

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 38 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

NICHOLAS BAHATI MULE.....ACCUSED

RULING

Nicholas Bahati Mule, the accused in this case, is charged with manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence are that on the 17th day April 2017 at Saigan Village in Dagoretti Sub-County within Nairobi County he unlawfully killed Davies Njau Wangari. The accused has pleaded guilty to this charge. Initially, the accused had been charged with murder contrary to section 203 as read with section 204 of the Penal Code but the offence was reduced to manslaughter after a Plea Bargaining Agreement between the accused and the Office of the Director of Public Prosecutions.

The facts presented in court show that on 16th April 2016 at 9.30pm the accused was at Mutuini Pub in Dagoretti Nairobi drinking in the company of one David Kamau, Mburu, and Daniel when the deceased entered and stood by the door. He looked around and asked David Kamau whether they could gamble. David Kamau agreed. The deceased placed money on the table. David Kamau noticed that the money was fake and refused to gamble. The deceased became angry and picked David Kamau's glass of beer but David Kamau resisted. The deceased pushed him and he fell. At this point the accused confronted the deceased and a fight ensued. Hannah Nyambura, the owner of the Pub, intervened and ordered the deceased to leave which he did. Shortly thereafter, the accused also left. While the accused was on his way home he met the deceased lying in wait armed with a knife. He grabbed the accused by the neck and they started struggling. The knife fell off and the accused picked it. He stabbed the deceased on the neck. The accused also sustained injuries on his right finger. The accused dropped the knife and went home to sleep. On 18th April 2016 the body of the deceased was found with injuries on the neck and blood stained knife next to him. Members of the public picked Daniel Kamau and the accused from their houses and marched them to the forest. Police rescued them and took them to Mutuini Police Post. They were later transferred to CID Kabete Police Station. On 19th April 2016 post mortem was carried out on the body of the deceased at the City Mortuary. The cause of death was found to be exsanguination due to chest and neck injuries due to sharp force trauma. The accused was assessed to determine his mental status on 27th April 2016. He was found fit to stand trial. He was charged with murder which has now been reduced to manslaughter.

The accused admitted the facts presented in court as correct. This court convicted him on his own plea of guilty. This court was informed that the accused was a first offender.

In mitigation, Mr. Mathenge learned counsel told the court that the accused was aged 37 years and comes from a family of 7 siblings; that he has a wife and young child of 2 years and that he lost his father in 2016 while the accused was in custody. It was mitigated that the accused is remorseful for the death of the deceased and the circumstances leading to that death; that the accused did not intend to cause the death of the deceased; that the accused has been reflecting on this and has taken several Christian related causes. It was mitigated that the accused suffered an injury during the incident that led to the death of the deceased and that he has pleaded guilty to manslaughter. He urges the court to consider non-custodial sentence. It was further mitigated that the accused is suffering from visual and leg disabilities.

Pending sentence, this court called for pre-sentencing report from the Probation Officer. The report was filed today. I have read the report. It does not contain any material adverse to the accused person.

I have considered this matter and the circumstances of the offence. I have noted from the facts as presented that the deceased attacked the accused with a knife and that they struggled and the knife fell down. This is the same knife the accused picked and stabbed the deceased. I have noted that the accused does not have previous criminal records. I have taken into account that the accused has admitted this offence and has saved this court valuable judicial time. I note that the accused has been in custody since 2016. Taking the time spent in custody into account, I hereby sentence the accused, Nicholas Bahati Mule, to two years imprisonment and thereafter two years under the supervision of the probation officer. Since the accused has stayed in custody for over two years, it is my order that the accused has already served his term of two years. He shall only serve the probation term of two years. This court hereby informs the accused of his right to appeal within 14 days from today's date. Orders shall issue accordingly.

Delivered, dated and signed this 19th day of December 2018.

**S.
Judge**

N.

Mutuku