

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 22 OF 2017

REPUBLICPROSECUTOR

VERSUS

FELIX MUTUA KAUNDAACCUSED

RULING ON SENTENCE

1. The accused herein **FELIX MUTUA KAUNDA** faced a charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars are that on the night of 16th and 17th September, 2017 at Ngomano village, Kalamba sub-location, Miu Location, Mwala sub-county within Machakos County unlawfully killed **KYALO KIMILU MWAKAVI**.
2. The accused pleaded guilty to the charge and was subsequently convicted on his unequivocal plea of guilty as per the court proceedings dated 25/07/2018.
3. Mr. Machogu learned counsel for the state indicated that the accused was a first offender as he had no previous criminal records.
4. Mr. Kituku learned counsel for the defence presented mitigation on behalf of the accused person. He submitted that the accused is remorseful and that he was a victim of circumstances as he had no intention of killing the deceased but was defending himself after being waylaid and attacked by the deceased as he headed to his home. It was finally submitted that the accused is a family man and the sole breadwinner. A non-custodial sentence was sought for by the defence counsel.
5. This court called for pre-sentence report on the accused by the Machakos County Probation Officer. The same was duly filed and is dated 13/08/2018. The summary of the report is that the deceased who had been a habitual thief in the area waylaid the accused who was heading to his home at night and the accused managed to subdue the deceased in self defence and raised alarm and after a while the deceased passed on. The report is in favour of a non-custodial sentence and that the clans of both accused and deceased have already commenced negotiations towards compensation to the deceased's family. The community and both families are ready and willing to accept back the accused as his family has already reconciled with that of the deceased.
6. I have considered the mitigation presented on behalf of the accused as well as the comprehensive report by the Machakos County Probation Officer. The circumstances of the death of the deceased have been explained although tragic as they are since the accused has claimed that he had no intention of killing him but was only defending himself after being waylaid and attacked at night as he walked to his home by the deceased. The accused has shown remorse for the death of the deceased. He is also a first offender. Both families have since reconciled and their respective clans had commenced negotiations towards compensation to the family of the deceased. The families and the community appear to be receptive to the accused being allowed to join them. I find a non-custodial sentence would be appropriate in the circumstances of this case and would go well with the negotiations for compensations initiated by the respective clans. Consequently, the accused is ordered to be placed under probation for three (3) years.

It is so ordered.

Dated and delivered at Machakos this 17th day of August, 2018.

D.K. KEMEI

JUDGE

In the presence of:-

Miruka for Gikonyo - for the State

Langalanga for Kituku - for the accused

Josephine- Court Assistant