

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 91 OF 2017

REPUBLIC.....PROSECUTOR

-VERSUS-

JOSHUA MUTUNGA KATUTHI.....1ST ACCUSED

PHILIP MUTUA MUTHUI.....2ND ACCUSED

(Formerly Machakos High Court Criminal Case No. 22 of 2016)

RULING ON SENTENCE

1. **Joshua Mutunga Katuthi** and **Philip Mutua Muthui** referred to as Accused 1 & Accused 2 were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The charge was later reduced to manslaughter contrary to Section 202 as read with Section 205 of the Penal Code after a plea bargain agreement was reached.

2. Upon conviction 1st and 2nd accused mitigated through their Advocate and thereafter pre sentencing reports were called for by this court. The same were filed by the County Probation Officer.

3. From the reports filed it has been shown that the families of both the deceased and accused persons have reconciled and the necessary Kamba customary rights undertaken. There is no animosity from either family and/or the communities they come from.

Those interviewed indicated that the behavior of accused 1 and accused 2 is acceptable to other members of the community.

4. I have considered that both of them are first offenders and they were first arraigned in court on 3rd May 2016. They have therefore been in prison custody for slightly over three (3) years.

5. I therefore sentence each of them to serve three (3) years on probation. Arrangements to be made for both to report to the Kibwezi East Sub-County Probation Officer. The terms and conditions of a probation sentence are fully explained to both accused persons.

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 12TH DAY OF JULY, 2019 AT MAKUENI IN OPEN COURT.

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HON. H. I. ONG'UDI

JUDGE