

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL CASE NO. 26 OF 2017

LESIIT J

REPUBLICPROSECUTION

VERSUS

LEWIS GITONGA WAIRIMU.....ACCUSED

RULING ON SENTENCE

1. The accused **LEWIS GITONGA WAIRIMU** was initially charged with murder contrary to **section 203** of the **Penal Code**. After a successful Plea Bargaining Agreement, the prosecution reduced the charge to that of manslaughter contrary to **section 202** of the **Penal Code** to which offence the accused pleaded guilty.
2. I have considered that the accused is a first offender.
3. Mr. Masara Learned Defence Counsel gave mitigation on behalf of the accused. In his submissions, Counsel urged that the accused was 24 years old and therefore just a youth who was at the prime of his life. He said that the accused was a Plant mechanic and was married with one child.
4. Mr. Masara urged that the accused regretted the offence stating that at the time of the incident he and the deceased were drunk and that he acted under the influence of alcohol. He pleaded for a non-custodial sentence.
5. In addition to mitigating factors given by the defence counsel, I have considered the circumstances of the case as per the signed agreement. The facts reveal that the accused relentlessly kicked and boxed the deceased until a friend restrained him. By the time he was restrained, the deceased had suffered serious injuries from which he died.
6. The motive for the attack is not apparent from the facts. There is also nothing in the facts to reveal what could have led to the attack. Neither is there any evidence of provocation of any kind.
7. I have considered the above factors and the fact the accused pleaded guilty to the lesser charge thus saving court precious time. I find it inappropriate to give a non-custodial sentence in this case for reason that what led to the relentless attack on the deceased remained unknown at the close of the case.
8. The accused has been in custody since June, 2017 a period of one year and 8 months. I will sentence the accused to five (5) years imprisonment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF FEBRUARY, 2019.

LESIIT J

JUDGE