



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 62 OF 2006

REPUBLICPROSECUTOR

VERSUS

KILONZO MUNYOKIACCUSED

JUDGMENT

In the information first laid before the Court by the Attorney-General, the accused herein had been charged with murder contrary to section 203 as read with section 204 of the Penal Code (Cap. 63, Laws of Kenya); and the particulars were that **Kilonzo Munyoki** the accused had, on 13th April, 2006 at Exotic Wood Products in the Industrial Area, within Nairobi Province, murdered one **Benjamin Mbuvi Ngelu**.

On the day of taking plea before **Apondi, J.** on 27th June, 2006 the accused pleaded not guilty but, through learned counsel **Ms. Anambo** holding brief for learned counsel **Mr. Kanyangi**, sought further mention to enable a plea of guilty to the lesser charge of manslaughter to be taken. On the new mention date, 17th July, 2006 learned counsel **Ms. Apiyo** holding brief for learned counsel **Mr. Kanyangi**, for the accused, confirmed that the accused was ready to plead guilty to a charge of manslaughter; whereupon learned State Counsel **Mr. Njogu** sought a week's leave to enable him to take necessary instructions regarding the offer made by the accused.

At the mention of 24th July, 2006 the Court directed that new charge information be filed, and the matter came up for fresh plea-taking before me on 26th July, 2006.

The charge was read out twice and interpreted twice in Kiswahili, the accused's language of choice; and he, **Kilonzo Munyoki**, pleaded guilty. And thereupon the prosecution presented an account of the facts relating to the commission of the offence, which the accused acknowledged to be a true account.

Both the accused and the deceased were employees of a firm known as Exotic Wood Products, located along Jilore Road in the Industrial Area, Nairobi. The accused, who was employed as a cook, was at 8.40 a.m. on the material date, in the course of his duties, in the kitchen. The deceased, at that moment, walked in and picked a quarrel with the accused, over some family matter; and he went further and picked a fight, hitting the accused on the chest. The accused reacted by drawing a knife and stabbing the deceased in the chest. The deceased bolted out, communicated to a security guard in the compound that the accused had

stabbed him, and at that moment collapsed on the ground. The deceased was rushed to Mater Misericordiae Hospital in the neighbourhood, where he died while undergoing treatment.

The autopsy conducted on the body of the deceased after it was taken to the mortuary, revealed that death had been caused by chest injury due to the penetration of a sharp object.

The accused, in the meantime, absconded from his regular work, but he later surrendered to the police and was placed under arrest, before being charged.

Learned counsel **Ms. Apiyo** made the mitigation address on 31st July, 2006 after learned State Counsel **Ms. Amenge** represented to the Court that the accused had no previous record of conviction and may be treated as a first offender.

Ms. Apiyo stated that the accused is aged 36, and is married with three children; and the accused also bears responsibility for two other children from a deceased sister of his. His sister's children as well as three of the accused's own children are in school. His own parents had died; he has one brother; his wife is unemployed; he is the sole bread-winner – consequently if he is held in prison, all his family responsibilities will pile up on his brother.

Ms. Apiyo stated that the accused who has been in custody since April, 2006 has given all co-operation to the law-enforcement authorities; is a first offender; had not had the intention to kill the deceased; and is remorseful. Learned counsel prayed for leniency and for a non-custodial sentence.

Thereupon I convicted the accused on his own plea of guilty, by virtue of section 202 as read with section 205 of the Penal Code (Cap. 63, Laws of Kenya).

Although section 205 of the Penal code sets the upper limit of the term of imprisonment for manslaughter at “life”, this is an offence which, I would take judicial notice, occurs in a varied set of circumstances; and the Court must consider the facts surrounding any instance of commission of the offence, as a basis for awarding just and merited penalty.

From the facts of this case, the causation of the death of the deceased took place on the spur of the moment, and probably would not have taken place if the deceased had not entered the kitchen in a querulous and aggressive manner; and it may well be that the reaction of the accused if on the extreme side, was not by any means entirely alien to occasional human behaviour. I have taken these facts into account, alongside the fact of the accused's remorsefulness and his ready co-operation with the law-enforcement authorities; and this leads me to find and to hold that the confinement which the accused has undergone since April, 2006 to-date (**25th September, 2006**) has served as sufficient chastisement for the unlawful act of causing the death of the deceased. I order that the accused be immediately set at liberty, unless he is otherwise lawfully held.

Orders accordingly.

DATED and DELIVERED at Nairobi this 25th day of September, 2006

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Ndung'u

For the accused: Mr. Kanyangi

For the Prosecution: Mr. Njogu