



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 12 OF 2014**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**JUSTO MWAMBA M'IRANDU.....ACCUSED**

**JUDGMENT**

1. The accused person was on 14<sup>th</sup> July 2021 convicted on own plea of guilty for the offence of manslaughter c/s 202 as read with 205 of the penal Code following successful plea bargain agreement which reduced the initial charge of murder to one of manslaughter.

2. The DPP confirmed that the accused was a first offender and called for a Pre-sentence report by the Probation Office.

3. In his mitigation before the court, the accused sought non-custodial sentences and offered to undertake community service at his local Chief's Office of the Police station. He gave a picture of a long suffering further who had been constantly been troubled by his so who demanded money with menaces to fund his hard drinking habits and at one point threatened physical harm –

*“Mwiti had threatened to kill me because when he took money from me he had hit me and held me by the neck until I was assisted by ... a neighbor.”*

4. The accused who is 77 years old has a positive report for non-custodial sentence where the Probation Officer's Report dated 26<sup>th</sup> July 2021 recommends that –

*“The general feeling of all those who were interviewed was that the offender is a good man who was defending himself from a dangerous person who unfortunately happened to be his own biological son. The Community members therefore already welcomed the offender back home after his release on bond with some thinking, much to their relief, that the matter had been concluded a long time ago. The community, therefore, prays for leniency towards the offender who is old and sickly.”*

5. Counsel for the Accused Ms. Nelima in submissions before the court urged the court to consider the relationship between the accused and the deceased, as father and son, and the provocative acts of the deceased.

6. The facts of the case as set out by the Prosecution included the accused's admission of the offence in his confession to the killing which was produced before the court as exhibits in both Kimeru and English translation as PEx. 5 (a) and (b) were as follows:

*“I do remember very well that on the 22/01/2020 Wednesday at around 1700hrs when I was at my homestead at Geeto village when my son Erick Mwiti Who has been troubling me very much by selling almost everything within sight in my compound, he has assaulted me at my old age, he has been abusing alcohol for long despite my fatherly advice which he turned a deaf ear. That day he came home while totally drunk accompanied by his friend John Kirimi. Erick Mwiti went to his father's house and asked him what he was saying about macadamia. I told him that those macadamia are made for his brother son (Hosea Mugambi) who is a form three student at Mweru secondary school. The deceased had earlier on harvested the macadamia without my permission, sold them and used the money in a drinking spree and also bought ingredients for making illicit brew (mugacha). The deceased told me that there is no macadamia for M'mutua's school fees, further said that the father of M'Mutua (Hosea Mugambi) will be very lazy if you will be giving macadamia for his son's fees, he should look elsewhere for fees, I will be harvesting the macadamia and use the money for beer. All this time the deceased was talking to me I was in bed as I was unwell. After that the deceased went to his house and joined John Kirimi in the house and stayed there for a while. The deceased and his friend started a quarrel while taking beer in that house and the deceased stabbed John Kirimi with a knife. His brother Hosea Mugambi came to my house and found me on my bed. He told me that Eric has stabbed John Kirimi with a knife on his thigh. I took my walking stick and together with Hosea went to the house of Erick but on arrival we found John Kirimi outside the house of Erick. Erick came out with a very big sharp knife and stared threatening to stab John Kirimi again on the back. I and my son Hosea Mugambi persuaded Erick not to stab John again and he agreed and went back to house. I and Hosea took kirimi up to the outside of my house. I saw Juliet Karimi Mwebia passing at a*

nearby road and called her. She came and I told her to take John Kirimi to his home which is near her home as Kirimi was very drunk. Juliet and Kirimi left and I went back to sleep. Later on I woke up after knowing that Mwiti was asleep due to the degree of drunkenness, I took my walking stick and went to Erick's house where I found the door locked with two nails from inside, I took a narrow panga which was left by Mwiti outside his house and used it to open the two nails whereby the door was opened. I found Mwiti lying with his back on his bed uncovered. I took the narrowed panga I had used it to open the door which was very sharp. I used it to slay him on his neck, also took another big panga that was near his bed and again used the same to cut more deep on his neck. I saw blood ooze out and hit the walls of his house at a high pressure and the head moved down, I knew that Mwiti was no more. I took a blanket, covered him, left the panga that I found at his house with blood stains in the deceased house, took the narrowed panga I had found outside his house and went with it in my house, wiped it and washed the blood then slept. No one saw me as I slayed Mwiti....”

7. The Counsel for DPP, Ms. Nandwa further set out the background to the offence as follows:

*“The deceased Eric Mwenda went to John Kirimi’s home and requested him to pick macadamia from accused’s farm. Along the way to the farm John Kirimi and the deceased met with the accused and that is when the deceased requested for permission to pick macadamia nuts from the accused’s farm. The accused allowed the deceased together with his cousin John Kirimi to pick 5kgs of macadamia. However, before they left the accused’s farm, he deceased started a quarrel with the accused, demanding money from him, that is the money given to the elderly by the State. Additionally, the deceased also threatened to sell a cow which belonged to the accused. It was at this time that John Kirimi requested the deceased to leave the accused person alone and both the deceased and John proceeded to pick the macadamia which they later went to Igoji market and sold them at ksh.500/- The deceased and John then drank beer at Igoji market and returned home at 3.00pm....”*

8. Having considered the circumstances in which the offence was committed with extreme and protracted provocation by the deceased son on his father where he disrespectfully challenged his authority and threatened to beat him while demanding money at the pain of loss of his cow by sale and extortion of macadamia produce, the court accepts that the provocation did justify the reduction of the offence to one of manslaughter under section 207 of the Penal Code, and in accordance with the plea bargain agreement.

9. Further, the court considers that the advanced age, ill-health of the accused and the fact that he shall for the rest of life live with the fact of having killed his own son, justify a non-custodial sentence. The accused has in compliance with section 3 of the Community Service Orders Act accepted to undertake Community Service.

10. For his advanced age probation may not serve its purpose of reforming the offender; a custodial sentence may deter others by him as it is wont said but his ill health and advanced age again makes him unsuited for the retributive element of deterrence. The penal objective which may be served by punishment on the old, sickly offender is perhaps only community service as a way of assuaging the revulsion of the Community for the act of unlawful killing of a father of his child. A Community Service Order appears to the court to be wholly appropriate in the circumstances of this case. The Community Service Officer shall, of course, determine the appropriate placement, nature and extent of the community service suited for the offender herein, given his frailties and the peculiarities of his case.

## **ORDERS**

11. Accordingly, for the reasons set out above, the Court makes the following orders: -

***i) The Accused person JUSTO MWAMBA M’IRANDU is CONVICTED for the offence of offence of manslaughter contrary to section 202 as read with 205 of the Penal Code.***

***ii) The accused is sentenced to serve Community Service for twelve (12) months at a placement area to be identified and under supervision of a Community Service Officer or other suitable person as may be determined by the Probation Services Office, Meru County.***

Order accordingly.

**DATED AND DELIVERED ON THIS 29<sup>TH</sup> DAY OF JULY, 2021.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

**Ms. B. Nandwa Prosecution Counsel for the DPP.**

**Ms. Nelima Advocate for the Accused.**