



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 89 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DANIEL NJUGUNA MWICIGI.....ACCUSED**

**RULING ON SENTENCE**

Daniel Njuguna Mwicigi was charged with murder contrary to section 203 as read with section 204 of the Penal Code. He was tried and acquitted for murder but convicted for manslaughter in a judgment delivered on 5<sup>th</sup> April 2018. The Prosecution Counsel informed court that the accused did not have previous criminal records and asked the court to treat him as a first offender.

Mr. Danson Omari, advocate, on behalf of the accused mitigated that the accused is remorseful and apologetic for the events leading to the death of the deceased; that he was under immense pain after his finger was bitten and cut off by the deceased and this made him unable to control himself; that he went to report the incident to the police a clear demonstration that he had not intended the death of the deceased. Mr. Omari mitigated that the accused is a family man with one wife and two children who are school going in class 7 and 5 who have needs that the accused is the only one who can provide for them. It was mitigated that the accused has a permanent home in Matembe Village in Lari and operates a business in Kitengela and also carries out farming; that he is servicing a loan and that if sentence to a custodial term he will falter in repayment of the loan a situation that may trigger repossession of the family property.

It was further mitigated that the accused suffers from asthma, a condition that may not be properly handled while in prison; that he also takes care of aged parents, a father John Mwicigi, 87 years and Beth Nyambura, 80 years; that the accused has co-operated with the police and the court during the investigations and the trial and that he has offered apologies to the family of the deceased who was a relative of his. Mr. Omari urged that the accused be handed a non-custodial sentence.

Before sentence, this court called for a report from the probation office. It was filed on 2<sup>nd</sup> May 2018. I have read the report which appears positive towards the accused. I wish to state here that the discretion as to what sentence to meet out against the accused remains with the court and the probation report is not binding to the court. I have considered all the circumstances of this offence and the attitude of the accused towards the offence. I have considered that he is a first offender and is remorseful and regrets the death of the deceased. It is not lost to me that the intentions of the accused in going to the scene was not to attack the deceased or anyone but to put out a fire which he thought posed a danger to the house nearby and the occupants of that house. It is unfortunate that these good intentions turned tragic. I have noted the attitude of the relatives of the deceased and the local administrators towards the accused who have spoken well of the accused and see him as posing no danger to the village and its inhabitants. I want to believe that the accused has learned a lesson and will not act in any manner that may jeopardize anyone in future. I am persuaded that a non-custodial sentence is befitting under these circumstances. Consequently, the accused Daniel Njuguna Mwicigi is hereby sentenced to serve one year non-custodial sentence under the supervision of the Probation Office. During this term, the accused shall also undergo counseling. Orders shall issue accordingly.

**Delivered, dated and signed this 3<sup>rd</sup> day of May 2018.**

**S. N. Mutuku**

**Judge**