



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.54 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

JOHN MACHARIA THUO.....APPLICANT

SENTENCING

The accused, John Macharia Thuo was initially charged with murder contrary to section 203 as read with section 204 of the Penal Code. Before his trial commenced however, he entered into a plea agreement with the office of the DPP wherein the State reduced the charge to one of manslaughter. The plea agreement between the parties was filed in court on 29<sup>th</sup> October 2013 and was accepted by the court after satisfying itself on the mandatory requirements of Section 137 of the Criminal Procedure Code. The accused subsequently took plea on the lesser charge on 21<sup>st</sup> November 2013.

The brief facts of the case are that on 7<sup>th</sup> April, 2013, the accused and the deceased were drinking in a bar at Kahata Trading Centre in Kiganjo Location of Gatundu South District. In the course of the evening around 10.30p.m. a fight ensued between the accused and the deceased in which the accused hit the deceased on the head causing him injury which later turned fatal. The accused unequivocally accepted the facts as stated and was convicted on his own guilty plea.

In mitigation, **Mr. Mboha** for the accused told the court that the accused was contrite and deeply regretted the incident; and was traumatized by the loss of the deceased who was his friend. He pleaded with the court to hand him a non-custodial sentence. I called for and received a probation officer's report in respect of the accused. I have considered the report. It states that other than abusing alcohol, the accused was a law abiding citizen and a useful member of the community. The report also states that the families of the accused and the deceased who are neighbours have taken steps at reconciliation and resolved to forgive the offender.

I am satisfied that this is a case that is fit for a non-custodial sentence. I sentence the accused to 3 years probation. The terms of the probation must include the condition that the convict shall register and participate in a rehabilitation programme for alcoholics and provide evidence of such registration and or participation to the District Probation Officer within 14 days of his release from custody.

Any violation of the terms of probation shall automatically lead to a prison term.

**Ruling delivered, dated and signed at Nairobi this 13<sup>th</sup> day of February, 2014**

**R. LAGAT - KORIR**

**JUDGE**

In the presence of:

.....: Court clerk

.....: Applicant

.....: For the accused

.....: For the State/respondent