



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.65 OF 2016**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**SIMON NGIGI MBIRA.....ACCUSED**

**RULING ON SENTENCE**

1. Simon Ngigi Mbira (the “Accused Person”) was originally charged with murder of James Waweru Mbira contrary to section 203 as read together with section 204 of the Penal Code. He was first arraigned at the High Court in Milimani on 04/08/2014. He denied the charges. The case was later on transferred to this Court since the alleged murder happened in Kiambu County.

2. By a Plea Agreement dated 10/10/2017, the Accused Person pleaded guilty to the charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. After due caution, and after satisfying myself that the Plea Agreement was entered into knowingly and voluntarily, I recorded a conviction and called for pre-sentencing report and victim impact statements (if desired) and set the case for a sentencing hearing.

3. The agreed facts of the case are laid out in the Plea Agreement as follows:

On the 19<sup>th</sup> day of July 2014 at around 11.30 p.m the Accused who was in company of his sister Keziah Njeri Mbira and her son D M were taking supper in the said sister’s house when the deceased arrived at the said home while drunk and on realizing that the accused was in the house he started abusing him and telling him on his face that he was a useless man with no money and owned nothing in the world. A physical confrontation ensued between the two arising from the insults and they were separated by their sister Keziah and the deceased went to his house which was a few meters away while the accused went back to the sister’s house where he sat down assuming that the deceased had gone to sleep only for the deceased to go back to the sister’s armed with a rungu and started attacking the accused and the accused while defending himself took a panga which was right behind the door of the sister’s house and hit the deceased on the fore head and he fell down while bleeding profusely.

The Accused who was in shock administered first aid to the deceased by covering the injured part with a petty coat and there after the deceased left for his house while the Accused slept in his sister’s house.

The following day their sister Keziah noticed that the deceased had not woken up and when she went to find out on how he was doing he found him lying dead in his house.

The Accused was later arrested and charged of murdering the deceased herein.

4. The Court invited the Victim’s family to file any Victim Impact Statements or come to address the Court if they so wished. This being a case where the Deceased and the Accused Persons are brothers, the Victim’s family is the same as the Accused Person’s family.

5. During the Sentencing Hearing, two brothers to the Deceased and the Accused Person addressed the Court. They both emotionally pleaded with the Court to mete out a non-custodial sentence to the Accused Person. The eldest brother, George Munyua Mbira told the Court that the arrest and incarceration of the Accused Person when he was in custody affected the family just as much as the death of the Deceased. He informed the Court that imprisoning the Accused Person will be double jeopardy for them because they already have to take care of the Deceased’s children – and they would have to do the same for the children of the Accused Person if he is given custodial sentence.

6. Mrs. Gulenywa mitigated on behalf of the Accused. She told the Court that the Accused Person is a first offender and has never been accused of any crime. Secondly, Mrs. Gulenywa submitted that the Accused Person is remorseful. He was drunk at the time he committed the crime. Mrs. Gulenywa further submitted that the Accused Person is now a reformed man: he has quit irresponsible drinking and has turned to God.

7. Mrs. Gulenywa told the Court that the Accused Person is a family man: he has a wife and two children. In addition, Mrs. Gulenywa submitted that the Accused Person has taken over the role of provider for the children of the Deceased. Finally, Mrs. Gulenywa asked the Court to consider that the Accused Person was in custody for two years prior to his release on bail. She prayed for a non-custodial sentence.

8. On her part, Ms. Maari, for the Prosecution, confirmed that the Accused Person is a first offender. She left sentencing to the discretion of the Court.

9. I have considered the following relevant factors in fashioning an appropriate sentence for the Accused Person in this case:

- a. The Accused Person pleaded guilty to the reduced charge of manslaughter and therefore saved the family the anguish of having to testify and also saved much judicial time.
- b. The Accused Person appeared to be genuinely remorseful.
- c. The family of the victim has expressed a strong wish that the Accused Person be committed to non-custodial sentence and they have, conversely, communicated that a custodial sentence is tantamount to re-victimizing the family, and, in particular, the victim's children since the Accused Person is taking care of them financially.
- d. The Accused Person is a first offender.
- e. The Probation Report is quite favourable and recommends non-custodial sentence which, it says, will provide an opportunity for the Accused Person to be rehabilitated.
- f. While not rising to the level of negating *mens rea* to the commission of the crime, the Accused Person was drunk at the time of commission of the crime. So was the Deceased. Indeed, the two were engaged in a drunken brawl.
- g. The circumstances of the crime do not point to a particularly well-planned or violent conduct on the part of the Accused which should attract societal opprobrium or disapproval in the form of a prison sentence.
- h. The Accused Person was remanded for more than two years before he could afford bail.

10. Given all these factors, my considered conclusion is that this is an appropriate case for a non-custodial sentence. I have taken the sentiments of the victim's family seriously in coming to this conclusion coupled by the fact that Probation Report recommends it. **I, therefore, sentence the Accused Person to serve a Probation Sentence for a period of three years under the supervision and direction of the Probation Office, Kiambu County.**

11. Orders accordingly.

**Delivered at Kiambu this 8<sup>th</sup> day of March, 2018.**

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**JOEL NGUGI**

**JUDGE**