



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 38 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PATRICK MUTUA MADUME alias PATY.....ACCUSED**

**SENTENCE**

1. The accused **Patrick Mutua Madume** alias **Paty** was charged with the offence of murder contrary to section 203 as read with section 204 of the penal Code. The particulars of the offence are that on 25<sup>th</sup> March 2011 at Dandora Phase Two Estate in Njiru District within Nairobi County murdered Joseph Gathinji Kagai.
2. At the close of the trial, the court found that while the prosecution had proved that the accused did kill the deceased it failed to prove that he had the requisite *mens rea*. The court therefore convicted the accused on the lesser offence of manslaughter contrary to section 202 of the Penal Code.
3. In mitigating for the accused, **Mr. Ongaro** submitted that the accused was a single parent of a son aged 7 years. He also asked the court to take into consideration that the accused has been in custody for 4 years. Subsequently Mr. Ongaro pleaded with the court to order a probation report and consider it in sentencing.
4. The court directed the production of a pre-sentence report. The report was filed on 29<sup>th</sup> September 2015. The probation report states that the accused was a father of 2 minor children aged 7 and 5. That he has no history of crime and that he was amenable to supervised rehabilitation. The report further states that the accused's family was willing to receive and assist him. The mother of the deceased is said to have forgiven him. She is quoted to have stated that she has known him since he was a young man and a friend of her late son (the deceased in the case).
5. The objectives of sentencing under law are *inter alia* retribution, deterrence, rehabilitation and community protection. Sentencing also serves restorative justice and shows the public's condemnation of the criminal conduct in question. The court is obligated to consider an appropriate sentence considering the circumstances of each case. In the case before me, the accused has been convicted of manslaughter under Section 202 of the Penal code. The maximum sentence provided under section 205 is life imprisonment. In this case however I find that there were no aggravating circumstances in the commission of the offence. The accused and the deceased were friends a fact attested to by prosecution witnesses in the course of trial and by the deceased's mother in the probation officer's inquiry. The accused has regretted his action and the victim's family has, according to the Probation Officer's report, forgiven him. I find these to be mitigating circumstances. Further the accused has been in custody for nearly five years now.

6. Having considered the above factors, I sentence the accused to a prison term of 5 years. Taking into account that he has been in custody for close to 5 years now, I consider the period already served in pre-trial custody sufficient. He is released forthwith unless otherwise lawfully held.

7. Finally before signing off this ruling, I observe that the judgment in this case was delivered sometimes back. The delay in writing and delivering the sentence was caused by an initial delay in receiving the probation report; and secondly, after delivery of judgment the file was inadvertently released to the registry. Nonetheless the delay which must have caused great anxiety to the parties is regretted by the court.

**Sentence delivered and signed at Nairobi this 3<sup>rd</sup> day of February, 2016**

**R.LAGAT-KORIR**

**JUDGE**

**In the presence of:**

- .....: Court clerk
- .....: Accused
- .....: Counsel for Accused
- .....: Counsel for the State