



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**Criminal Case 2 of 2006**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**JOTHAM BULIMO ALUSA ..... ACCUSED**

**SENTENCE**

JOTHAM BULIMO ALUSA, the accused, was initially charged with the offence of murder of Hudson Kiminyi contrary to section 203 as read with section 204 of the Penal Code. That charge was reduced to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the manslaughter charge were that the accused, Jotham Bulimo Alusa,

***“On the 19<sup>th</sup> day of November, 2005 at Bukhulunya village, Bukhulunya sub-location in Vihiga District of Western Province, caused the death of HUDSON KIMINYI through an unlawful means.”***

The accused pleaded guilty to the charge and admitted the facts constituting the offence of manslaughter following which he was convicted on his own plea of guilty. The facts constituting the charge of manslaughter were not complicated. They were as follows:

At 8 p.m. on 19<sup>th</sup> November 2005 the accused was in his house in Bukhulunya village in Bukhulunya sub location, Vihiga District, Western Province, with his wife, Helen Tago Mitoma and were chatting when they detected the presence of a person walking outside the house. The accused went out to check. Immediately he got out, he was hit on the head with a stone by a person who started to flee as soon as he did so. Undeterred, the accused gave chase and caught up with the person who turned out to be the deceased, Hudson Kimiti. He was unknown to the accused. The deceased had a panga with which he tried to cut the accused. However, the accused overpowered the deceased and got hold of the panga which he used to cut the deceased once as he raised alarm. Messrs John Muhavi Mbaye and Stephen Amugune Kianwa, the accused’s neighbours responded and rescued the deceased who fell unconscious. They also advised the accused to report the matter to the village elder, one Elias Makenzi Mukoyani, who notified the Chief who in turn reported to the police. But it was not until the following day that the police from Chavakali Patrol Base visited the scene and found that the deceased had already died. The body was taken to Vihiga District hospital mortuary and the accused was arrested and charged with murder which was later reduced to manslaughter.

Postmortem on the body of the deceased was done by Dr. Kamau on 2<sup>nd</sup> December 2005 at Vihiga District Hospital. It established the cause of death as cardiopulmonary failure due to loss of blood caused by severe bleeding caused by multiple injuries. The Postmortem report was produced as exhibit No. 1. The accused was examined by a Psychiatrist and found to be fit to stand trial. A P3 Form in this regard duly signed was produced as exhibit No.2.

After the accused’s conviction on his own plea of guilty, Mr. Athung’a, learned counsel for the accused, mitigated against sentence on his behalf. He said that the accused was remorseful, had three children, and was aged 49 years at the time of commission of the offence. The accused, he said, was attacked at night by the deceased who was a stranger to him. The accused was hit on the head with a stone by the deceased and it was in self defence that he chased and fought the deceased whom he

overpowered. The deceased, he said, was cut only once. It was the accused who reported the matter to the village elder and turned himself in.

I have given due consideration to the mitigation and the circumstances in which the offence was committed. It was at night and it was the deceased who went to the accused's homestead and attacked him. The accused was entitled to defend himself and his family. He has been in custody since 2006 and is a first offender who says he is remorseful. He has a family and his conduct shows clearly that he did not intend to inflict a fatal blow on the deceased. Taking all these mitigating factors into account, I do not think a custodial sentence is merited. The accused is imprisoned for a day so that when the court rises, he shall be released and set free.

*Delivered at Kakamega at Kakamega 15<sup>th</sup> day of November, 2007.*

**G. B. M. KARIUKI**

**J U D G E**