



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 19 OF 2011**

**REPUBLIC**

**VERSUS**

**JOSEPH MATHENGE GITHETHUKI.....ACCUSED**

**RULING ON SENTENCE**

1. The accused was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; after plea bargaining the offence of murder was reduced to the offence of Manslaughter contrary to Section 205 of the Penal Code; an agreement was reached and a Plea Bargain Agreement was signed between the Office of the Director of Public Prosecution and the accused; the same was accepted and adopted by the court;
2. The particulars of the offence were read out to the accused which was that on the 6<sup>th</sup> September, 2011 at 2.30am the accused reported to the police station that he had killed a person who had attacked him at Njaithini Village; the police escorted the accused to the scene of crime and found the deceased's body; who was identified as Antony Munyiri and a postmortem was produced in evidence and marked as "PEXh.1";
3. The accused was convicted on his own plea of guilty to the offence of manslaughter and to having unlawfully killed the deceased in self defence after being attacked by him;
4. In mitigation made by his counsel, Mr. Maru, this court was urged to take into consideration that the accused had been remanded since 2011 which translates to a period of eight (8) years; Counsel urged the court to also consider that was a law abiding citizen with no previous record and that he had been adequately punished; due to the positive Victim Assessment Report and the mitigating circumstances advanced in favour of the accused and also being first offender, counsel submitted that the accused be given a chance and that he be released back to society;
5. The prosecution also submitted that the accused did not have a previous criminal record and left the sentencing to the court;

**ANALYSIS**

6. It is this court's considered view and that it must take into consideration the facts and circumstances of the instance case and impose an appropriate sentence; it must also take into consideration whether the accused realizes the gravity of the offence and is repentant and genuinely remorseful for the unlawful act; and that the accused is ready and willingly to learn from his mistakes and to reform in order to become a good citizen;
7. In this instance this court has considered the gravity of the offence and balanced it against the facts and the circumstances in which the offence was committed; the offence is found to have been committed in self defence after the accused was attacked by the deceased; he did not plan or intend to commit the act;
8. This court has taken into consideration that the accused pleaded guilty when given the opportunity; and that he is remorseful for the unlawful act that he committed leading to the unfortunate loss of a life; it also noted that he is a first offender; he is also a father of two children and the eldest in his family and played a big role in providing for his family and parents who are peasants; he was a livestock keeper and during the period spent in custody had improved his skills;
9. Upon reading the Victim Impact Statement Report the same is found to be favourable; there exists no grudge between the accused and the deceased's family; and there is no evidence in the Report that there has been any emphatic denunciation of the accused's actions by the deceased's family nor the community; that the report does not bear any signs of a strong need to have the offender removed from society; and that it recommends the release of the accused back into society;
10. In the circumstances the accused is hereby sentenced to a term of three (3) years imprisonment; he has been remanded in custody since the 14/07/2011 when he was arraigned, which translates to a period of more than eight (8) years; this period shall be taken into consideration and shall be set off against the term; which effectively means that the accused has served his sentence;
11. The accused to be set at liberty unless otherwise lawfully held.

Orders accordingly.

**Dated, Signed and Delivered at Nyeri this 3<sup>rd</sup> day of October, 2019.**

**HON.A.MSHILA**

**JUDGE**