



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 62 OF 2015

REPUBLICPROSECUTOR

VERSUS

BONIFACE MWANZIA MBATHA.....ACCUSED

JUDGMENT ON SENTENCE

1. The accused was charged with offence of Manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code (Cap 63, Laws of Kenya)**. The particulars of the offence are that the accused on the **11th day of May, 2014** at Munyaka village Kathukini Sub-Location in Masinga Sub-County within Machakos County unlawfully killed **Patrick Mwangangi Kisilu**.

2. The facts of the charge are that on **11th May, 2014** at Munyaka village Kathukin Sub-Location in Masinga Sub County in Machakos County at around 9.00p.m the deceased **Patrick Mwangangi Kisilu** who was by then drunk went to the house of the accused person and banged his door causing the accused person to open the door and the deceased person forced himself into the house of the accused person and fell on his bed while carrying a piece of wood. The accused person was not happy and took the piece of wood and hit the deceased on his legs prompting the deceased to leave the house of the accused. On **12th May, 2014** the deceased was found by a passerby lying by a roadside. The deceased was escorted to the hospital where he was treated and discharged. On **30th May, 2014** his condition deteriorated and he was taken to hospital. Unfortunately he died on the way to hospital. On **2nd June, 2014** the doctor conducted a postmortem and formed opinion that the cause of death was cardiopulmonary arrest due to hypostatic limonia which was caused by left lower limb fracture. The State had produced the postmortem report in court as exhibit No. 1. The accused and the deceased were known to each other prior to the occurrence of the offence.

3. The accused pleaded guilty to the charge. The State Prosecutor submitted that the accused be treated as first offender. In mitigation the accused's counsel **Mr. Kyalo** submitted that the accused person is a family man with two young children and old sickly parents. The accused did not intend to commit the offence and is remorseful.

4. I have carefully considered the charge and the plea of guilt by the accused person. From the facts of the case it appears that the deceased was the sole aggressor in this matter. The deceased at night while drunk went to the house of the accused, banged the door and forced himself into the house of the accused person, and fell into his bed while carrying a piece of wood. The accused person, being not happy with such conduct, hit the deceased with the said piece of wood. This led to the deceased death after several days and after treatment. Whatever may have transpired between the two was not intended. The accused appears to regret the same, and the court believes him.

5. However, a life which is precious was lost, and this court cannot ignore that fact. The court is obligated to send out a clear signal that it is the small, unintended fights, which finally lead to death, and that people need not engage in any hostilities at all. If the accused person had refrained from hitting the deceased, the deceased would be alive today. The accused person must then suffer the consequences of his action, even if the court severely reduces such consequence.

6. This court is satisfied that a deterrence sentence is necessary, and herewith sentences the accused person to serve six (6) months in jail.

7. **That** is the judgment of the court.

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E.K.O. OGOLA

JUDGE

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 15TH DAY OF FEBRUARY, 2017

.....

DAVID KEMEI

JUDGE

In the presence of:

Muthama – for accused

Machogu - for State