

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.43 OF 2012

REPUBLIC..... PROSECUTOR

VERSUS

JOSEPH KALABA KIDAKI ACCUSED

SENTENCE

The accused **Joseph Kalaba Kidaki** was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the night of 1st June 2012 at Nyaga Sub location Githunguri District, Kiambu County murdered **Alfred Joshua Mahindu**. At the conclusion of the trial, the court convicted him of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

In mitigation, defence counsel submitted that the accused was remorseful for the offence and that he was a young man aged 35 years with a young family which depended on him. Counsel recalled that the accused had displayed unusual compassion by taking in the deceased when he had no place to stay. Counsel further recalled that prosecution witnesses had shown that the deceased was a drunkard and a violent man. He submitted that in sentencing the accused the court should give consideration to the aims of punishment and that further the court should consider the circumstances under which the offence took place. Finally, counsel urged the court to consider that the accused had been in custody for four years and that the same period should suffice as punishment.

On his part, prosecution counsel told the court that the State has no previous records of the accused and that he should be treated as a first offender.

I have considered the mitigation offered by the accused. It is true that evidence in this case showed that the deceased was a person given to drink and violence and that the accused was shown to be a person of compassion who invited the deceased into his home. Having taken all these factors into consideration, and considering the purposes of sentencing, I consider that the accused shall benefit from a custodial sentence which should allow for his further rehabilitation. Considering the period he has already been in custody, I sentence him to 10 years imprisonment.

Right of appeal against both conviction and sentence explained to the accused.

Orders accordingly.

Sentence delivered, dated and signed at Nairobi this 7th day of October, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

..... Accused

.....: For accused

.....: For the State