

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 95 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH WACHIRA NJOKI.....ACCUSED

SENTENCE

Joseph Wachira Njoki was charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence stated that on the 30th November 2011 at around 11pm at Ndaragwa Shopping Centre in Ndeiya Location Kiambu West District he murdered Simon Ngaruiya Thairu.

The accused was tried and found not guilty for the offence of murder. He was acquitted of murder but found guilty of the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. Before pronouncing the sentence, this court called for previous records of the accused, if any, and invited the accused to mitigate the offence. The court was informed by the Prosecution Counsel that the accused's previous records were not available and asked that the accused be treated as a first offender.

In mitigation the accused, through his advocate Mrs. Nyamongo, told the court that the incident leading to his conviction for manslaughter resulted from a fight in a bar where he was attacked by four cousins and injured and that he acted in self defence but unfortunately fatally injured the deceased. He told the court that he had not intended to cause the death of the deceased and that he regrets that death. He sought forgiveness from the family of the deceased and asked the court to treat him leniently and give him a non-custodial sentence. He further told the court that he was aged 30 years and that he has a single parent, his mother. He said he has been in custody since December 2011. He stated that he has learned hard lessons while in custody and promises to lead a decent life. He pleaded with the court to give him another chance in life.

I have considered the mitigation by the accused and the circumstances under which this offence was committed. The accused had the chance to leave the scene when he decided to go to pick a panga. He did not leave or seek help. Instead he left the scene, when and pick the panga, return to the scene and attack the deceased. I have also considered that the accused has been in custody for over five years for reasons appearing on the court records. In these circumstances therefore, I hereby sentence the accused to serve a jail term of seven (7) years. However, having taken into account the time the accused has spent in custody awaiting the conclusion of this trial, from December 2011 to date, I hereby reduce the jail term to two (2) years. For the avoidance of doubt the accused, Joseph Wachira Njoki, is sentenced to serve two years in prison. This court informs his that he has a right to appeal the judgement and the sentence within 14 days from today's date. It is so ordered.

Dated, signed and delivered this 2nd day of February 2017.

S. N. Mutuku

Judge