



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO.82 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**WILLIAM GITONGA MWAI.....ACCUSED**

**RULING ON SENTENCE**

The Accused, William Gitonga Mwai was initially charged with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

Pursuant to a Plea Bargain Agreement dated the 3rd day of April, 2014., the original charge of murder was withdrawn and the Accused was charged with the offence of **Manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**.

The accused and the deceased were brothers and shared a room in the family homestead. On the 19th August, 2013, the accused and deceased were paid for casual work done. After being paid, the accused and the deceased agreed to jointly purchase some meat for their supper.

At 7.00p.m., the deceased arrived home drunk and proceeded to bed without cooking the meat. When the accused arrived home, he too was drunk and he had expected deceased to have cooked the meat. The accused got angry and a quarrel ensued and the accused armed himself with a metal bar and struck the deceased thereby occasioning him with fatal injuries.

The Postmortem Report was produced into court and was marked as “**Pexb.1**” and the cause of death was established to have been an injury to the head caused by a blunt object.

The above particulars of the offence were read out to the Accused who confirmed the facts to be correct and true. This court proceeded to convict him on his own plea of guilty and invited mitigation on behalf of the Accused by his counsel, before sentence was passed.

In mitigation, counsel submitted that at the time of the incident, both the Accused and deceased were drunk and in a fit of anger, the Accused had struck his brother with the iron bar, it was counsel's submission that there was no “**malice aforethought.**”

The accused is a young man, a first offender, remorseful and is capable of reforming. Counsel therefore pleaded for a non-custodial sentence to enable him to be of better use to society and also to consider the plight of the Accused's mother.

The State submitted that the Accused be treated as a first offender.

Before passing sentence, this court requested for a Probation Officer's Report which was tendered into court on the 29th September, 2014. This court has perused the Report and finds that the Report is favourable to the Accused and recommends a non-custodial sentence to enable him get appropriate social support from his family to enable him to rehabilitate.

The report confirms that the Accused is a young man and is aged 32 years and that he has no previous criminal record. The family has also come to terms with the unfortunate incident and have forgiven the Accused and are willing to support him, where possible.

Taking into consideration the circumstances of the case and the facts and also that the Accused had no premeditated intention of killing the deceased, this court is satisfied that the Accused is deserving of leniency.

The accused is hereby sentenced to three(3) years suspended sentence. He will serve the term in his home area and during this period, he is to rehabilitate himself and refrain from drinking alcohol and enroll himself at the nearest rehabilitation centre. The accused shall report to the Area Probation Officer on the last working day of each and every succeeding month for a period of one and a half (1½ ) years. The Area Probation Officer shall file a Report into court every six (6) months on the Accused's progress.

In the event that the Accused breaches any of the conditions of the suspended sentence, the Accused shall be re-arrested and shall serve the remainder of the three years sentence in prison.

It is so ordered.

**Dated, Signed and Delivered at Nakuru this 29th day of October, 2014.**

**A. MSHILA**

**JUDGE**