



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**Criminal Case 18 of 2005**

**REPUBLIC ..... PROSECUTOR**

**V E R S U S**

**JOHN MUKWENDO SHIUNDU ..... ACCUSED**

**S E N T E N C E**

The accused, John Mukwendo Shiundu, was convicted on his own plea of guilty of the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the charge were that – *“on 29<sup>th</sup> April, 2005 at Kholera village, Matungu Sub-location in Butere/Mumias district within the Western Province the accused, John Matungu Shiundu, caused the death of Jackson Kadima by an unlawful act”*.

The facts constituting the offence given to the court by the learned Principal State Counsel, Mrs. A. Kithaka, showed that the accused was on his farm when the deceased accosted him and a bitter verbal exchange ensued. It lead to a fight. During the fight the accused grabbed a jembe the deceased had with him and hit the deceased with it thereby inflicting on him fatal injury. It seems the accused and the deceased who were contiguous neighbours had had disputes over the boundary of their respective farms.

The postmortem report by Dr. Johnson Akatu dated 4-5-05 showed the cause of death of the deceased was cardiopulmonary arrest and head injury. These facts were admitted by the accused who the learned State Counsel said was a first offender.

Mr. Shitsama learned counsel for the accused, mitigated against sentence and pleaded for a lenient sentence. He pointed out that the accused had pleaded guilty and was remorseful. He pointed out that the accused had by accident met with the deceased and had no inkling he would be involved in a fight with him.

The deceased, he said, was carrying a jembe which the accused grabbed and used to hit the deceased during the fight. He conceded that the accused used more force than was necessary to defend himself. The accused surrendered to the police and was arrested.

In asking for lenient sentence on behalf of the accused, Mr. Shitsama also submitted that the accused was the sole breadwinner of his family, and had six children all of whom were pursuing education and were dependent on him. He pointed out that the accused whose family had been displaced following the torching of his home after the death of the deceased had been traumatized and had suffered greatly. The accused, he submitted, was keeping bad health and suffered hypertension and a dislocated arm. He had been in custody, he said, for a period close to a year.

Manslaughter is a serious felony. It carries a maximum of life imprisonment. It results from an unlawful act or omission. Its seriousness cannot be overemphasized.

In passing sentence, I take into account that the accused pleaded guilty and is a first offender. I have considered also that he (the accused) is remorseful. I also take into account that accused surrendered to the police after he had fatally injured the deceased.

The circumstances in which the deceased was injured show that the accused was on his farm when the accused who was his contiguous neighbour found him and a quarrel erupted. The accused was not armed and the jembe he used to inflict the fatal injury on the deceased was snatched from the deceased during the fight.

I have had regard to the health of the accused and the fact that his home was torched after this incident thereby displacing him and his family. I also take into account that he has been in custody for a period close to a year.

Nevertheless, the accused should have known better than to use an instrument such as a jembe to hit the deceased. He could have walked away from the deceased when the quarrel erupted and avoided what ensued. His life was not in danger and it does not appear the deceased intended to use the jembe on the accused.

After considering all these mitigating factors, and weighing the circumstances of the offence, it is my considered view that a custodial sentence is warranted. Accordingly, I sentence the accused to a term of imprisonment of one year. It is so ordered.

***Dated, signed and delivered at Kakamega this 17<sup>th</sup> day of February, 2006.***

**G. B. M. KARIUKI**

J U D G E