

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU
CRIMINAL CASE NO. E032 OF 2022

REPUBLIC.....

.....PROSECUTOR

VERSUS

SAMUEL NDUNGU NJOROGE.....

ACCUSED

RULING ON SENTENCE

1. The accused were initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; upon a Plea Bargain Agreement being entered this charge was then reduced to manslaughter.
2. The Plea Bargain Agreement dated 18/11/2025 was adopted by the Court upon being satisfied that the accused person had understood the contents and that he had executed it voluntarily without promise or benefit of any kind and without threats, force, intimidation or coercion of any kind.
3. The accused were charged with having unlawfully killed **JOHN MURUNYU NJUGUNA** on the 18th August, 2022 at Kiriko Village Nembu location in Gatundu South Sub-County within Kiambu County.

4. The facts as narrated by the Prosecuting Counsel are as follows; The accused and the deceased were neighbours in Kiriko Village, Nembu Location. On the 18/08/2022 at about 8.00 am in the morning the accused and deceased met and a quarrel ensued over **FAITH WANGARI MBURU** who was the estranged wife of the accused. The two had separated and the accused blamed the deceased for their differences and eventual breakup of the relationship. On the material date the deceased was armed with a machete (panga) and he tried to assault the accused who ran away and the deceased gave chase and the accused went and hid in a granary. He later came out of hiding armed with a metal rod and he hit the deceased with it, who then fell down and died on the spot. The neighbors arrested the accused and made a report to Nembu Police Post. The accused was detained and the body was moved to Gatundu Level Five Mortuary and on 19/08/2022 a post-mortem was conducted on the body by Doctor Ndegwa who established the cause of death was due to head injury caused by blunt force trauma. The Post Mortem Report was produced into court and marked as **'PExh.1'**.

5. The accused stated that the facts as narrated were true and correct and the Court proceeded to convict him on his own plea of '**Guilty**' for the offence of Manslaughter c/s to Section 202 as read with Section 205 of the Penal Code.
6. The accused were represented by Learned Counsel Ms Sinana whereas Mr. Gacharia was the Prosecuting Counsel for the State; both Counsel were invited to make submissions before sentencing; The accused through his Counsel opted to make a written mitigation statement whilst Prosecuting Counsel for the State made oral submissions.
7. Counsel submitted that the accused was profoundly remorseful about the unfortunate incident that had led to the demise of the deceased. He had willingly accepted responsibility for his actions by pleading guilty to the manslaughter charges and by doing so had saved the Courts time and conserved judicial time and resources; Before the incident the accused and the deceased had several back and forth with each other and at one time the deceased had gone to the accused's workplace armed with a machete and had threatened him with violence; on that fateful date the accused stated that he had over-reacted in trying to defend himself but the attack was not

premeditated. Immediately after the incident he had submitted himself to the police together with the murder weapon and had fully co-operated with the police investigations. Whilst in remand he had time to reflect on his actions which led to the unfortunate situation whereby a life was lost; The accused had no prior convictions or criminal history and had never been in conflict with the law and prayed that he be treated as a first offender; his actions were only in self defence and he has now reformed and he pleaded for a non- custodial sentence or in the alternate he urged the court for a lenient custodial sentence and the Court to take into consideration the time spent in custody.

8. Prosecuting Counsel made oral submissions and stated that although the deceased was armed during the incident, a fight does not justify the excessive use of force which led to fatal injuries; the law expects all people to exercise restraint and the accused had the option to disengage but used a degree of force that was unreasonable;
9. When passing sentence Prosecuting Counsel urged the Court to consider a custodial term as a non-custodial sentence would be inappropriate; to consider that the Accused used a deadly

weapon and that the attack was on a vulnerable part of the body part being the head; also to be considered are the objectives of the sentence imposed which are to act as a deterrent and to discourage violent acts and at all times the sanctity of life be valued.

10. Counsel reiterated that a custodial sentence would be appropriate.

ANALYSIS

11. The applicable law on sentencing for the offence of manslaughter is found under the provisions of Section 205 of the Penal Code which reads as follows:-

'Any person who commits the felony of manslaughter is liable to imprisonment for life'

12. It is the duty of this Court to impose a sentence that meets the facts and circumstances of the case; The aggravating factors are the use of a metal rod that dealt the fatal blow; the accused's failure to exercise restraint which led to the unfortunate incident in which a life was lost. The mitigating factors are that by accepting the Plea Bargain Agreement the

accused had not wasted judicial time and spared the victims family from further trauma. Other mitigating factors taken into consideration is the accused's defence of self defence which is permissible in law provided the person uses reasonable force; Also taken into consideration is that the 1st accused is fairly young being aged twenty-six (26) years and that the prosecution had no previous record and it was submitted that he be treated as a first offender.

13. It is noted from the Victim Impact Assessment Report that the victims' family are neighbour's with the offenders family; the victims family has not come to terms with the demise of their 24 year old son whom they described as young and was a hard worker; the family had deep emotional pain stemming from the tragic loss of their child; they expressed that they had forgiven the accused and had left the whole matter to the Court's wisdom.

14. Due to the aggravating factors in which a deadly weapon was used and that it was aimed at the most vulnerable part of the human anatomy leading the unfortunate loss of a precious life, this Court is satisfied the accused is best suited to serve a custodial sentence to enable him reflect on the offence

committed and to attend counselling for anger management; the appropriate custodial sentence is found to be that of Ten (10) years.

15. The Court is satisfied that the accused is deserving of the benefits of Section 333(2) of the Criminal Procedure Code and the period spent in remand from 12/08/2022 be deducted from the sentence.

FINDINGS & DETERMINATIONS

16. Having taken all factors into consideration this Court makes the following findings and determinations: -

(i) The accused is hereby convicted on his own plea of guilty for the offence of Manslaughter;

(ii) The accused is hereby sentenced to a Ten (10) year custodial sentence.

(iii) The period spent in remand from the date of arrest 12/08/2022 be deducted from the sentence

Orders Accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT VOI THIS 8TH DAY OF MAY, 2026.

**A. MSHILA
JUDGE**

In the presence of;

Millicent/Sanja - Court Assistants

Kabutha h/b for Gacharia - Prosecuting Counsel for the State

Magoma h/b for Sinana - for the Accused

Accused - present from Nairobi Remand

ORIGINAL