



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 74 OF 2014**

**DIRECTOR OF PUBLIC PROSECUTION.....REPUBLIC**

***VERSUS***

**ABED MUTISO MULILI.....ACCUSED**

**SENTENCE**

1. The accused herein Abed Mutiso Mulili 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 7<sup>th</sup> day of December 2014 at Kwa Mukeka Shopping center in Mumbuni location Machakos Sub-County within Machakos County unlawfully killed AMOS KANGETHE PAUL.

2. The facts of the case are that on 7<sup>th</sup> December 2014 at 7.30 p.m at Kwa Mukeka Trading Centre Kasinga Sub-Location Mumbuni Location within Machakos County the deceased Amos Kangethe Paul and the accused herein engaged in a physical confrontation after the deceased had sipped a cup of coffee belonging to the accused. The accused in a fit of rage stabbed the deceased with a knife killing him instantly. The body of the deceased was later picked up by the police and a post mortem examination was conducted where it was established that the cause of death was a penetrating chest injury due to stab wound. The accused was subsequently arrested and charged.

3. The accused admitted the charge as well as the facts as read out to him and subsequently an unequivocal plea of guilt was duly entered against him.

4. Mr. Kamanda learned counsel for the defence presented mitigation on behalf of the accused. He stated that the accused is a first offender and aged 23 years old and that he is remorseful of what happened and prays for leniency. It was submitted for the accused that he has been in custody since December 2014 and has learnt the hard way thereby meriting a second chance of being given a non custodial sentence.

5. A pre sentence report by the Machakos Probation Office dated 7/11/2017 indicated that the accused's home environment is hostile and not conducive for community rehabilitation. The report further revealed that both families of accused and deceased are not on talking terms as no reconciliation efforts had been initiated and that there is a real likelihood of a security threat to the offender's life. The report therefore indicated that the accused is not suitable for a non custodial sentence.

6. A victim impact statement by the mother of the deceased dated 8/11/2017 revealed that animosity and hostility between her family and that of the accused is still high and that no reconciliation efforts have been initiated by the family of the accused.

7. I have considered the mitigation of the accused as well as the pre sentence and victim impact statement reports. Indeed the accused pleaded guilty to the charges. However, the circumstances leading to the death of the deceased is of concern. It transpired that both deceased and accused had been drinking mates and hailed from the same village and it can be said that they were indeed friends. If indeed the deceased had merely sipped a cup of coffee belonging to the accused, the same should not have warranted a brutal reaction from the accused. The accused would in the least have just reprimanded his friend not to repeat it as it amounted to bad table manners. It was therefore astonishing and completely out of character for the accused to fish out a knife and stab his friend. That was completely unwarranted. The actions by the accused led to a loss of life which is precious. The accused ought to have known that these unintended

fights often turn tragic. The act of sipping accused's cup of coffee by the deceased did not warrant such retaliation from the accused. It must be pointed out to the accused that shedding of innocent blood must be atoned. The accused is hereby ordered to serve five years imprisonment.

It is so ordered.

Dated, signed and delivered at Machakos this **8<sup>th</sup>** day of **December**, 2017.

**D. K. KEMEI**

**JUDGE**

In the presence of:

Machogu for state

Kamanda for accused

Abel Mutiso Mulili – accused

Kituva – court clerk