



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**HCCR NO. 211 OF 2017**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**BENJAMIN MUSYOKA THOMAS.....ACCUSED**

**RULING ON SENTENCING**

1. The accused has been convicted of the offence of manslaughter.
2. The prosecution has stated that it has no record of the accused on whether he had a previous conviction and thus urged court to treat him as a first offender.
3. In mitigation through his advocate Mr. Hassan, submitted that, the accused has been in custody for 9 years or so. He is repentant and remorseful.
4. He regrets having killed his wife and depriving their only child they had a mother. He seeks the court's leniency. He seeks a non-custodial sentence.
5. The provisions of Section 205 of the Penal Code states that any person who commits a felony of manslaughter is liable to imprisonment for life.
6. Under section 26(2) Penal Code the court is given discretion to impose a sentence shorter than prescribed by relevant provisions except where mandatory minimum sentences are prescribed.
7. Section 333(2) CPC; proviso thereto obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial.
8. Under Judiciary sentencing guidelines policy, sentences are stated to be imposed to meet the objectives such as;
  - Ø *To punish offender for his criminal conduct. (Retribution).*
  - Ø *To deter offender form committing a similar offence subsequent as well as discourage other people from committing similar offences. (Deterrence).*
  - Ø *To enable offender reform from his criminal disposition and become a law abiding person.*
  - Ø *interalia*
9. Policy guideline Section 23.9 (2) states that the effect of mitigating circumstances/factors is to lessen the term of custodial sentences provided by statute.
10. The court has taken into account the fact that the accused has been treated as a first offender, he has been in custody for close to 9 years during trial.
11. However, the court has to effect the dictates of the statute and policy guidelines on objective of the sentencing thus punish offender, deter him from committing similar offence, discourage others from committing similar offence and enable the offender to reform from his criminal

disposition *inter alia*.

12. Thus the court will not impose life sentence, but will in the circumstances of case and taking into account that extreme and disproportionate force was used thus resulting to loss of live, impose custodial sentence.

13. This will also serve to de-escalate domestic violence which seem to be on the rise and especially against the women.

14. The court thus sentences the accused to serve fifteen (15) years imprisonment, same to run from the date of arrest that is 15/07/2009. Those are the orders of the court.

**SIGNED AND DATED THIS 9<sup>TH</sup> DAY OF JULY 2018, IN OPEN COURT.**

.....

**C KARIUKI**

**JUDGE**