REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 26 OF 2008

DAVID CHERUIYOT MUTAI :: APPELLANT

=VERUS=

REPUBLIC ::: RESPONDENT

RULING/ORDER

I have considered the mitigating circumstances narrated by counsel for the accused and note that the accused is now about 55 years of age. I have also considered that he has pleaded guilty to the charge.

I have further considered the circumstances which culminated in the death of the deceased. Those circumstances suggest that the accused was provoked when he saw his wife (the deceased) being escorted at night by a person who was her former boy friend (**Nyongio**). The accused was armed with a rungu but the fatal injury was inflicted by a panga which the said boy friend carried. The said boy friend in attacking the accused merely added salt to an already bleeding wound. Those circumstances call for a non custodial sentence. The accused has been in custody for nearly three (3) years. He is remorseful. In my judgment, he has learnt his lesson.

In the premises, I sentence the accused to one day's imprisonment. That means in effect that the accused should be set at liberty at the close of business today. Right of Appeal against sentence 14 days.

F. AZANGALALA
JUDGE5/4/2011