



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Case 105 of 2008**

**REPUBLIC**

**-VS-**

**MICHAEL GATIGA**

**SENTENCE**

From the record, it is apparent that the accused, aged 23yrs old is a first offender who has pleaded “guilty” to the lesser but cognate charge of manslaughter, contrary to Sec. 202 as read with Sec. 205 of the Penal Code Cap 63 Laws of Kenya. After the new information was read over to the accused, he admitted the charge and also confirmed the facts as outlined by the State Counsel. Consequently, the learned trial Judge viz, Mutungi J. convicted the accused and called for a probation report. It is my understanding that the learned Judge made the order based on the facts that were narrated to him. Though the learned Judge has now retired from the public service, it is incumbent on me to study what he had recorded, and base my decision on facts. Unfortunately, the Probation Officer introduced new facts that were **not** narrated by the learned State Counsel.. I am not sure whether that was an oversight or deliberate. The learned State Counsel had earlier stated that after the quarrel persisted, the accused left for his nearby house and came back with a knife which he used to stab the deceased on the left hand collarbone and left hand. The deceased later ran away, collapsed and became unconscious. On 1<sup>st</sup> October, 2008, the deceased died at Kenyatta National Hospital.

On the other hand, the Probation Officer stated in his report that after the quarrel, the accused went to his house and the deceased followed him there while armed with a bottle of beer. The officer also states that the two fought and in the process the accused picked a knife, which he used to stab the deceased on the neck. He also added that the accused did **not** intend the stab to be fatal.

With respect, those two sets of facts are completely different. Since the probation report is completely misleading, I hereby reject the same in its entirety. Before I pass the sentence, I hereby invite counsels to make submissions in mitigation. In any event, a probation report — even if accurate — is not binding to this court. It can only act as a guide.

**MUGA APONDI**

**JUDGE**

**3<sup>RD</sup> JUNE, 2009**

Sentence read and signed in the presence of the accused, **Ms. Macharia** – State Counsel: **Ms. Kiptoo** for **Ms. C. Odembo** for Accused and **Mr. Lukalo** – Probation Officer.

**MUGA APONDI**

**JUDGE**

**3<sup>RD</sup> JUNE, 2009**