



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 13 OF 2019**

**REPUBLIC**

**VERSUS**

**FRANCIS MWANGI KAREBE.....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 this charge was then reduced to manslaughter;
2. The Plea Bargain Agreement dated 16/03/2021 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 of any kind;
3. The accused was charged with having unlawfully killed Simon Macharia Mwangi on the night of 13<sup>th</sup> day of October, 2019 at Peter Ciira sub-location in Mathira East Sub-County within Nyeri County; and he was convicted on his own plea of 'Guilty' of 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 material times represented by Learned Counsel Mr Ombongi whereas Mr. Ondimu was the Prosecuting Counsel for the State; both counsels were invited to make submissions before sentencing;
5. Prosecuting Counsel for the State submitted that on the 17/10/2019 the accused had confessed to having committed the offence and had recorded his statement at the earliest onset; by accepting the Plea Bargain the accused had not wasted judicial time; the Probation Officers Report filed on the 18/11/2019 availed in the court record touched on the accused's social status and interaction with the community and it demonstrated that he had a continuing good relationship with the community;
6. The accused had been arrested on the 15/10/2019 and was granted bail on the 23/11/2019 and had therefore spent approximately two (2) months in custody; due to his advanced age notably Ninety (90) years and his medical condition the State was not seeking a custodial sentence; based on these circumstances the period spent in remand was an adequate custodial sentence; it had no previous records of the accused and that he may be treated as a first offender;
7. In mitigation Counsel for the accused submitted that the convict mourned the loss of his son and was extremely remorseful; and pleaded for a lenient sentence on the grounds of the convict's advanced age and medical health condition and prayed for a pardon or a non-custodial sentence.

**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 Probation Officers Report; it was reported that there had been a long standing strained father and son relationship arising from the deceased's alcoholism; the deceased had picked a quarrel with his elderly father on that material date accusing him of wanting to curse him; despite the intervention of one Mary Muthoni Kibocha the deceased persisted in taunting his aged father leading to the fight; in the ensuing melee the accused stabbed the deceased who succumbed to the injuries on the same day whilst receiving treatment;
9. This court has taken into consideration the aggravating circumstances in the commission of the offence in that the convict used a deadly weapon namely a knife which he used to inflict the fatal injuries; but the facts narrated by the prosecution reveal that the killing was not premeditated; a witness to the incident one Mary Muthoni Kibocha stated that on the material date it was the deceased who attacked the accused who in self defence retaliated leading to the unfortunate state of affairs;
10. The mitigating factors taken into consideration by this court are that the accused readily pleaded guilty and thus saved the court on

judicial time; also taken into consideration are the personal circumstances of the accused; that he was of advanced age (90 years) and had an existing medical condition in the form of blood pressure; he has also expressed his remorse and found to have no previous record and is deemed to be a first offender;

11. The offence of manslaughter is punishable by a maximum sentence of life imprisonment; however, the maximum sentence is usually reserved for the worst case scenario the applicable law on sentence for the offence 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.’

12. In the light of the mitigating factors this court is satisfied that the accused is deserving of leniency and a non-custodial sentence; it is noted that the accused was arrested on the 15/10/2019 and granted bail on the 18/11/2019 and was remanded for a period of approximately one (1) month; this court therefore finds that this period to be an appropriate sentence.

### **FINDINGS & DETERMINATIONS**

13. For the foregoing reasons this court makes the following findings and determinations;

- (i) The period of one (1) month spent in remand is found to be an appropriate sentence;
- (ii) The sentence is hereby deemed to have been duly served;
- (iii) The convict be set at liberty forthwith unless otherwise lawfully held;

Orders Accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 22ND DAY OF APRIL, 2021.**

**HON. A. MSHILA**

**JUDGE**