

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCR NO. 5 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH GITARI MUGUONGO.....ACCUSED

J U D G M E N T

1. **JOSEPH GITARI MUGUONGO** the accused herein is charged with manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code. The particulars being that on the 9th July, 2016 at Kianthanga village, Mariani Sub-location, Karingani Location within Tharaka Nithi County he unlawfully caused the death of **JUSTUS NGAI MUTHUNGI** (the deceased herein). This is a charge preferred against the accused after a plea bargain agreement between the accused herein, his counsel and the counsel Director of Public Prosecution. The accused pleaded guilty to lesser charge of manslaughter and was convicted by this court on 23/2/2017.

2. In his mitigation, the accused pleaded that he is a first offender and was remorseful that he had used excessive force in committing what he described as a "*crime of passion.*" He prayed for leniency from this court. This court before passing an appropriate sentence as provided by law called for probation report. I have gone through the social inquiry report which contains damning details on the character of the accused herein and the manner in which he committed the offence. He took away an innocent life in a most brutal manner just because of suspecting him of having an affair with one Agnes Kageni Mugo, the sister in-law to the accused and widow to his later brother. The post mortem report tendered in evidence as P Exh 1 shows several cuts on the head and multiple bruises in both the lower limbs and upper limbs. The deceased must have suffered a painful death in the hands of the accused herein and he certainly does not deserve any leniency from this court or anyone going by social inquiry and his sin of passion.

3. I would not have hesitated to hand the accused the maximum sentence provided under **Section 205** of the Penal Code but I am persuaded to consider the mitigating factors herein including the fact that this was a plea bargain arrangement between the state and the defence. The accused therefore is sentenced to serve 15 years in prison in order for him to reflect on what he did and possibly reform. He has 14 days Right of Appeal.

Dated and delivered at Chuka this 16th day of March 2017.

R.K. LIMO

JUDGE

16/3/2017

Judgment (sentence) dated signed and delivered in the open court in the presence of the Ms Ndombi for the state and Mutani for Accused

R. K. LIMO

JUDGE

16/3/2017