REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. E031 OF 2022

REPUBLIC.....PROSECUTION

VERSUS

MARTIN MWANGI NDUNG'U..... ACCUSED

RULING ON SENTENCE

1. The accused, Thomas Gatimu Irungu, was charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code** and was convicted on 17th June 2025 on his own Plea of Guilty with the offence of **manslaughter contrary to Section 202 as read with Section 205 of the Penal Code** under a plea bargain agreement executed on behalf of the state on 8th July, 2025 and signed by the accused on 24th June 2025, and the same was presented in court on 16th July, 2025.

2. The particulars supporting the charge were that on 16th October, 2022 at Mbari ya Hiti trading Centre, in Kahuro Location, Kahuro Sub-County within Murang'a County, the accused caused the death of *Earnest Irungu Kareri.*

3. The brief facts of the case as reflected at page 2 of the agreement are that on 16th October, 2022 at 6pm, ...

i) The accused is facing the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code.

ii) The particulars of the offence are that the accused on the 16th day of October 2022 at Mbari ya Hiti Trading

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Centre, within Kahuro Location, Kahuro Sub County within Murang'a County murdered Earnest Irungu Kareri.

iii) Brief facts are that on 16th October, 2022 at around 6.00 pm the accused, Thomas Gatimu Irungu and the deceased Earnest Irungu Koret were enjoying some alcoholic beverages at Mbari ya hiti trading centre in a bar known as Mwireri.

iv) An altercation ensued at around 6.00pm and it escalated until they were ejected from the bar by bar attendant.

v) While outside the bar, the altercation continued and the accused immediately removed a sword from his jacket and stabbed the deceased on the chest. The deceased collapsed.

vi) Other patrons raised alarm and even called upon a local pharmacist who declined to perform first aid as the situation was dire.

vii) Members of public informed their area chief of the murder who in turn informed OCS Kahuro Police Station.

viii) The OCS and other officers from Kahuro police station proceeded to the scene, documented it and collected the body and took it to Murang'a level V morgue.

ix) The accused was arrested more than one year later on 3rd November, 2022.

x) The post mortem was performed by Dr. Kamotho Wategа where he documented the cause of death to be single penetrating stab wound to the chest

4. Mr. Dennis Maina, Learned Counsel for the accused, in mitigation on behalf of the accused submitted that the accused person is sincerely remorseful. Has had a chance to

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reflect and appreciate the actions that let to this matter during his time in custody. He is remorseful. The accused person is 57 years old man, family man, married with five children who need fatherly guidance in their lives. He is sickly, asthmatic and has been receiving treatment while in remand. He has been in custody for 2 years 11 months. While in custody has undertaken religious studies and has been awarded 2 certificates which have given him chance to reflect. He is a first-time offender and as clear from pre-sentence report and facts as prosecuted by the State, the act was unintentional. It was a result of two friends arguing after imbibing. They argued and things got out of hand and he was not in charge of his faculties. Our request is that the accused is suitable for a non-custodial sentence. We pray he be placed on probation for period deemed fit by the court for proper rehabilitation and reintegration back to society. The accused's family has keenly followed the matter before court are ready to receive him back and support him.

5. Counsel Matu prayed for leniency in sentencing the accused, and urged the court to consider a non-custodial sentence.

6. On the other hand, Ms. Majanga, Counsel watching brief for the victim's family submitting on the victim impact statement stated; "On behalf of the victim's family, no one should take another person's life even after drinking. Family of deceased and continues to suffer by loss of their father. His death affected his wife and he has never recovered. The killing of deceased requires a deterrent sentence. Although he has saved court's time by plea bargaining, he has left the deceased's wife widowed and children orphaned. They fully depended on him. They also need justice. Family prays for deterrent sentence. We object to non-custodial. Counsel urged the court for a deterrent sentence and was categorically opposed to a non-custodial sentence."

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7. Ms. Nzuki, Counsel for the state associated with Counsel Majaga's sentiments and equally urged the court for a sentence commensurate with the offence committed.

8. I have carefully considered the facts of this case and the circumstances in which the offence was committed. I have also considered the accused's plea in mitigation, including his age which is stated to be 46 years in the pre-sentence report and the fact that he is a first offender. I have also taken into account the objectives of sentencing as set out in the Judiciary's Sentencing Policy Guidelines which includes retribution, rehabilitation, restorative justice, community protection and denunciation.

9. That said, I would like to point out at this juncture, that the offence of manslaughter is a serious offence which attracts a maximum sentence of life imprisonment. In as much as I have taken due consideration of the accused's plea in mitigation including the fact that he was a first offender, given the facts of this case, I find that a non-custodial sentence as proposed in his plea in mitigation would not be appropriate for the accused in this case.

10. In my view, a custodial sentence would be most appropriate in the circumstances. Taking into account all relevant factors, including the fact that the accused has been in custody for a period of nine (9) years, ***I hereby sentence the accused to serve ten (10) years imprisonment. The sentence will take effect from 8th August, 2016, when the accused was first arraigned before this court.***

Dated, Signed and Delivered Virtually this 30th April, 2026

HON. T. W. OUYA, OGW
JUDGE

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In the presence of:

Dennis Maina for Accused
Mwakio for State
Majanga watching brief for Family of victim

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