



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Criminal Case 49 of 2004**

**REPUBLIC** ..... **PROSECUTOR**

- Versus -

**PETER RAYASI KATUTA** ..... **ACCUSED**

**Coram: Before Hon. Justice L. Njagi**

**Ms. Moolraj for the Appellant**

**Ms. Mwaniki for the State**

**Court clerk – Kinyua**

**J U D G M E N T**

The accused was initially charged with murder contrary to section 203 as read with section 204 of the Penal Code. The charge was subsequently reduced to manslaughter to which the accused pleaded guilty. The learned state counsel requested that the accused be treated as a first offender.

In mitigation, learned counsel for the accused asked the court to take into account that the accused had a young family with five children, and that he is the sole bread winner. He was arrested on 20<sup>th</sup> October, 2004, which is close to two years, and that he is truly remorseful. On that basis, counsel requested the court to reduce the sentence to the barest minimum to enable the accused to go back and start rebuilding his life with his family.

The learned state counsel left the sentence to the court.

I have considered that the accused pleaded guilty to the charge of manslaughter and that he is a first offender. I have also taken into account that he has been in remand custody for close to two years.

There is no minimum sentence prescribed for manslaughter, but there is a maximum sentence. Within that scale, the court has jurisdiction to mete a sentence which is appropriate in the circumstances. The circumstances which led to the blow on the deceased which turned fatal are not very clear. But it is clear that the deceased and the accused had dinner and drinks in the house of the accused during the fateful night. Was there any provocation? Did the accused hit at the deceased in self defence? Were the parties drunk? What led to the fatal injury on the deceased? We can only speculate.

Having pleaded guilty to unlawfully killing the deceased, however, the accused knows well enough that he was the cause of the loss of that life. Balancing that with the plea of guilty, and that the accused is a first offender who has been in remand custody for two years, the accused deserves a short custodial sentence to atone for that loss of life. I accordingly sentence him to two years imprisonment.

Right of appeal within 14 days.

Dated and delivered at Mombasa this 5<sup>th</sup> day of September, 2006.

L. NJAGI

JUDGE