

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 13 OF 2020

REPUBLIC

.....**PROSECUTOR**

GABRIEL MBUGUA **VERSUS**
KAMAU.....

ACCUSED

RULING ON SENTENCE

1. The accused, *Gabriel Mbugua Kamau* was charged with the offence of murder Contrary to *Section 203* as read with *Section 204* of the *Penal Code* but was convicted on his own plea of guilty with the lesser offence of manslaughter under a plea-bargaining agreement dated 14th December 2023.
2. The particulars of the offence of manslaughter were that on 20th May 2020 at Kagongo village, Kihumbuini location in Murang'a County, the accused unlawfully caused the death of *John Waweru Geita*.

- 3.** The facts of the case are that on 20th May 2020, as the accused was walking home from Kihumbuini Trading Centre, he noted that there were some people following him. On turning to see who they were, the deceased jumped on him and attempted to steal from him. The accused, who was an electrician, removed one of his tools of trade, namely, pliers from his waist and in self-defence hit the deceased with it on the head. He then ran away and reported a case of attempted robbery at Kihumbuini Police Station vide OB No.4/20/05/2020. The relatives of the deceased were informed about what happened. They took the deceased to hospital for treatment but he passed away after a few days while undergoing treatment at Thika Level 5 Hospital.
- 4.** An autopsy conducted on the deceased's body revealed that the cause of death was a head injury due to blunt force trauma.
- 5.** In his plea in mitigation on behalf of the accused, learned counsel *Mr. Kirubi* submitted that the accused was a first offender, a single father of five children since his wife deserted him and the children after he was charged with the

offence of murder. Counsel further urged the court to note that the accused committed the offence in self-defence after he was accosted by the deceased; that the accused was remorseful for what happened and he was praying for a non-custodial sentence.

- 6.** After hearing the facts of the case and the accused's plea in mitigation, I called for a pre-sentence report which was filed on the 10th March 2026. A reading of the report confirms that the circumstances in which the offence was committed were as narrated by the prosecution. The report further confirmed that the accused was genuinely remorseful for what happened and that he did not know until later that the attacker he was defending himself against was the deceased who was his friend.
- 7.** The report also documented views of the victim's family and stated that though pained by the loss of the deceased, the family was willing to be reconciled with the accused. It is also important to note that the community in which the accused and the victim hailed from blamed commission of

the offence on alcoholism and was not opposed to the accused being considered for a non-custodial sentence.

8. After considering the facts of this case particularly the circumstances in which the offence was committed, the accused's plea in mitigation and the pre-sentence report, I am persuaded to find that the accused's unlawful action which led to the death of the deceased was not pre-meditated. It is apparent that the accused did not intend to harm or kill the deceased but his reaction was instantaneous aimed at defending himself from an aggressor who turned out to be the deceased. He appears to have acted on the spur of the moment in response to the natural human instinct of self-preservation.

9. I am cognizant of the fact that manslaughter is a very serious offence which attracts a maximum sentence of life imprisonment. However, in considering an appropriate sentence, the court does not only consider the gravity of the offence but is also guided by other factors, for instance, whether the accused was a first offender and other mitigating factors disclosed in his plea in mitigation; the

circumstances in which the offence was committed and any aggravating factors revealed in the case as well as the moral blameworthiness of the accused.

10. Having taken into account all relevant factors outlined above, I am in agreement with the recommendation made in the pre-sentence report that this is a suitable case for consideration of a non-custodial sentence. In my considered view, imposition of a custodial sentence in this case will not serve any of the objectives of sentencing.

11. Consequently, I hereby exercise my discretion and sentence the accused to a period of three years on probation. During this period, the accused shall undergo guidance and counselling under the supervision of the County Director of Probation, Murang'a.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANGA this 12th day of March, 2026.

HON. C. W. GITHUA

JUDGE

In the presence of:

The accused

Mr. Kirubi for the accused

Mr. Mwangi for the state

Ms. Susan Waiganjo, Court Assistant

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