

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 32 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

NICHOLUS MWAMBILI MBOGO.....ACCUSED

SENTENCE

Nicholus Mwambili Mbogo was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. He was tried and acquitted for murder but convicted of the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Judgement to this effect was delivered on 1st March 2017. The prosecution did not tender any previous criminal records. The Prosecution Counsel asked this court to treat the accused as a first offender.

In his mitigation through Mrs. E. B. Nyamongo, Advocate, the accused told the court that he is the last born in a family of one girl and three boys and that he was born in 1992. He said that both his parents are deceased; that the deceased in this case was known to him since the age of 16 years and that they were married and parents of two daughters aged 7 and 2 years; that they had separated for 6 months prior to the death of the deceased. He told the court that deceased's parents did not approve of their union. He said he did not plan nor did he intend to kill the deceased. He said he was remorseful and sought forgiveness from the family of the deceased. He asked the court to treat him with leniency and sentence him to serve a non-custodial sentence. He sought to be released on probation to enable him take care of their two children since he was the only surviving parent.

I have considered the mitigation. I note that the accused is remorseful and regrets the death of the deceased. I have also considered the circumstances under which the deceased died and the extensive injuries she suffered to the head. This ought not to have happened no matter the differences between the two of them. This is one of those border line cases between murder and manslaughter the only saving factor for the accused being that the prosecution failed to prove malice aforethought. In my considered view, a probation term is not appropriate. I will and do hereby sentence the accused to serve a custodial term of five (5) years' imprisonment of five. He is hereby informed of his right to appeal against the conviction and/or sentence within fourteen (14) days of today's date. Orders shall issue accordingly.

Dated, signed and delivered this 13th day of March 2017.

S. N. Mutuku

Judge