



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 88 OF 2015

REPUBLICPROSECUTOR

VERSUS

JOSEPH MULWA MUTUAACCUSED

JUDGMENT ON SENTENCE

1. The accused person **Joseph Mulwa Mutua** was initially charged with the offence of Murder contrary to **Section 203** and **section 204** of the **Penal Code**. Subsequently the charges were reduced to that of Manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code**.

2. The facts of the charge are that on **12th December, 2015** the accused person left Nairobi for his home in Kiliku sub location in Kangundo, Machakos to his house where he resides with his wife **Patricia Nzisa**. Upon arrival at his home at about 10pm he alerted his wife to open the door but the wife did that after some hesitation and delay. After opening the door the wife blocked the accused person from entering into the house causing the accused person to force his way into the house after noting the suspicious behavior of his wife. While inside the house the accused person picked a rungu and hit his wife on the forehead and hand injuring her. In the cause of the events the deceased person **Cosmass Muoka** who was inside the house emerged from under the bed half naked and charged towards the accused person. The accused person using the rungu hit the deceased person on the head, causing him to fall down. The deceased failed to wake up but the accused called the neighbours who took him to Kangundo hospital where he died upon reaching the hospital. On 21st of December, 2015 the doctor conducted a postmortem on the deceased and formed the opinion that the cause of death was a severe head injury with severe haemorrhage. The postmortem is stamped 6th May, 2016, and was produced as exhibit No. 1.

3. Accused admitted the above facts as true.

4. **Machogu** for State submitted that the court may treat the accused as a first offender.

5. **Mr. Kituku** for the accused submitted in mitigation that the accused is remorseful. He has pleaded to charge, and saved court time. Counsel submitted that the accused acted in self defence. He was also extremely provoked. He clearly had no intention to murder. Counsel submitted that there have also been reconciliation steps by the family and clan customary talks and compensation has been done pursuant to Defence Exhibit No. 1. The accused has two children aged 3 and 7. He is the one who takes care of them. The accused does not have a criminal record. Counsel submitted for a lenient sentence or a non-custodial sentence.

6. I have considered the facts of the charge, and I am satisfied that the same disclose the offence of Manslaughter to which the accused has pleaded guilty.

7. I have also considered the mitigation of the accused. I have also considered the report filed herein by **Atangwa Mulela** clan dated 19th October, 2016 which contains an agreement between accused family and the deceased family under which the accused has agreed to pay the deceased's family fourteen (14) cows as compensation for the bloodshed

8. It is clear to me that the accused is remorseful for the blood that he shed, and is willing to reform, and as a sign of that willingness, he has agreed to pay a compensation of fourteen (14) cows to the family of the deceased.

9. It is also clear that the accused would be welcome back to society.

10. However, the accused person killed a person. He cannot say that there was nothing he could have done.

11. The blood that was shed cries for adequate punishment for the crime. It is not lawful for one to take the life of another, regardless of the crime one may have committed. Life is sacrosanct, and anybody who takes away one's life must be punished appropriately. Granted that the accused may have acted in the passion of the moment, he must still serve time in prison, even if that time is severely reduced because of the fact that the two families have agreed to resolves the issue.

12. I therefore convict the accused person on his own plea of guilty and sentence him to serve a jail term of one (1) year from the date of this ruling.

13. The accused has the right to appeal this judgment within the time required by law.

THAT is the judgment of the court.

DATED AND DELIVERED AT MACHAKOS THIS 29TH DAY OF NOVEMBER, 2016.

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E. OGOLA

JUDGE

In the presence of:

Mr. Machogu for State

Mr. Kituku for accused

Court Assistant – Mr. Munyao