

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Case 38 of 2008

REPUBLIC ----- PROSECUTOR

V E R S U S

DINYISCO AMALEMBA ITAYO ----- ACCUSED

S E N T E N C E

The accused is charged with the offence of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code. The particulars of the offence are that the accused on the 1st day of August, 2008 at Mutao village, Mutao Sub-location, Shirere Location in Kakamega South District within Western Province unlawfully killed **Geoffrey musee**. The accused pleaded guilty to the charge.

On 1st August, 2008 at Mutao village at about 6.00 p.m. the accused was heading home when he was confronted by the deceased who alleged that the accused had on 31/7/08 stolen his radio speakers. The Accused attempted to flee as the deceased was bigger in size and older than him but the deceased ran and caught up with him and began assaulting the accused. The deceased produced a knife from his trouser pocket and attempted to stab the accused. A struggle ensued and the knife fell and the accused picked the knife and stabbed the deceased once on the neck.

The deceased died of the injuries at the scene. A Postmortem by Dr. Oreke opined that the deceased died due to penetrating chest trauma. The accused was escorted by his father to the Police Station and the accused was initially charged with the offence of murder which was later reduced to manslaughter.

Mr. Ondieki, counsel for the accused, in mitigation submitted that the accused is very remorseful and that the deceased was the accused's first cousin. He acted in self defence. The knife belonged to the deceased. The accused had just done his Kenya Certificate of Primary Education and was due to join Form one. The accused is a minor under the children's Act and should be given a chance to construct his life through studies.

The accused herein is about 17 years old and therefore a child under the provisions of **Section 2** of the **Children's Act, 2001** (Act No. 8/2001). Taking into account the above scenario which led to the commission of the offence, and noting that the accused acted in self defence, I sentence the accused to serve three (3) months imprisonment at a Boastal Institution within Western Province.

Delivered, dated and Signed at Kakamega this 30th day of July, 2009.

SAID J. CHITEMBWE

J U D G E