



**IN THE REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 16 OF 2011**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**MURIAN KENGANYA MAKURI.....ACCUSED**

**SENTENCE**

Murian Kenganya Makuri has been tried for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. He was found not guilty of murder and was convicted for manslaughter. Manslaughter is an offence created by section 202 of the Penal Code. The penalty for manslaughter is provided for under section 205 of the Penal Code that provides thus:

**Any person who commits the felony of manslaughter is liable to imprisonment for life.**

After conviction Mr. Anambo, advocate, on behalf of his client mitigated that the convict was faced with a difficult situation after finding the deceased in bed with his wife; that the accused is very remorseful; that he is the first born in his family and takes care of his elderly parents; that he has two children and is a young man at the prime of his youth. Counsel further submitted that the convict has reformed while in custody and has achieved various certificates including a certificate of a man of honour.

Counsel submitted various certificates and a letter from Nairobi Remand and Allocation Prison dated 16<sup>th</sup> October 2015 showing that the convict exhibited exemplary behaviour while in custody both to the members of public and his fellow inmates. Counsel told the court that the convict has been in custody for the last 4 years.

I have considered the circumstances under which the deceased died. I have taken into account the fact that the convict took advantage of his detention to study for various certificates. He was baptized while in custody and it is my hope that he also made peace with God by confessing this killing and seeking forgiveness. He is said to be a pastor.

As shown above, the penalty for manslaughter is life imprisonment. This is a stiff penalty. It is however the upper limit of that penalty. I have read section 333 of the Criminal Procedure Code on "Other Sentences". The proviso to that section provides that:

**Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.**

I have noted that the convict has been in custody since February 2011 making it slightly over four years to date. There are no previous criminal records against him and therefore this court treats him as a first offender. I will and do hereby sentence the convict, Murian Kenganya Makuri, to ten (10) years imprisonment. Having taken into account the four years he has been in custody, he shall serve a prison term of six (6) years which is the remainder of the period of ten (10) years imposed. The right of appeal has been explained to the convict. Orders shall issue accordingly.

**Dated, signed and delivered this 24<sup>th</sup> November 2015.**

**S. N. MUTUKU**

**JUDGE**

**In the presence of:**

Ms Magoma for the prosecution

Mr. Anambo for the convict

Mr. Murian Kenganya Makuri, the convict

Mr. Daniel Ngumbi, court clerk