

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL CASE NO. 20 OF 2003

REPUBLIC :: PROSECUTOR
V E R S U S
SILVESTER MACHIKA :: ACCUSED

SENTENCE

Initially, Silvester Machika was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. On 2-3-2005, following plea bargaining, he pleaded guilty to the lesser offence of manslaughter under Section 202 as read with Section 205 of the Penal Code. He was charged of having caused the death of Cosmas Okanga by unlawful act on 1st December 2002 at Malimili village, Malimili sub location, Ilesi Location in Kakamega District of Western Province and convicted on 2.3.2005.

The facts constituting the offence which the Accused admitted were that the accused was engaged in a quarrel with his brother, one David Mosi, which degenerated into a fight. The deceased, who was their father was herding cattle nearby came to separate the fight. The accused picked a stick and hit him on the head and on the ribs and ran away. The deceased fell down and neighbours took him to Mukumu Mission hospital where he fell into coma and subsequently died on 10.12.2002. The postmortem conducted by Dr. Anguchi on that day attributed the cause of death to cardiopulmonary arrest caused by severe head injury. The accused was examined by Dr. Aswani on 31.12.2002 and found to be fit to stand trial.

Mr. Karuri informed the court that the accused was a first offender.

Mrs. Muleshe, learned counsel for the Accused, prayed for leniency and pointed out that the accused was a young man who had intended to live a good life. She pointed out that the accused regretted the death of his father which resulted from his use of excessive force. The accused, I was told has been in custody for two years and was remorseful.

I have duly considered the said mitigation and the circumstances in which the accused caused the death of his father. I give due consideration to the fact that the accused, a young man, was a first offender who is remorseful and had pleaded guilty. I also bear in mind that he has been in custody for two years and the unlawful act that caused death of his father was ostensibly prompted by cowardice and foolishness on his part.

Nevertheless manslaughter is a serious felony which carries a sentence of life imprisonment. It was reckless of the accused to use the excessive force that he did. His father was not armed and was not intent on attacking him. He came to separate his sons from fighting. The death of the deceased will remain on the conscience of the accused for ever. I think a custodial sentence is merited in this case.

After weighing one thing with another, I accordingly sentence the accused to a term of four years imprisonment.

Dated at Kakamega this 22nd day of April, 2005.

G. B. M. KARIUKI

JUDGE