

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Case 15 of 2009

REPUBLIC.....PROSECUTOR

V E R S U S

DAVID MWANDO KULALI.....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 on the 23rd day of February, 2009 at Emwatsi village, Embali Sub-location, West Bunyore Location in Emuhaya District within Western Province the accused unlawfully killed GILBERT MUNAI MWANDO. The accused pleaded guilty to the charge.

On 23rd February, 2009 the accused arrived home at 1.00 p.m. and found that his mother had been assaulted by the deceased who was his uncle. The accused and his brother, David Muhando Kulali, decided to go to the deceased's home and inquire why the deceased had assaulted their mother. They found the deceased at home and in the process of inquiring why the deceased had assaulted the accused's mother, an argument ensued. The deceased picked a panga and attempted to cut the accused who evaded and picked a walking stick which was in the deceased's home and hit the deceased on the head. The accused and his brother ran away.

The deceased was rushed to Yala District Hospital but passed away while undergoing treatment. A Postmortem conducted on 27/2/09 by Dr. Esiaba indicated that the cause of death was head injury secondary to blunt object. The accused was arrested the following day by members of the public and handed over to the police. The accused was charged with murder which was reduced to manslaughter.

The accused on 23/3/09 informed the Deputy Registrar that he was 15 years. An order for age assessment was made but there is no report in the file. Taking into account the circumstances of the case and that the accused is a first offender, I do not think a custodial sentence would serve any purposes in this case. The accused is a child under the Children's Act and never intended to kill the deceased. The accused is hereby set free and shall be at liberty unless otherwise lawfully held.

Delivered, dated and Signed at Kakamega this 28th day of July, 2009.

SAID J. CHITEMBWE

J U D G E