



**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL CASE NO. 6 OF 2001**

**REPUBLIC ::::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**BENJAMIN KYENGO MUUNYI ::::::::::::::::::::::: ACCUSED**

**CORAM: J. W. Mwera J.**

**Matata Advocate for Accused 10**

**Orinda State Counsel for Republic**

**C.C. Muli**

\*\*\*\*\*

**S E N T E N C E**

The accused herein was charged under S.202 as read with S.205 Penal Code in that on 12.10.2000 at Kituto village, Kitaingo Makueni, he unlawfully caused the death of Joseph Mutisya Muunyi, his brother.

It all started with the accused plucking some cassava twigs to plant as seed, from the deceased's shamba. The deceased did not take kindly to this and in a row that followed he threatened to uproot the accused's avocado seedlings or young trees and also to prevail on their father not to give the accused any part of the family coffee land. That this was seemingly resolved and the two brothers proceeded onto their father's shamba to work there. It looks like the row erupted again and they fought. They were seen running towards a neighbour's home. When the neighbours stopped them and observed the deceased, he was wounds all over. But then the accused who had been armed with a knife ran off.

Attempts and efforts were made to get the deceased treated but he succumbed to the wounds and died. A post mortem report indicated that he died due to collapsed lungs and profuse bleeding from the wounds. The injuries were consistent with the assault by the accused. The accused was arrested and charged. He pleaded guilty to the offence and admitted the facts; he was said to be a first offender, remorseful aged 25 years and unmarried. Mr. Matata asked the court to exercise leniency in the sentence. That the accused had been in remand for a bout a year.

Having considered all the foregoing this court is convinced that in the circumstances the accused do serve a prison term of fifteen (15) months.

Sentence accordingly.

**Delivered on 24th July 2001.**

**J. W. MWERA**

**JUDGE**