



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 6 OF 2020**

**REPUBLIC**

**VERSUS**

**JAMES KIRAGU WAMBUGU.....ACCUSED**

**RULING ON SENTENCE**

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; upon a Plea Bargain Agreement being entered the charge was then reduced to manslaughter;
2. The Plea Bargain Agreement dated 18/03/2021 was adopted by the court upon it being satisfied that the accused had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion;
3. The accused was accused of having unlawfully killed Joseph Mathenge Wambugu on the 5<sup>th</sup> day of July, 2020 at Njoguini Village, Thatha Sub Location, Muhoyas Location within Tetu-West Sub-County in Nyeri County; the accused was convicted on his own plea of 'Guilty' to the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code;
4. At the hearing hereof the accused was at all times represented by Learned Counsel Mr. Ndungu whereas Mr. Ondimu was the Prosecuting Counsel for the State; both counsel were invited to make submissions before sentencing was passed;
5. Prosecuting Counsel for the State submitted that there was no pre-meditation and on the 12/07/2020 the accused had readily confessed to having committed the offence and had recorded his statement and at the earliest onset was ready to have entered a plea of 'Guilty'; the Post Mortem Report was produced and marked as '**PEXh.1**'; the Mental Assessment Report was marked as '**PEXh.2**' and the confession made on the 12/07/2020 was marked as '**PEXh.3**';
6. The accused had from the onset his arrest which was 5/07/2020 had been ready and willing to enter a plea of guilty; his behavior showed signs of remorse; from the facts of the case the State was seeking a custodial sentence and proposed that he be granted a term of five (5) years with probation of two (2) years commencing from the 5/07/2020; the prosecution had no previous records of the accused and he may be treated as a first offender;
7. In mitigation counsel for the convict associated himself with the prosecution's submissions that the convict in accepting the Plea Bargain Agreement had not wasted the court's time; he was extremely remorseful and had reformed as he had learnt some church matters and had also learnt that crime does not pay; counsel prayed for a lenient sentence of two (2) years preferably a non-custodial sentence on the grounds that the community was not hostile; the convict was born in 1984 and was aged 37 years and that he be given a chance to self-improve by seeking counselling services.

**ANALYSIS**

8. It is the duty of this court to impose a sentence that meets the facts and circumstances of the case; this court has considered the full circumstances of the offence which is contained in the confession; Report; there had been a long standing strained father and son relationship as the accused was an alcoholic; the accused had picked a quarrel with his father previously and the subject of exchange was meat; the bad blood persisted despite the intervention of the nyumba kumi wazees; on the material date his father armed with a bakora (walking stick) and one Kevin armed with a panga waylaid him with the intention of disciplining him by giving him a thorough beating which led to a fight; in the ensuing melee the accused grabbed the panga which had been dropped by Kevin and he used it to slash his father severally who later succumbed to the injuries;
9. The applicable law on sentence for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which reads as follows;

**‘Any person who commits the felony of manslaughter is liable to imprisonment for life’**

10. The section provides for the maximum sentence that is life imprisonment; this court has taken into consideration the aggravating circumstances in that the convict used a deadly weapon namely a panga in committing the offence; but the facts reveal that the killing was not premeditated; the accused had arrived home intoxicated and his father and nephew had planned to give him a thorough beating to discipline him for being drunk and disorderly; on the material date it was the deceased who attacked the accused who in self defence retaliated leading to the unfortunate state of affairs;

11. The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty and thus saved on judicial time; also taken into consideration are the personal circumstances of the accused that he has also expressed his remorse and is deemed to be a first offender;

12. In the light of the mitigating factors this court is finds that a non-custodial sentence would not be appropriate in the circumstances and sentences him to five (5) years imprisonment; the period spent in remand to be taken into consideration.

**FINDINGS & DETERMINATIONS**

13. Having taken all factors into consideration this court makes the following findings and determinations;

(i) The accused is convicted on his own plea of guilty for the offence of Manslaughter;

(ii) The accused is sentenced to a term of five (5) years imprisonment; the term to run from the date of arrest;

Orders Accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 29<sup>TH</sup> DAY OF APRIL, 2021.**

**HON. LADY JUSTICE A. MSHILA**

**JUDGE OF THE HIGH COURT**