

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Case 3 of 2009

REPUBLIC.....PROSECUTOR
VERSUS
SAMUEL WAWERU NJAU.....ACCUSED

ORDER ON SENTENCE

SAMUEL WAWERU NJAU, the accused herein, was initially arraigned before this court on the information of the Attorney General dated 6th January 2009, to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. On 12th February 2009, he pleaded not guilty to the offence before Lady Justice Kasango. When Lady Justice Kasango was transferred to Meru High Court, a fresh plea was taken before Mr. Justice Makhandia on 12th May 2009 where again the accused pleaded not guilty. When this case came up for hearing before me on 18th November 2009, the parties asked for time to plea bargain. On 27th May 2010 a plea bargain agreement was accepted and approved by this Court whereupon the accused pleaded guilty to the lesser charge of manslaughter contrary to *Section 202* as read with *Section 205* of the Penal Code. It is alleged that the accused herein unintentionally and unlawfully caused the death of George Njoroge Thiga on 26th December 2008. The accused is an uncle to the deceased. The duo are said to have picked up a quarrel. The deceased who appeared drunk insulted the accused. He even challenged him for a fight. The accused got angry and was forced to wrestle the deceased to the ground. A fight ensued and in the process the accused is said to have kicked the deceased on the chest and on the head. The deceased became unconscious. The accused left the deceased at the road side. He was found dead the next day.

The accused, through Mr. Nderi, learned counsel, beseeched this court to be lenient in sentencing him. Mr. Nderi has urged this court to pronounce a non-custodial sentence by taking into account the number of years the accused has been in custody pending trial. It is pointed out that the accused is the only bread winner of his family of two children.

I have taken into account the facts in mitigation and the fact that the accused is a first offender. The maximum sentence given by law for such an offence is a life sentence. The accused has been in custody for 1 ½ years. I have also considered the fact that the accused is a young man aged 32 years. If he is kept in custody for long, he is likely to lose

his youthful energy which he could have used to build the nation and raise his young family. There is no doubt that he will remain with the stigma of having shed the blood of his nephew. Having taken into account the aforesaid factors, I will sentence the accused to eight (8) years imprisonment.

Dated and delivered at Nyeri this 9th day of July 2010.

J. K. SERGON

JUDGE

In open court in the presence of Miss Nyigei holding brief Nderi for Accused and Mr. Makura for the State.