



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL CASE NO. 45 OF 2014
REPUBLICPROSECUTOR
VERSUS
BONIFACE MUTUA MUSYOKAACCUSED
SENTENCE

1. The accused **BONIFACE MUTUA MUSYOKA** was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on 31/5/2014 at Kitui village in Pumwani within Nairobi County murdered **COSMAS MULEI MBITHE**.
2. He pleaded not guilty to the said charges and by a plea bargain Agreement dated 7/3/2017 signed between the Advocate for the accused and the prosecution and accepted and recorded in court on the same date the accused pleaded to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code and was convicted on his own plea of guilty.
3. In mitigation the accused submitted that he was remorseful for his action and that the two families had agreed on modalities of compensation. The State on the other hand stated that they did not have any record on the accused who should be treated as a first offender.
4. To enable the court pass an appropriate sentence herein I ordered for a pre-sentencing report which has now been filed in which it was stated that at the time of the offence the accused was married with two children in class three and nursery respectively who are now living with his mother, the wife having deserted the matrimonial home upon the arrest of the accused. It was stated that at the time of the commission of the offence the accused was under the influence of alcohol which made him to sleep in the house of the accused person where a cousin of the deceased accused him of stealing his money and a mobile phone.
5. It was when the deceased confirmed that the accused was in the habit of stealing when that fight ensued between them forcing the accused to go for a knife which he used to stab the deceased on the thigh leading to his death.
6. On the victim impact statement, it was stated that the deceased was a child of a single mother who died in 2005 and was the sole bread winner to his grandmother and two sisters. It was stated that the two families had agreed on compensation with the victim's family having forgiven the accused for whom they plead with the court to accord a non custodial sentence. The probation officer therefore recommended a probation sentence to enable the accused undergo counseling session on anger management, proper decision making skills and to take care of his young children.

7. From the post mortem report produced herein as P.Exhibit 1 it is clear that the deceased sustained one penetrating sharp force, injuries to left groin and only died due to loss of blood. This to my mind shows that the accused did not have an intention to kill the deceased even though his action lead to his death.

8. The principles of sentencing process is that the sentence meted out must be proportionate to the offending behavior. The court is also required to take into account under **Section 333 (2) of Criminal Procedure Code** the time already served in custody during the trial and in the absence of aggravating circumstances or any other circumstances that render a non-custodial sentence unsuitable a sentence of imprisonment should be avoided.

9. I have taken into account the circumstances leading to death of the deceased and the fact that the accused's family and the victim's family have agreed in some modes of compensation which though will not restore the lost life will go a long way in reducing their sorry and ill will towards the offender and the fact that the accused two children have been rendered children in need of care and protection and is of the considered opinion and hold that this is a case in which the accused should be accorded a second chance to enable him be a useful member of society while benefiting from rehabilitation program.

10. Having taken note of the fact that under **Section 205 of the Penal Code** any person who commits a felony of manslaughter is liable to imprisonment for life and the fact that the accused has been in custody for three years I hereby sentence the accused to a probation sentence of three years under the supervision of the probation officer in charge of Mitaboni location of Machakos County and to enable him take care of his children and grandmother.

DATED, SIGNED and DELIVERED at Nairobi this 27th day of April, 2017.

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Nduati for the State

Mr. Masaki for the accused

Accused present

Tabitha court clerk