

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CRIMINAL CASE NO. 33 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL KIOKO MUIA.....ACCUSED

SENTENCE

1. The Accused herein **DANIEL KIOKO MUIA** is charged with an offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars of the information are that on the 6th day of March, 2015 at Kitangani village in Masinga Sub-county within Machakos County unlawfully killed **REUBEN NZUKI NZIOKA**.

2. The facts of the case as presented by the learned Counsel for the state are that on the 6th March, 2015 at Kitangani village in Masinga Sub-County within Machakos County at around 1.00 a.m. the deceased herein was asleep in his house when he heard noise from the kitchen and he ventured outside to find out the cause and source of the noise only to be violently hit on the head with a sharp object by the accused herein. The deceased was rushed to hospital but died while undergoing treatment. The accused was apprehended at the scene and handed over to Kikumini police patrol base from where he was charged. A post mortem examination was conducted on the body of the deceased and the pathologist established the cause of death to be severe head injury due to combined sharp and blunt force trauma. The post mortem report form was produced as an exhibit. The accused was reported to have been intoxicated at the time.

3. The accused pleaded guilty to the charge as laid out in the information as well as admitted the facts as presented to the court. Consequently, a plea of guilty was entered for the accused upon his unequivocal plea of guilty and was duly convicted.

4. Mr. Kimeu learned Counsel for the accused presented mitigation on behalf of the accused. He stated that the accused is a first offender aged 37 years old with a family. It was also submitted that the accused was intoxicated at the time and was not in control of his actions and regrets the incident and prays for leniency from the court.

5. A victim impact statement by the wife of the deceased dated 18/07/2017 revealed that no reconciliation efforts have been initiated by the family of the accused and that the deceased's family have lost a breadwinner.

6. A pre-sentence report by the Machakos Probation Service dated 18/12/2017 revealed that the accused is not a first offender as he had been convicted and ordered to serve CSO for six (6) months vide **Criminal Case No. 1303 of 2014** for an offence of assault which was to commence on 4/3/2015 but that the accused committed the present offence two days after release from custody. The report further revealed that the home environment is not favourable for a non-custodial sentence since the members of the community are hostile due to the possibility that it might pose a security threat to accused and the victim's family as no reconciliation has been initiated and reached under Kamba Customs by the family of the accused.

7. I have considered the mitigation of the accused as well as the pre-sentence and victim impact statement

reports. The accused has indeed pleaded guilty to the charges. However the circumstances leading to the death of the deceased is of concern. It is indicated that the accused was by then intoxicated and that the deceased had only come out of his house to enquire about the intrusion by the accused at such hour in the night (1.00 a.m.) only for the accused to violently attack him. There was absolutely no provocation from the deceased who was quite elderly and the reaction by the accused was quite unwarranted in view of the fact that it was not his compound. The defence of intoxication by the accused is not helpful as his response to the deceased's genuine enquiry as to what he (accused) was doing at the deceased's compound was quite violent and which led to loss of life. The accused ought to know that drunkenness or intoxication is no defence to a criminal charge as presently preferred against him. Further, no explanation has been offered by the accused as to what he was doing at the home of the deceased in the dead of the night yet he is deemed to have had his own place of abode. The accused's actions led to the death of an innocent old man. This calls for a deterrent sentence. The accused is ordered to serve ten (10) years imprisonment.

Dated and delivered at Machakos this 21st day of December, 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Langalanga - for the accused

Machogu - for the state

Kituva - court Assistant