

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Criminal Case 52 of 2003**

**REPUBLIC.....STATE
VERSUS
ROBERT KARIUKI KIUMBE.....ACCUSED
ORDER ON SENTENCE**

The accused person herein, ROBERT KARIUKI KIUMBE was initially arraigned before this court on the information of the Honourable Attorney General dated 22nd August 2003, to face a charge of murder contrary to section 203 as read with section 204 of the Penal code. The particulars of the offence were that on the 4th day of February 2003 at Mugumo-ini village in Maragua District of the Central province, he murdered David Mwangi Kaguchia. The case proceeded for hearing afresh before the Hon. Mr. Justice Makhandia on 21st October 2009. Initially the prosecution had tendered the evidence of six witnesses before Lady Justice Okwengu. The Honourable judge was transferred before she could conclude the case. The case was then placed before the incoming judge, Lady Justice Kasango who heard and dismissed a Preliminary objection based on sections 72(3) (b) and 77(1) of the Constitution. The Honourable judge was transferred from Nyeri High Court before she could hear the case. The file was then placed before the Honourable Mr. Justice Makhandia on 16/6/2009 who directed the case to proceed for hearing de novo. At the end of the evidence in chief of the first witness, Mr. Mwangi, learned advocate for the accused person when called upon to cross examine the witness informed the Honourable judge that his client (accused) was willing to plead guilty to a lesser charge of Manslaughter.

On 27th April 2010, this court accepted and approved the plea agreement executed by the learned counsels appearing in this matter. The accused was then convicted on his own plea of guilty to the offence of Manslaughter contrary to section 202 as read with section 205 of the penal code.

Upon conviction, Miss Ngalyuka, learned Senior State counsel, urged this court to treat the accused as a first offender. Mr. Mwangi, learned advocate for the accused person beseeched this court to be lenient to the accused because he is remorseful and to also take into account the fact that he has been in custody since the time of his arrest. I have considered the mitigating factors outlined by the accused's advocate. I have also taken into account the fact that the accused is a first offender. It is obvious from the record that the accused was arrested on 5th February 2003 and has since then remained in custody pending trial. It would appear from the facts outlined by Miss Ngalyuka, that the accused committed the offence after he was insulted by the deceased and while he was under the influence of alcohol. It is possible he was drunk. The accused acted savagely when he used a panga to cut the deceased yet the circumstances indicated that the quarrel between him and the deceased was a mere brawl. The facts as outlined indicate that the accused was the one who actually visited the deceased's house where the quarrel arose and the consequent fight which led to the loss of life. I am of the view that a custodial sentence is necessary in the circumstances of this case to enable the accused reflect on his past and future as he serves his sentence in prison. I have taken into account the fact that the accused has been in custody for over years. He was arrested when he was aged 18 years. He is now aged about 26 years. The accused is at his prime age where he could use his youthful energy in the development of this country. I am inclined to pronounce a lenient sentence because of the above factors. I hereby sentence the accused to serve six (6) years imprisonment.

Dated and delivered this 7th day of May 2010.

**J.K. SERGON
JUDGE**

In open court in the presence of Miss Ngatunyi holding brief for Mr. Mwangi for the accused and Mr. Makura for the state.