

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

Criminal Case 37 of 2003

REPUBLIC PROSECUTOR

V E R S U S

FOSTER ISABWA AMBENGE ACCUSED

SENTENCE

On 21st April 2005, FOSTER ISABWA AMBENGE, the accused, pleaded guilty to the offence of manslaughter contrary to section 202 as read with s.205 of the Penal Code and was convicted accordingly. The particulars of the charge were that the accused caused the death of SIMON AMBENGE GAVIHI through an unlawful act on 25-7-2003 at Budaiywa village, Budaiywa sub-location, in Busali location in Vihiga District within western Province. The accused was treated as a first offender. His advocate, Mr. Manyoni, urged the court in mitigation to treat him with leniency. He said the 24 year old accused should be given an opportunity to reconstruct his life. The accused, he said, has a 5 year old son and a young wife and has been in custody for one year and 8 months.

The deceased was the accused's father. The genesis of the quarrel was food which the accused demanded but could not get as there was none in the house. When the deceased demanded to know why the accused was quarrelling, the accused attacked him and hit him repeatedly with a piece of timber on various parts of his body until the deceased collapsed.

He died the following day at Shamakhokho Health Centre where he had been admitted.

Manslaughter is a serious felony. It carries a sentence of life imprisonment. The accused has asked for leniency on the basis of the mitigation by his counsel. I take into account the fact that he pleaded guilty, is a first offender, and has a young family. I also take into account that he has been in custody for one year and 8 months.

The unlawful act that caused the death of the deceased was due to senselessness on the part of the accused. He showed marked lack of respect for an old man who was also his father. His action in beating his father to death with a piece of timber exemplifies a beastly act. The offence is prevalent and requires a deterrent sentence. I sentence the accused to Fifteen (15) years imprisonment.

Dated at Kakamega this 17th day of June, 2005.

G. B. M. KARIUKI

J U D G E