



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 38 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VS.**

**STEVE MUTIE MWENDWA.....ACCUSED**

**RULING ON SENTENCE**

1. Through a Plea Agreement dated 28/02/2017, the Accused Person herein, Steve Mutie Mwendwa (“Accused Person”) agreed to plead guilty to the lesser offence of Manslaughter contrary to Section 202 as read together with Section 205 of the Penal Code, Chapter 63, Laws of Kenya. The Accused Person had originally been charged with the offence of murdering Joseph Mwandikwa (Deceased) on 21/08/2017. He had pleaded not guilty to the murder charge.

2. The agreed facts are as follows:

*[O]n the 21<sup>st</sup> day August 2017 the Accused who was working as a casual labourer within Githurai 44 arrived in his rental house where he used to stay with the deceased who was his cousin. On arrival in the house he found the deceased and another friend who had visited them on the previous day. The Accused had kept Kshs. 450 in a drawer in their bed and immediately he entered the house he went straight to check whether the money was still intact but unfortunately he could not find the said money. When the Accused inquired from the Deceased as to whether he had taken the money, the Deceased told him that the said money was taken to the Deceased’s girlfriend. They settled the matter and they both went to sleep. After a few minutes, the Deceased woke up and switched on their radio with a very high volume and the Accused pleaded with him to reduce the volume but he could not take anything from the Accused. The Accused then reached the remote control which was on the bed and reduced the volume. The Deceased was upset and grabbed the accused by the neck and in the process of physical confrontation the deceased reached for a knife which was on top of the radio and as they were struggling with the knife the Deceased was disarmed of the knife by the Accused who accidentally stabbed him on the left side of the chest. The Accused quickly woke up their friend who was sleeping and they called for a tax and rushed him to Milele Hospital within Githurai 44 where First Aid was administered and rushed him to Kenyatta National Hospital where he was declared dead on arrival. The Accused then called some relatives who assisted him to transport the Deceased’s body to the Chiromo Mortuary. The Accused immediately reported the matter at Kiamumbi Police Station where he was arrested and later charged of murder in this Honourable court.*

3. The Prosecutor submitted the records for the Accused Person confirming that he is a first offender. The Prosecutor had no recommendation for the Court regarding sentence. However, they presented two people who spoke on behalf of the victims.

4. Onesmus Mwendwa Muneeni is uncle to the Deceased. He told the Court that the issue had been discussed at the Clan level since both the Accused Person and the Deceased come from the same Clan. He intimated that the Accused Person’s family has not yet fully paid the agreed compensation but conceded that the Clan has a way of ensuring that the compensation is paid.

5. The Chairman of the Clan, Mr. Joseph Nyithia Mutisya also addressed the Court on behalf of the Clan. He urged the Court to consider giving the Accused Person a non-custodial sentence given the circumstances of the offence, and the fact that the issue had been discussed at the Clan level and agreements reached. He informed the Court since the Accused Person and the Deceased were related, sending the Accused Person to prison would be double jeopardy to the Clan.

6. Mr. Njuguna, Defence Counsel, urged the Court to grant a non-custodial sentence. He submitted that the Accused Person was a first offender and that he was deeply remorseful. He further submitted that it was the Deceased that first attacked the Accused Person and in the ensuing confrontation, the Accused Person stabbed the Deceased. Immediately he realized what happened, the Accused Person took it upon himself to get medical help for the Deceased. He arranged to take him to two different hospitals before the Deceased was pronounced dead at Kenyatta National Hospital. The Accused Person then arranged for the body to be taken to Chiromo Mortuary before he presented himself to Kiambu Police Station.

7. The Pre-sentence report strongly recommended non-custodial sentence and was very favourable.

8. In determining the appropriate sentence for the Accused Person, I have considered the following favourable factors on his behalf:

- a. The Accused Person is a first offender;
- b. The Accused Person pleaded guilty at the earliest instance and saved the Court much time and the family much anguish;
- c. The Accused Person is relatively youthful at 22 years old;
- d. The Accused Person is demonstrably remorseful for his actions on that fateful night;
- e. The Accused Person acted in self-defence – though imperfect -- and was not gratuitously violent when the homicide happened. The killing was not pre-planned but was a result of a violent confrontation started by the Deceased;
- f. The victim’s family recommends non-custodial sentence;
- g. The Accused Person and his family have arranged reconciliation with the Victim’s family; and
- h. The after-incident conduct of the Accused – taking the Deceased to the hospital and presenting himself to the Police – demonstrates that the Accused Person is a conscientious person who deeply regretted the incidence; and
- i. The Accused Person has been in custody since August, 2017 when he was first presented before the Court.

9. In the circumstances, I sentence the Accused Person to serve a Probation Sentence for a period of two years under the supervision and direction of the Probation Office, Kiambu County.

10. Orders accordingly.

**Delivered at Kiambu this 15<sup>th</sup> Day of March, 2018.**

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**JOEL NGUGI**

**JUDGE**