



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.53 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

F N KACCUSED

SENTENCING

The accused, **F N K** was initially charged with murder of **J M R** contrary to section 203 as read with section 204 of the Penal Code. Before his trial commenced however, he entered into a plea agreement with the office of the Director of Public Prosecutions wherein the State reduced the charge to one of manslaughter. The plea agreement between the parties was filed in court on 4th November, 2013. The same was accepted by the court after satisfying itself on the mandatory requirements of **Section 137 of the Criminal Procedure Code**. The accused was subsequently charged with manslaughter contrary **section 202** as read with **section 205** of the **Penal Code**.

The brief facts of this case are that on the 19th June 2011 at around 10a.m, the deceased **J M R** and the accused **F N K** who were both working with a building contractor as casual labourers at Rurie Village in Juja location within Kiambu County were involved in a quarrel, whereby the accused alleged that the deceased was having a love affair with his wife. The accused further blamed the deceased for his family quarrels claiming that whenever he (accused) had disagreements with his wife, the wife would leave their home for the house of the deceased and spend the night there. This, the accused alleged, happened on many occasions. The accused became bitter and confronted the deceased. A fight then ensued and since they were fighting within the construction site, they were separated and advised to sort out the matter downstairs, as they were constructing on an upper floor. The accused then went downstairs followed by the deceased whereby they continued arguing and at that point the accused stabbed the deceased once on the chest with a pen knife. The deceased was rushed to Thika District Hospital where he succumbed to the injuries inflicted on him during the fight. A post-mortem conducted confirmed that the deceased had died due to penetrating chest injury with associated punctured left ventricle and haemopericardium.

The accused unequivocally accepted the facts as stated above and was convicted on his own guilty plea on 26th February, 2014.

In mitigation, **Mr. Swaka** for the accused submitted to the court that the accused was extremely remorseful and regretted the act which was unintentional as the accused had no malice aforethought. He pleaded for a non-custodial sentence stating that the accused had a young family; and had transformed into a God-fearing person. To support that the accused was transformed, **Mr. Swaka** filed a baptismal card and other religious certificates obtained by the accused after undergoing various bible courses while

in custody. He asked the court to consider that the accused had already spent four years in custody.

Before considering sentence, I called for and received a probation officer's report. I have considered both the report and the circumstances of the case. It is indicated in the report that both the accused and the deceased are related and come from the same locality and that the accused's family has made unsuccessful attempts at reconciliation with the deceased's family. Taking all the mitigating factors above into consideration, I sentence the accused to serve three years imprisonment.

Orders accordingly.

Sentence delivered at Nairobi this 20th day of May, 2014

R. LAGAT - KORIR

JUDGE

In the presence of:-

.....: Court clerk

.....: Accused

.....: For the accused

.....: For the State