



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.18 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAVID CHERUIYOT MUTAI.....ACCUSED**

**SENTENCE**

1. The accused herein, DAVID CHERUIYOT MUTAI, pleaded guilty to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code** following a plea bargain agreement executed on 21st March, 2017 that saw the initial charge of murder reduced to a lesser charge of manslaughter.
2. The accused was consequently convicted on the lesser charge of manslaughter on his own plea of guilty. The particulars of the offence were that on 25<sup>th</sup> May, 2016 at Ainamoi Village, in Transmara East District within Narok County, unlawfully caused the death of KISELEMA MAGARA.
3. The facts of the case, as narrated by Miss Ouko, counsel for the state were that on 2016 the accused was sleeping in the house of his neighbour one Johana after taking illicit brew when he felt someone poking him on his neck with a stick and in the heat of the moment, he woke up from his drunken stupor whereupon he started fighting the deceased. In the course of the physical confrontation, the accused unleashed a pen knife which he used to stab the deceased several times after which the accused ran away and hid on top of a tree, but he later surrendered himself to the police at Kilgoris Police Station. The deceased was taken to Longisa District Hospital where he died on the same day while undergoing treatment.
4. In mitigation Mr. Magara for the accused submitted that the accused was a young man aged 35 years, was a first offender who deeply regretted his actions and was married with 5 children. Mr. Magara attributed the accused's irrational actions to drunkenness and prayed for a non custodial sentence.
5. The probation officer's report filed on 26<sup>th</sup> May 2016 recommended a non-custodial sentence for the accused.
6. I have considered the circumstances under which the deceased herein met his death. The deceased clearly provoked the accused into a physical duel by poking him on the neck and the accused responded with deadly force of a pen knife which he used to stab the deceased several times. Considering that both the accused and the deceased were drunk at the time of the offence, one cannot rule out the fact that alcohol could have impaired their judgment. It is however my view that alcohol cannot be an excuse for anyone to take the life of another person and that the accused should take responsibility for his actions.
7. Manslaughter is serious felony which attracts a maximum of life sentence upon conviction. In the instant case, however, I note that the unprovoked attack on the accused by the deceased precipitated the physical duel that ended into the death of the deceased. Under the above circumstances and taking into account the recommendations of the probation officer and the mitigation by the defence counsel, I am of the view that a non-custodial sentence will be appropriate in this case.
8. Consequently, I hereby sentence the accused herein to 2 years probation during which period he will be supervised by the probation officer of his area.

**Dated, signed and delivered in open court this 29<sup>th</sup> May, 2017**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Mr. Otieno for the State
- Mr. Bigogo for the accused
- Omwoyo -court clerk