



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT CRIMINAL CASE NO 46 OF 2018**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**MICHAEL MUTWURI M'NGARUTHI.....ACCUSED**

**SENTENCE**

1. A plea agreement dated 29/6/2021 and filed in court on 30/6/2021, came before court for adoption was adopted, a new charge of manslaughter was presented to court, as bargained, was read to the accused who then pleaded guilty, a plea of guilt was entered against the accused for the offence of manslaughter and he was accordingly acquitted.
2. Pursuant to that plea of guilty and the consequent conviction, the court directed that a pre-sentencing report be filed by the probation officer prior to mitigation and sentencing. The pre-sentence report was filed on 20/9/2021 and a reading of the same reveals that the accused terms what happened to his father as an accident, which he begs the court to have mercy on him. In empathy with the accused, his mother and his siblings say they have healed and are open to have him back home. The accused mother, in particular wants the accused released so that he can offer her security and protection, because since his arrest, she had to relocate from her homestead in fear of criminals. The local administration feels that the environment at home is conducive for the accused rehabilitation, as most of the residents believe that he did not commit the offence on purpose. The report thus concludes that the accused is a good candidate for non-custodial sentence in the nature of probation to avail him for intensive counselling to help him rehabilitate into society
3. Riding on that report, the defense counsel urged the court to give to the accused a non-custodial sentence while noting that he is a lone son of the mother and that he has not behaved but been of good conduct while in custody.
4. For the prosecution, submissions were offered that the accused deserves no mercy in the nature of a probation sentence because he committed the grave offence of killing his own very old father and threatened his mother who remains scared. He urged for custodial sentence even though he had no previous record of the accused who then should be treated as a first offender.
5. I have taken into account the presentence report and the mitigation offered by Mr. Thangicia for the accused and the position taken by the prosecution. I have equally taken into account the sentencing policy and its objectives in the administration of criminal justice and I take the view that for the age of the accused and the circumstances revealed by the probation officers report, best interest of justice would be served by giving to him a non-custodial sentence. An additional account is taken of the fact that having been arrested and arraigned in court on the 17<sup>th</sup> may 2018, he has remained in custody for a period now aggregating three years and four months.
6. The court accepts the recommendation by the County Probation Officer, P.K Aruyaru in his pre-sentencing report, and commits the accused to probation for a period of 3 years, to undergo intensive counseling, in preparation for his integration back into society, to be a responsible and useful citizen. During that time the County probation officer will assign to him an officer to take him through the sentence.

**Dated Signed and delivered virtually via MS Teams this 30<sup>th</sup> day of September, 2021**

**Patrick J.O Otieno**

**Judge**

**In Presence of**

Mr. Maina for the prosecution

Mr. Thangicia for the defendant

**Patrick J.O Otieno**

**Judge**