

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
Criminal Case 78 of 2004

REPUBLIC.....PROSECUTOR

VERSUS

JAMES MUSAU WAMBUA.....ACCUSED

13/6/06

Coram

D.A.Onyancha,J

Advocate for accused –Kamanda/Nyakeri

Principal State Counsel for Republic- O'mirera

CC-Mueni

SENTENCE

Accused fought with his step-father who went to his house to ask why accused had used deceased's bicycle without deceased's permission. During the fight deceased was cut with a panga accused picked during the continuance of the fight. When deceased fell unconscious the accused dragged the deceased to outside deceased's house and left him there without warning deceased's wife. The next morning the deceased was discovered there, barely alive. When concern was raised, and people including accused assembled, accused was noticed with blood stains. On being questioned, accused admitted having inflicted deceased with the injuries during a fight at midnight the night before. Deceased was taken to Machakos Hospital and eventually to Kenyatta Hospital where he died on 26.5.2004. Accused who was arrested on 26.5.2004 was charged with murder, now reduced to manslaughter. Accused is sorry and remorseful for having killed his stepfather. He is a first offender and prays for leniency. He has been in remand for two years. There is no doubt that the deceased is the one who went to quarrel with accused, at midnight when people had gone to sleep. There is no evidence that accused is the one who started the fight. There were other ways of solving the bicycle problem by deceased rather than confrontation. But while the fault and provocation appears to have come from deceased, the accused who escaped from his attack could have escaped and ended the fatal fight. He instead went and having picked a panga went back to cut his step-father which eventually brought his death.

Having considered all the mitigation and considered the period of 2 years in remand, the court has decided that accused should go to jail for 3 years (three).

It is so ordered.

D.A. ONYANYA

JUDGE

13.6.06