



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANGA**

**CRIMINAL CASE NO 13 OF 2015**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**MICHAEL NJIRAINA MWANGI ..... ACCUSED**

**SENTENCE**

1. The accused was initially charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code to which he pleaded not guilty. By a plea bargain agreement entered into between him and the prosecution, the said charges were reduced to manslaughter and he pleaded guilty to the same and was convicted on his own plea of guilty.

2. The court is now called upon to decide on the most appropriate sentence thereon taking into account the sentencing provision of section 205 of the Penal Code.

3. In compliance with the Judiciary sentencing policy Guideline, the court called for presentencing report in which the following issues were noted: the offender is the first born son of a family of five inclusive of the victim, was married with one child, however his wife left him in the year 2013, taking away with her the one issue of the marriage, who is now aged 11 years.

4. On the circumstances of the offence it was indicated that the accused had given his brother several rolls of bhang to sell for him and when he asked him for the proceeds of the sale, he refused to give him the money. The convict went for a drinking spree with friends and when he came back, he found the victim drunk and already asleep in the house they shared together, he demanded for the money and when the deceased said he did not have the money, he took a panga and cut him once on his leg above the ankle and left him in the room bleeding and went away until the following day when he heard that he was being sought by members of the public who wanted to lynch him, when he decided to run away to Nairobi until 2015 when he returned back for a funeral and was arrested.

5. On his attitude towards the offence, he admitted that he never intended to kill his brother and that at the time he was drunk and had abused bhang. He was angry with his brother for refusing to give him the proceeds of sale of bhang and that the death of his brother had haunted him and that he had learnt his lesson during the period he had been in custody.

6. On the family members' attitude, they sought for leniency on his behalf saying that they had healed from the loss of one son and would not wish to lose the convict through imprisonment and were ready to receive him back and assist him settle.

7. The local Administration and community Members, had no hostility towards him, though they stated that he was a known bhang peddler and suspected to be a member of outlawed Mungiki sect.

8. On the victim impact statement, it was indicated that the victim was single with no financial obligations and though the family had healed, the gap left could not be filled. It was recommended that the offence should be treated as serious.

9. Sentence objectives as per the judiciary Guidelines are; **4.1 Sentences are imposed to meet the following objectives: 1. Retribution: To punish the offender for his/her criminal conduct in a just manner. 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences. 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person. 4. Restorative justice: To address the needs arising from the criminal conduct. such as loss and damages.**

**Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs. 5. Community protection: To protect the community by incapacitating the offender. 6. Denunciation: To communicate the**

*community's condemnation of the criminal conduct. 4.2 These objectives are not mutually exclusive, although there are instances in which they may be in conflict with each other. As much as possible, sentences imposed should be geared towards meeting the above objectives in totality'.*

10. In this case both the accused and the victim were brothers and as submitted by his Advocate, since he was the Elder brother, more was expected of him, to provide leadership and not to act as Cain against his brother, the fact that he had sold his bhang and declined to give him the proceeds of sale notwithstanding. His conduct of stopping his sisters from seeking assistance on behalf of the deceased portrayed him as a man who was on a revenge mission against his brother even though he only inflicted one cut on his leg.

11. Since his family members have forgiven him and are willing to live with him in a redemptive manner, the Court being a court of justice and mercy must take that into account while passing an appropriate sentencing herein so as to give him a second chance, noting that the fact that he caused the death of his brother is a stigma he shall live with throughout his life, which to my mind is also part of the sentence.

12. In sentencing the accused, I have taken into account the fact that the same has been in custody from 12<sup>th</sup> march 2015 and in recognition of his blameworthiness has entered into plea bargain agreement with the Prosecution, I have further noted that his family are ready and willing to assist him in rehabilitation and has come to the conclusion that a sentence which will best meet the justice of this case, is one that combines both rehabilitation and community protection as the convict was a known bhang peddler, which led to the death of his brother and was also suspected of being a member of an outlawed sect, for which the community needs protection.

13. I would therefore sentence the convict to a term of Ten (10) years with effect from 12<sup>th</sup> march 2015 to be served as follows:-

A) The period from 12<sup>th</sup> march 2015 to 17<sup>th</sup> November 2021 being the pretrial detention considered as served under the provision of section 333 of the Criminal Procedure Code.

B) The next two (2) years thereafter imprisonment to enable the same benefit from the prison rehabilitation programs.

C) The remaining period thereafter on probation for further rehabilitation and resettlement in the community.

D) During the period on probation, the convict shall not associate with any known or perceived members of the Mungiki sect and shall not sell or deal with bhang.

E) In default of condition D herein, the convict shall serve the remainder of the terms in custody.

14. And it is ordered.

**SIGNED DATED AND DELIVERED THIS 17<sup>th</sup> DAY of NOVEMBER, 2021**

**J. WAKIAGA**

**JUDGE**