

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 46 of 2010

LESIT, J.

REPUBLIC.....PROSECUTION

VERSUS

SAMUEL KINYUA NJIRU.....ACCUSED

RULING ON SENTENCE

1. The accused person has been convicted of manslaughter contrary to **section 202** of the **Penal Code**. The sentence for the offence of Manslaughter is provided under **Section 205** of the **Penal Code** which provides:

“205. Any person convicted of manslaughter is liable to imprisonment for life.”

2. The prosecution has explained that the accused person has no previous record. I have considered that fact and will therefore treat the accused person as a first offender.

3. I have also considered the mitigating circumstances presented on behalf of the accused by his counsel, Mr. Oyieko. Counsel has urged the court to consider that the accused has been in custody in this case since June, 2010. Counsel urged that at the time of arrest the accused had been granted custody of his two children by the area District Children’s Officer. Counsel also urged that the accused was also taking care of his aged and frail mother. Counsel urged that in 2012 the case did not proceed at all because of myriad Administrative challenges. He urged the court to be merciful to the accused.

4. I have considered the mitigation ably made on behalf of the accused by his counsel. I have indeed considered that the accused has been in custody during the pendency of his trial, for the last six years. As for the delay in 2012 I note the delay was partly due to absence of the defence counsel from whom the current one took over the defence, and partly due to that fact the trial judge ceased to exercise jurisdiction of this court. No one party can be blamed for that delay.

5. As for the children of the accused, having heard this case I am aware that the accused had a child with the deceased and the ones mentioned in the D.C.O’s letter are by another woman as evidenced in the report itself.

6. I have considered the circumstances of the case. The accused threw a burning stove at the deceased at point blank range causing her severe injuries from which she succumbed and died after a period of time. The excruciating pain she must have gone through due to that heinous and senseless act for which no remorse has been demonstrated both at the time the deceased was hospitalized and also in the course of this trial cannot be overlooked.

7. I have borne all these factors in mind before passing sentence. I have also considered **Section 205 of the Penal Code** which shows clearly that a person convicted for the offence of manslaughter is liable to imprisonment for life. That means court can exercise discretion in sentencing.

8. Having considered all the factors herein above I sentence the accused to six years imprisonment.

9. The accused has a right to appeal against both the conviction and sentence within 14 days from the date of this sentence.

DATED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2016.

LESIIT, J.

JUDGE