



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 43 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

N J K.....ACCUSED

JUDGMENT ON SENTENCING

1. This matter is coming today for Judgment on sentencing. The charge facing the accused is Manslaughter. The accused pleaded guilty to the same on **27th July, 2016**. The offender and the deceased come from the same locality. In Mitigation the accused was said to be the sole breadwinner of his family of elderly parents, and his two children, and that his wife had left him after the accused committed the said offence.

2. The court directed that a Probation Report be prepared, which was done by the Probation Officer, Machakos dated **28th September, 2016**. In brief, the Report states the background of the offence and gives the family background of the accused person. The report indicates that the offender has no previous conviction. The offender is the son to John Mutua Kamazi (*retired*) and Beatrice Mutheu a house wife. The offender is the 4th born among eight (8) children. The family owns several pieces of land totaling to about six (6) acres of land in Mumbuni, Machakos. The offender was born in Machakos in the year 1970. He attended [Particulars Withheld] primary schools then proceeded to [Particulars Withheld] secondary school and [Particulars Withheld] Secondary School where he dropped out in 1990 at form two as he was a slow learner. He started working on casual jobs in Thika then came back to Machakos where he worked as a mason cum casual labourer in his home area up until his arrest. At the time of his arrest, he was separated with his wife for one week and the wife **I W** had moved to her maternal home with their three children; 1. T M a form two student at [Particulars Withheld] Secondary School, 2. Y M in class six pupil at [Particulars Withheld] primary school, 3. M N a class two pupil in the same school. After his arrest she moved back to the matrimonial home with the children then later left for work and the children live with the offender's parents. He claims to have arthritis and he is a Christian.

3. During the interview, the accused stated that the deceased was his close friend. They spend the day at the deceased's home and in the evening they went to the accused home to drink chang'aa. As they continued drinking, the deceased began insulting the accused with reference to his wife. They began arguing and when the argument escalated, the accused insisted that the deceased leaves, and got hold of the deceased's hand to show him out, but the deceased pushed him, and a fight ensued and they fought a bit and then the scuffle moved outside. The accused returned to his house and continued drinking. He heard the deceased move as if he was going away. The next day, the deceased's brother and mother alerted the accused of his demise which occurred a few paces from his house.

4. The accused regrets the demise of his childhood friend. He pleads for the courts leniency and asks for God's forgiveness as well as that of the deceased's family and his family. He prays for a non-custodial sentence.

5. After the offence, there was marked hostility between the two families and their relationship became strained. With time, the relationship between the two families has improved and the clan of the offender Eombe conducted compensation talks with the clan of the deceased's family Ethanga and reached an agreement dated 7th October, 2015. The meeting was attended by the two clans and family members from both sides. The clans resolved that the incident was an accident and noted that the accused and deceased were friends since childhood, worked together regularly and drunk together. They were said to have no previous quarrels or conflict and to have been both drunk at the time of the offence. In the said report, the deceased's mother stated that her husband passed away when her four children were young, her eldest child died soon after he had secured a job while one of her sons is bedridden after developing a tumour that affected his nerves. Thus when the deceased who was the third born met his death, she became very bitter; seeing his death as yet another misfortune to befall her. When the deceased mother was interviewed, she broke down in tears stating that she grieved his death bitterly and the memory of his loss pains her to date. Her last born son is the one who now takes care of her and she is elderly and suffering from a back problem. She stated that while the clan compensation was initiated and the burial costs paid by the offender's clan, she still has not gotten over the loss of her son.

6. The deceased's brother stated that he has accepted what happened and harbours no ill will towards the offender or his family. He prays for the offender to be released on a non-custodial sentence and stated that clan compensation and reconciliation had been done which had helped the family come to terms with what happened. The local administration stated that the offender and his family have no criminal history. The offender is well known to the area chief having been born and raised in the area and he was described to have been a person of good character and a hardworking family man. The local administration attested that the offender and deceased were good friends.

7. According to the local administration, the offender's security is not at threat. The offender was the sole breadwinner of his family. His wife left soon after he was arrested. This family pleads for his release on a non-custodial sentence so that he can take up his parental responsibilities and also assist his parents as his father suffers from hypertension and diabetes.

8. I have carefully considered the offence with which the accused is charged, his plea of guilt, his mitigation and the Probation Report. The offence is a serious offence and although the accused person is remorseful, a life was lost. I therefore sentence the accused person to a jail term of one (1) year. The accused can appeal.

THAT is the judgment of the court.

DATED AND DELIVERED AT MACHAKOS THIS 16TH DAY OF NOVEMBER, 2016.

E. OGOLA

JUDGE

In the presence of:

Mr. Machogu for State

Accused present

Court Assistant – Mr. Munyao