



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAJIADO**

**CRIMINAL CASE NO. 44 OF 2015**

**REPUBLIC.....PROSECUTOR**

**Versus**

**JOSHUA KOIKAI SITAYA.....ACCUSED**

**Counsel Mr. Mokaya for the Accused**

**Mr. Akula, Senior Prosecution Counsel**

**SENTENCE REMARKS AND VERDICT**

The accused Joshua Koikai Sitaya initially you were charged with the offence of murder contrary to section 203 of the Penal Code. At the close of the trial this court considered and evaluated the evidence which led to the substitution of the offence to a lesser charge of manslaughter contrary to section 202 of the Penal Code punishable under section 205 of the same code. The brief circumstances were that on the night of the attack on 31/10/2013 you demanded the deceased Orais Sapunyu to come out of his house so that you can talk over some issue which was not clear from the case. As the deceased turned down your request for a discussion with you, the more you continued pressing for it to happen now and there.

A combination of facts presented by PW1 and PW2 painted a picture when you suddenly armed yourself with a metal bar and a piece of wood. In a spur of the moment the deceased was hit and as a result he suffered severe head injury. The bodily harm suffered necessitated the deceased to be taken to Malaika hospital. It is in the course of the efforts to have the deceased acquire proper medication that he succumbed to death. The cause of death from the autopsy report was intracranial cerebral injuries due to blunt force consistent with assault. I do not know for certain what caused the violence of such a magnitude as there was anything available to show that you were either defending yourself or property. In your case, you surrendered yourself to the police that the deceased was having an affair with your wife. On the day this fatal blow happened no scintilla evidence that the deceased was with your wife was placed before court. Though I allowed the offence from murder to that of manslaughter was as a result of malice not proved beyond reasonable doubt.

It is against this background I now pass sentence. Mr. Nyata for the defence made reference to mitigating factors which may be relevant to your favour. Thus that you are a family man in whom your spouse and children depend on you for support and maintenance. That you are remorseful and do regret the offence. It was also the contention that you did not plan nor did you have the intention to kill the deceased.

Prior to you being indicted before this court a psychiatric report showed that you are a person with good concentration and memory. There were no mental disorders noted. You were therefore not suffering from any mental disorder despite this court lowering your culpability to that of manslaughter. Mr.Nyata also asked as to bear in mind the period spent in custody awaiting conclusion of your trial. Mr. Akula in his

remarks informed the court that you have no previous criminal record. He however likewise invited me to apply the law as the offence you were found guilty and convicted is a serious offence.

The pre-sentence report which was called for by this court also captures your profile and family background. This includes that you are married and blessed with three children. The report also indicates that no victim – offender medication has taken place since the occurrence of this offence. In their view a non-custodial sentence will benefit for your rehabilitation.

I have considered the arguments from both sides including the pre-sentence report. The offence of which you have been found culpable is a serious one where another human being life through unlawful acts has been prematurely terminated. The sanctity of life is protected in our constitution and any person who violates the right and endangers the life of another has to pay the price of accountability. The manner in which the deceased was subjected to intense assault in order to bring about his death is a factor to be taken into account in making an order on sentence.

As a demonstration to the seriousness of the offence under section 202 parliament provided punishment for a maximum of life imprisonment. This to me falls under the category of heinous crime particularly when committed in circumstances not within the exceptions of the law like in defence of property or self. This court must respond to the demands of the gravity of the offence and the commensurate sentence. This therefore is not a proper case for non-custodial sentence. Criminal law is about public interest and society in general where the object of punishing crime with the hindset that the same will act as a deterrence and a warning to others that in the event a crime of such a nature is committed the law will be enforced.

Having considered all those factors including the period you have been held in custody since 21/12/2015 the minimum term I must impose upon you is one of 25 years imprisonment. 14 days right of appeal explained time which to file an appeal to the Court of Appeal.

**Dated, signed and delivered in open court at Kajiado this 21<sup>st</sup> day of April, 2017**

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**R. NYAKUNDI**

**JUDGE**

**Representation:**

Mr. Mokaya for the accused present

Mr. Akula for the state present

Accused present

Mr. Mateli Court Assistant