

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NO. 14 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOSHUA KIOKO MBINDA.....ACCUSED

SENTENCE

1. By an information dated 15th May, 2017 the accused **JOSHUA KIOKO MBINDA** is charged with an offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars are that on the 22nd day of March, 2016 at Miaani village, Iiuni sub-location, Kola location within Machakos County unlawfully killed **JAMES MUEMA MWANZA**.

2. The facts of the information as presented by learned Counsel for the Prosecution are that on the 22nd day of March, 2016 at Miaani village, Iiuni Sub-location, Kola Location within Machakos County the deceased herein, **James Muema Mwanza** was served food at a food kiosk owned by the accused. After the deceased had completed his meal, the accused demanded from him that he clears a previous bill of Kshs.200/= and immediately the accused seized a mobile phone belonging to deceased and walked towards the kitchen. The deceased followed him there and a confrontation ensued between them whereupon the accused stabbed him with a kitchen knife on the chest killing him instantly. A post mortem was later conducted on the body by Dr. Waithera of Machakos Level Five Hospital who formed the opinion that the cause of death was perforating chest injury. The post mortem was produced herein as an exhibit. The accused was arrested and charged with the offence.

3. The accused admitted the charge as well as the facts as read out to him and subsequently a plea of guilt was entered upon his unequivocal plea of guilt and convicted accordingly.

4. Miss Kavita Learned Counsel for the defence presented mitigation on behalf of the accused. She stated that the accused was remorseful for the unfortunate loss of his friend. She further stated that the accused is a first offender who merits a non-custodial sentence.

5. A victim impact statement by the mother of the deceased dated 25/09/2017 indicated that the family of deceased and accused had had a meeting and signed a consensus agreement on mode of compensation as per Kamba traditions but that the family of the accused is yet to fulfil the same.

6. A pre-sentence report by the Machakos Probation Service dated 18/12/2017 is in favour of a non-custodial sentence since both families of deceased and accused had already commenced compensation process vide Kamba customs whereby deceased's family has received part payment of the compensation. The report also indicates that the community is receptive towards the accused.

7. I have considered the mitigation of the accused as well as the impact statement and pre-sentence reports. The accused has pleaded guilty to the charges and prays for leniency. It is noted that both families for accused and deceased have already embarked on compensation under Kamba customs. The home and community environment appears to be receptive to the accused following reconciliation and compensation efforts by the two respective families and supported by their respective clans. A non-custodial sentence would help achieve that end. Consequently the accused is ordered to serve under

probation for a period of three (3) years.

It is so ordered.

Dated and delivered at Machakos this **21st** day of **December**, 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Langalanga - for the accused

Machogu - for the state

Kituva - Court Assistant