

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 61 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL MUTHURI.....ACCUSED

RULING ON SENTENCE

The accused Daniel Muthuri was initially charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged that on the 6th day of August 2016 at Transami area of Embakasi within Nairobi County the accused murdered an unknown African Juvenile. The accused was arraigned in Court on 17th August 2016 but the plea was not taken until 26th September 2016. He pleaded not guilty. The matter was placed for hearing on 5th May 2018 but the accused through his legal counsel Mr. Solomon Wamwayi informed the court that the accused has offered to plead to a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The offer was accepted by the Director of Public Prosecutions. A plea bargaining agreement was prepared and signed by both parties. The prosecution prepared a fresh charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code through the information dated 9th August 2018 which was read over to the accused and all the particulars of the charged explained to the accused. He pleaded guilty to the new charge.

The prosecutor presented the following facts:

That on 6th August 2016 the accused and the deceased were at a garbage dumping site where they lived as street urchins commonly known as "chokora". The accused was preparing food for himself. The deceased demanded to have some of the food which was not ready. This sparked a fight between the accused and the deceased. The accused picked the knife he was using to chop vegetables and stabbed the deceased and ran away. The accused was left screaming "amenia" which attracted the attention of scrap metal dealers. They pursued the accused and arrested him. They handed him over to the police at Embakasi Police Station. He led police to where he had dropped the knife which was recovered. The body of the deceased was taken to the City Mortuary where it was examined by Dr. Oduor Johansen who found that the cause of death was chest injury due to penetrating trauma. The findings of the doctor were documented in the post mortem report produced in court as Ex.1. The accused was examined and found fit to plead.

The accused admitted the facts as presented. Consequently this court found him guilty of manslaughter on his own plea of guilty and convicted him. The accused was treated by this court as a first offender after the prosecution informed the court that the accused did not have previous criminal records.

In mitigation Mr. Wamwayi on behalf of the accused told the court that the accused is a street urchin; that his parents were elderly and lived in Meru; that the accused is aged 24 years and is single and that he lived in the dump site; that he is illiterate and that the quarrel giving rise to this case arose after the deceased who was also a street urchin demanded the food that the accused was cooking. Mr. Wamwayi urged this court to give the accused a non-custodial and lenient sentence. Mr. Wamwayi cited **Republic v. James Kimosop [2017] eKLR** and urged the court to be persuaded by this case in passing the sentence.

I have considered the sad circumstances that led to the death of the deceased. It was due to a quarrel over food. The accused and the deceased were street urchins and lived at the garbage dumping site the scene of this crime. It is common knowledge that food is a precious commodity to every human being and a basic necessity. The situation becomes aggravated when that person has no livelihood and lives from hand to mouth after collecting anything edible from the garbage or from begging. I have taken into account this situation. The accused however used excessive force and his actions cannot be left unpunished. This is what the law demands for ends of justice to be met. I have considered that the accused is a young man, is illiterate and his family is in Meru. He was virtually fending for himself. He has been in custody since August 2016 a period of two (2) years to date. I hereby sentence the accused Daniel Muthuri to a term of imprisonment for four (4) years. However, taking into account that he has been in custody for two (2) years since his arrest I order that he serves two (2) years of that sentence. He has been informed of his right of appeal within fourteen (14) days from this day. Orders shall issue accordingly.

Delivered, dated and signed this 9th day of August 2018.

S. N. Mutuku

Judge