



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 51 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ANTHONY MUSAU NZIOKI.....ACCUSED**

**RULING ON SENTENCE**

1. Anthony Musau Nzioki was initially charged with the offence of murder of John Muli Mutua, the deceased, contrary to section 203 as read with section 204 of the Penal Code. The deceased died on 8<sup>th</sup> February 2017 from head injuries caused by blunt force trauma. This court considered the evidence tendered in court and arrived at a conclusion that the offence proved against the accused was manslaughter and not murder. The accused was found guilty of manslaughter and was convicted.

2. Before the sentencing and mitigation hearing, this court called for a probation report which was filed on 8<sup>th</sup> May 2019. I have read the report which gives the historical background of the family and personal history of the accused as well as the victim impact statement. I have noted from the report that the accused is a son of a single mother who did not take care of him. He was brought up by his aunt. He did not advance in education but dropped out because he lacked interest in school. He does not have previous criminal history and he has been doing casual jobs to enable him take care of his young family of a wife and two young children. His family has nothing adverse against the accused and speaks highly of him. The accused was assessed to be of no danger to the community.

3. The family of the deceased has not come to terms with the death of the deceased and leave matter to the court to impose appropriate sentence believing that justice will be served.

4. In mitigation the accused told the court that the incident leading to the death of the deceased happened at night after the accused was drunk. He had lost a phone in the course of that evening and states that he is very remorseful for what happened. He asks for leniency in sentencing and consideration of the time he has spent in custody awaiting the determination of this case.

5. I have considered the mitigation and the information contained in the probation report. I have also considered the circumstances under which the deceased died. The accused was not alone when the attack on the deceased occurred. However, this does not make him any less culpable. I have noted that he was brought to court to answer to the charge of murder in November 2017 and that he has been in custody up to this date. This is a period of slightly under two years. I have taken this into account.

6. Given the unfortunate circumstances under which the deceased was attacked and injured it is the view of this court that justice will be served by the accused serving three (3) years in jail after which he will be placed under the supervision of probation officers for another two (2) years during which time he will undergo counseling. It is so ordered.

7. This court has informed the right to appeal against conviction and sentence within 14 days from this day.

**Delivered, dated and signed this 30<sup>th</sup> day of May 2019.**

**S. N. Mutuku**

**Judge**