

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL CASE NO. 23 OF 2017

REPUBLIC PROSECUTOR

-versus-

JOHN MWITA GATI ACCUSED

SENTENCE

1. The accused person herein, **John Mwita Gati**, was charged with the murder of his younger brother one **Clement Nyamakoma** (hereinafter referred to as '**the deceased**'). Following a plea bargain the accused person pleaded guilty to the offence of manslaughter and he was subsequently convicted.

2. Upon receipt of the accused person's mitigations the Court called for a Pre-Sentence Report which was filed on 25/09/2018. I have carefully considered the contents of the Report alongside the mitigations and the Prosecution's submissions. The Report captures the position of the mother to the deceased who is also the mother to the accused person. That, despite being elderly she had lost her husband shortly before losing the deceased who was her last born. Her life was captured as so desolate that she had no one to take care of her having lost her husband, the deceased and that the accused person was in custody. That, the three were her only breadwinners. That, she occasionally visited the graves of her husband and the deceased begging them to return and that the situation had driven her to drunkenness as she waits for her end to come. That, the family is shattered as there is no one to provide for it or take charge of its affairs including the children of the deceased and the accused person.

3. The mother craved for the Court's leniency to have the accused person released to assist her. I have considered the mitigations as well and the unique circumstances in this case coupled with the fact that the accused person is a first offender. The mother is no doubt elderly and needs assistance and reasonable care as provided for in **Article 57** of the **Constitution**. Likewise, the children of the deceased as well as those of the accused person are still young and their welfare is of paramount importance pursuant to **Article 53(2)** of the **Constitution**. As things now stand there is no one in the family who can fit into such shoes save the accused person. That being so, in considering the children's best interests and the welfare of the mother I find that justice, and for the greater good of the family as protected under **Article 45** of the **Constitution**, militates against a custodial sentence in this matter.

4. This Court is hence in agreement with the recommendation in the Report for a non-custodial sentence. This Court hereby sentences the accused person to 3 years' probation.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 11th day of October 2018.

A. C. MRIMA

JUDGE

Ruling delivered in open Court and in the presence of: -

Mr. Mwita Kerario Counsel for the Accused person.

Mr. Joseph Kimanthi, Senior Principal Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the State.

Evelyne Nyauke – Court Assistant.