

REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE NO. 45 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOHN MUGEI ASENA.....ACCUSED

SENTENCE

The Accused John Mugei Asena was initially charged with the murder of Ruth Nyambura Thandi. He thereafter pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code after a plea bargain. The particulars of the offence were that on the night of 15th and 16th July 2014 at Mlolongo township in Athi River District within Machakos County, he unlawfully killed Ruth Nyambura Thandi.

The brief facts of the case were that the deceased Ruth Nyambura Thandi was married to the Accused and had been separated for three months prior to her death. On 15th July 2014 the deceased was seen by one Moses Kuria Wambui and Edward Nganga Njuguna at Syokimau where she used to live with the Accused. She then entered their house and found one Charles Asena, the Accused's brother. The deceased appeared drunk and wanted to take belongings from the house. The Accused's brother left the house, and the Accused arrived later on after having been called by Moses Kuria Wambui who was the caretaker. The Accused and the deceased then started fighting and were seen running out of the house to a field next to their compound, where they were seen chasing each other.

On 16th July 2014 one of the neighbors found the body of the deceased in the field she had been seen chasing each other with the Accused, which was next to the rental house in which the Accused was living. A postmortem was conducted on 15th August 2015 and the cause of death of the Deceased was established as a severe head injury following repeated blunt force trauma. The learned Prosecution counsel, produced the postmortem report as an exhibit.

The Accused admitted the facts as stated by the prosecution and was convicted of the offence of manslaughter on his own plea of guilty. I am now called upon to sentence him bearing in mind that the maximum sentence for the offence of manslaughter is life imprisonment. After conviction, I called for a pre-sentencing report from the Probation Service. A report in this regard dated 29th October 2015 was filed. The report stated that the Accused and his family have pleaded for leniency and regret what happened. The Accused was found not to have any criminal history. The victim's family members are still bitter about the incident, and believe the deceased was murdered. They have no objection to any sentence the Court may deem fit. Lastly, the probation report is favourable to a non-custodial sentence being imposed, and recommends a probation sentence in order for the Accused to undergo rehabilitation through counseling.

I have considered the facts of the case and the Accused personal circumstances. He is aged 27 years old, the first born in his family, and was in gainful employment before the incident that led to his conviction. Further, that there was an element of provocation in the events leading up to the fight with the deceased. In the circumstances, I sentence him to three (3) years imprisonment. Such term of imprisonment shall take into account the time he has been in custody before and during the trial, and after conviction. However, he shall serve the balance of his sentence under probation. The Accused John Mugei Asena is accordingly set free unless otherwise lawfully held.

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 30th DAY OF NOVEMBER 2015.

P. NYAMWEYA

JUDGE