



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Case 109 of 2008**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DANIEL MWAURA NDUNGU.....ACCUSED**

**JUDGMENT**

The Accused was originally charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, (Cap. 63 Laws of Kenya). The Accused however offered to plead guilty to a lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

After the information of manslaughter was read to the Accused and explained to him in Kiswahili a language which he understood, the Accused answered "*ni kweli*" "*It is true*", and a plea of guilty was duly entered. When the facts were read to the Accused he also confirmed that the circumstances described which led to the commission of the offence were correct. So a plea of guilty was confirmed.

In his mitigation, the Accused, through his Counsel, Mr. Gekonga, pleaded that he was very remorseful. He is a young man of 22 years of age. He has 2 children now under the care of his parents as his wife had ran away and deserted him when he was in remand. The Accused said through his counsel that he is reformed, he has stopped drinking alcohol and had become a staunch Christian; he is a first offender and has been in custody for 1<sup>1/2</sup> years, and that the court should consider giving the accused a light sentence.

The circumstances leading to the commission of the offence are not in dispute, but ended up in a tragedy by the accused cutting his friend on the neck with a machete (*panga*) which led to his friend's bleeding to death.

The accused was a small time thief. He had stolen a sufuria from his aunt. He sold it and gave the proceedings of sale to his friend, Peter Chacha Wamalwa, the deceased. When the Accused later approached his friend for the money, the friend informed the accused that he had already used the money. A dispute arose, and the accused cut his friend, the deceased, with a panga. The friend, the deceased, died before he reached hospital.

Upon realizing what he had done, the Accused panicked and wanted to kill himself so that he could be united with his friend in death as they were in life. He took poison and might himself have died of poison if some Samaritan had not discovered and taken him to hospital where he recovered, and was eventually discharged. On his arrest later, he was subjected to a mental assessment and was found to be mentally sound to be able to stand trial. Both the mental assessment report and post-mortem reports were tabled by Mr. Nyakundi learned State Counsel.

A charge of manslaughter contrary to section 202 of the Penal Code, carries a maximum punishment of life imprisonment.

I have considered the circumstances of the commission of the offence in this case. The price of the sufuria (*cooking pan*) is not disclosed. But whatever the price or value thereof it did not deserve a fight with the use of dangerous weapons like a panga. In the olden days when boys [not even like the Accused (*28 years of age*)] fought over such trivial things like the loss of a chicken, or the price thereof or like in this case the loss of some small sum of money, boys measured their strength by hand to hand combat and not the use of dangerous weapons, like machetes or spears, and when such weapons were used they were used to "*maim*" and "*disable*" but not to kill the opponent. Fatal injury was only inflicted if the opponent was declared an enemy combatant. The situation should not be different today, particularly where there is no evidence that there was any danger of imminent fatal injury to the accused.

By adverting to the use of a panga, and thus inflicting fatal injury upon his friend, (*the deceased*) the accused used excessive force which did not appear in proportion to either the friend's reaction or danger to himself. It was not disclosed that the accused was grievously injured.

The Accused says he has reformed, that he has stopped drinking and that he had become a staunch Christian. As far as I know, there ought to be no alcohol served among prison inmates or remandees. I cannot therefore take the accused's word that he has stopped drinking alcohol. Perhaps he has resolved not to take alcohol once he is out of prison and that is commendable on his part. As to his conversion to Christianity or adherence to its teaching again that is commendable. The test is however when he is out of the prison regime, not while he is still in prison.

The punishment for manslaughter as stated above is life imprisonment. The accused has been in custody for 1<sup>1/2</sup> years. It is said he is a first offender. The offence he committed is a serious one, he took away a life, even if he did not intend to. The accused was saddened enough to want to immolate himself for his friend's life. Taking all those circumstances into account, a prison term of five years would give the accused sufficient time to reflect on his life, cool down and perhaps come out a reformed citizen.

There shall be orders accordingly.

**Dated, delivered and signed at Nakuru this 28<sup>th</sup> day of May 2010**

**M. J. ANYARA EMUKULE**

**JUDGE**