

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CRIMINAL CASE 44 OF 2006

REPUBLIC PROSECUTOR

V E R S U S

JACOB WEREMBA KONG'ANI ACCUSED

S E N T E N C E

The facts constituting the felony of manslaughter which the accused, JACOB WEREMBA KONG'ANI, admitted and entered a plea of guilty were straight forward. In a nutshell, they were that, on 27th May, 2006 at about 8 P.M. at Busokho village, Isongo Sub-location, East Wanga Location in Butere/Mumias District within the Western Province the accused unlawfully caused the death of JAPHAS KONGANI KWEYU (the deceased).

Mr. Karuri, learned State Counsel, told the court that the deceased was a polygamist with three wives with whom he lived in the same homestead in Busokho village. The accused is the son of the first wife of the deceased. The deceased was a man of humble means. The accused resented the fact that his father, the deceased, practiced polygamy in spite of the poverty in the home. He showed scant respect to him on account of this and their On 25th May, 2006 at 8 p.m the accused went home drunk and picked a quarrel with his own mother, Rehema Mbai Kongani, over food which he demanded and got. His mother was able to placate him. But he picked another quarrel with his step-mother, Rose Awinja. His father, Japhas Kongani Kweyu, who was advanced in age overheard the quarrel as he sat in the house of his third wife, Josephine Aketch, and confronted the accused. He had a walking stick which he raised in an attempt to hit him as he reprimanded him. The walking stick dropped off to the ground and the accused picked it and clobbered his father with it on the head until he fell down and became unconscious. The deceased was taken by members of the family to Makunga Health Center immediately from where he was transferred to Kakamega Provincial General Hospital where he was admitted but later died.

Meanwhile, the accused fled but members of the public pursued him and apprehended him and handed him over to the police at Makunga Police Station. He was later charged with murder which was reduced to manslaughter on which he was convicted on 12-10-2006 on his own plea of guilty.

Mr. Wafula, learned counsel for the accused, mitigated against sentence on the accused's behalf. He told the court on 26.10.2006 that the accused was a first offender and was young. He said that the accused was provoked by his father who hit him with a stick and that he acted in his own defence and did not intend to kill. He was remorseful, he said, for the unlawful act which resulted in the death of his father. The accused has been in remand for about one year. Mr. Wafula pleaded with the court to give a lenient sentence.

I have given due consideration to these mitigating factors including the fact that the accused pleaded guilty to the charge, is a young man and is a first offender who has shown remorse for the offence. I have also taken into account the fact that the accused has been in remand for about a year.

I have had regard to the circumstances in which the offence was committed. The accused was drunk. That fact that he picked quarrels with his mother and step-mother over petty domestic issues reflected his bellicose character and scant respect for his parents. When his father's walking stick fell to the ground, the accused could have walked away. Instead, he picked it and hit his father repeatedly with it until he fell unconscious. He knew that what he had done was unlawful and so, he fled. The state of drunkenness

may have contributed to the unlawful act.

The circumstances in which the offence was committed show that a deterrent sentence is called for as the offence in this area of the country has become very prevalent. Time and again this court has had to deal with similar cases where young men beat old men and women to pulp with all manner of weapons. The death of the deceased has resulted in the loss of a breadwinner and head of the family. Yet the fact that the accused is young, was drunk, is remorseful, pleaded guilty and is a first offender who has been in custody for about a year does mitigate against sentence. But manslaughter is a serious felony that carries a life sentence. Taking all these circumstances into account, I sentence the accused to a term of imprisonment of ten (10) years.

Dated at Kakamega this 7th .day of December.. 2006

G. B. M. KARIUKI

J U D G E