



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE 87 OF 2014**

**LESIT, J.**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BATHWEL MBURU NGETHE.....ACCUSED**

**RULING ON SENTENCE**

1. The accused entered into a plea, Agreement with the State which saw his charge reduced from murder contrary to **section 203 Penal Code** to Manslaughter contrary to **section 202** of the **Penal Code**. He pleaded guilty to the reduced charge.

2. A person convicted of the offence of manslaughter is liable to imprisonment for life under **section 205** of the **Penal Code**. That is however not a mandatory sentence and the court has discretion to determine the appropriate sentence to give.

3. I have considered that the accused has been treated as a first offender by the State.

4. Mrs. Wang'ombe appeared for the accused in this case. I have considered her submissions in mitigation on behalf of the accused.

- That he is remorseful for the offence;
- That the accused had not planned to commit this offence.
- That the accused went to a neighbour trying to get help for the deceased.
- That he comes from a broken home and was left to fend for himself at an early stage in life.
- That he has undergone counselling, is reformed and is a born again Christian.
- That he prays for a non-custodial sentence.

5. I have considered that the accused has been in custody since 26<sup>th</sup> September, 2014, a period of two years and six months.

6. I called a pre-sentence Report, which was to incorporate victim impact statements. I have seen the Probation Officers Report dated 26<sup>th</sup> March 2017; Ms. Abima who prepared the Report did not state what she recommended in this case, leaving it open for the court to determine what sentence it will consider appropriate.

7. The statement is a “mixed grill” and could inform why the Probation Officer did not commit herself either way. It is shown that the accused was the older brother to the deceased. Their father has not healed and insists that he would like the accused to apologize to him before he can forgive him.

8. Of the six siblings, only the sister was committed to take the accused in if granted a non-custodial sentence. The said sister lives in Nakuru. The other siblings have healed and are willing to help resettle the accused and help him rebuild his life.

9. I have also noted the expression made by residents of area where deceased and accused lived when incident occurred.

10. Having taken all these factors into account and especially the fact deceased and accused were brothers, that then siblings have healed and accused attitude to offence being that of regret and remorse, and also the period the accused has been in custody during the pendency of this case, I find a probation sentence the most suitable one for this case.

11. The accused has indicated that he is willing to serve a probation sentence. The accused will serve a probation term of 3 years. I warn him of the following:

(a) That Probation is a punishment. He is not being set free. There are conditions attached to this sentence.

(b) He must not commit any other penal offence during this period.

(c) Must be of good behavior and keep company with persons of good conduct.

(d) Must undergo guidance and counselling organized by Probation Department.

(e) He is required to relocate from Kayole where he was living when this offence took place and should not visit that area during the sentence period.

(f) He must submit to the supervision of Probation Officer who will be monitoring him and comply with any directions given

12. If he breaches any of these conditions he will be brought back to this court and will be given an alternative sentence.

13. Those are my orders.

**DATED, SIGNED AND DELIVERED THIS 4<sup>th</sup> DAY OF APRIL, 2017.**

**LESIT, J**

**JUDGE**