officer's Report which was tendered into court on the 26th November, 2014. This court has perused the Report and finds that the Report is favourable to the Accused and recommends a non-custodial sentence to enable him get appropriate social support from his family to enable him to rehabilitate.

The report confirms that the Accused is a young man and is aged 30 years and that he has no previous criminal record. The family has also come to terms with the unfortunate incident and have forgiven the Accused and are willing to support him, where possible.

Taking into consideration the circumstances of the case and the facts and also that the Accused had no premeditated intention of killing the deceased, thus court is satisfied that the Accused is deserving of leniency.

The Accused is hereby sentenced to three(3) years suspended sentence. He will serve the term in his home area and during this period, he is to rehabilitate himself and refrain from drinking alcohol and enroll himself at the nearest rehabilitation centre. The accused shall report to the Area Probation Officer on the last working day of each and every succeeding month for a period of two (2) years. The Area Probation Officer shall file a Report into court every six (6) months on the Accused's progress.

In the event that the Accused breaches any of the terms and conditions of the suspended sentence, the Accused shall be re-arrested and shall serve the remainder of the three year sentence in prison.

It is so ordered.

Dated, Signed and Delivered at Nakuru this 19th day of December, 2014.

A. MSHILA

JUDGE



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