

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 290 of 2015

JONAH OLE THOMAS.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Pursuant to **Section 362 and 364 of the Criminal Procedure Code**, the lower court file in the Chief Magistrate's Court at Kibera Cr. Case No. 2044 of 2013 has been forwarded to this court so that the court can satisfy itself as to the correctness, legality or regularity of the sentence passed.

The applicant was charged with manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**. The particulars of the offence were that on the 16th day of June, 2013 at Ngong Township in Kajiado North District within Kajiado County, unlawfully killed Geoffrey Kimemia Mwangi. After the trial, the Applicant was found guilty and convicted. He was sentenced to serve four (4) years imprisonment. The learned trial magistrate before passing the sentence noted that he had taken into account that the Applicant had spent two years and 4 months in custody.

The Applicant filed a Chamber Summons application on 14th December, 2015 requesting the court to revise the sentence. He mitigates that he suffers from high blood pressure and asthma and that he is the sole bread winner of his family.

I have looked at the trial court record. The only prosecution witness who witnessed the incident was PW4. He saw the Applicant fighting with the deceased. He first saw them wrestling each other and then fight with stones. He later saw the Applicant draw a knife and stab the deceased. After the incident he saw the deceased walking with difficulty while holding his waist, hip and leg. What did not come out clearly was the cause of the fight although it was clear that the two knew each other.

Although the Applicant may not have intended the death of the deceased per se, he knew that by stabbing him, he would inflict serious injuries to him. Upon conviction, he was remorseful and sought forgiveness. The sentence was passed on 28th October, 2015. So far, he has served 1 year and 5 months in jail. Added to the 2 years and 6 months he was in remand, cumulatively, he has been in custody for 3 years and 11 months. Taking into consideration that the death of the deceased was unintended, I would recommend a non-custodial sentence for the balance of the jail term. I accordingly order that a Probation Officer's Report (P.O.R.) be filed. Mention on 29/03/2017 for Probation Officer's Report.

DATED and DELIVERED in Nairobi this 21st day of March, 2017

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person

2. *Miss Sigei for the Respondent.*