

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 18 OF 2014

REPUBLIC PROSECUTOR

V E R S U S

ATHMAN SALIM BAKIO ACCUSED

SENTENCE

I have considered this matter. The accused person was initially charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. However, in a plea bargaining arrangement entered into between himself and his counsel on the one hand, and the State on the other hand under Section 137A of the Criminal Procedure Code (cap.75), the accused pleaded guilty to the lesser offence of manslaughter contrary to section 202 as read with 205 of the Penal Code(cap.63). The maximum sentence for the offence of manslaughter is life imprisonment.

The admitted facts which are in writing and are part of the plea bargain, give the circumstances of the offence. The accused's counsel Mr. Onono has also made strong points in his mitigation for the accused. He has said that the accused is a young man with a young family. That the deceased was the grandfather for the accused. That the deceased was the aggressor in a farm dispute. That the accused will remain with a stigma in his family for the rest of his life.

The Assistant Director of Public Prosecutions Mr. Wanyonyi has said that the offence is serious, but urgent the court to use its discretion in deciding the appropriate sentence. He has said that the accused be treated as a first offender.

I have taken in mind the circumstances and facts of the case. I have also taken in mind that the accused pleaded guilty and did not waste the court's time. I have taken into account that the accused is a first offender, and that the deceased was the aggressor to the wife of the accused in relation to a farm dispute.

However, a life has been lost. The deceased was certainly an old man and weaker than the accused. There is no evidence that the accused suffered any injuries in a fight or a struggle with the deceased. The force used with a sharp weapon was excessive. In my view therefore a non custodial sentence is not appropriate. The accused is said to be about 19 or 20 years old now. He has been in custody since September 2014.

I sentence him to serve six (6) years imprisonment.

Dated and Delivered in Garissa this 16th day of February 2016.

GEORGE DULU

JUDGE