

REPUBLIC OF KENYA

High Court at Machakos

Criminal Case 26 of 2010

REPUBLIC

VERSUS

BERNARD MWENDO KINYANZUI ACCUSED

SENTENCE

I have considered the facts and circumstances of the case, the mitigating factors and the probation report. The accused was drunk when he committed the offence. He had been assaulted by somebody else. When he went and took a stool and came back, his assailant had gone away. He hit the deceased with the stool, which resulted in death. The accused is a young man in his early thirties. He is a first offender. The probation report recommends a non-custodial sentence, as the two families were negotiating reconciliation.

In my view, a non custodial sentence is not appropriate. Though the accused was drunk at the time of the incident, there does not appear to be any reason why he should have transferred his anger from his assailant who had gone away, to an innocent companion, the deceased. I appreciate that the accused pleaded guilty to manslaughter and did not waste court's time. However, I think that a custodial sentence is called for.

Taking into account all the facts before me, I sentence the accused to serve six (6) years imprisonment. He can appeal within 14 days.

Dated at Machakos this 7th day of **December** 2012.

George Dulu
Judge

In presence of:-

Ms. Kwamboka for State

Ms. Amala holding brief for Mr Mutia for accused

Mutinda – Court clerk

Accused present