

IN THE COURT OF APPEAL OF KENYA

AT NYERI

CRIMINAL CASE 6 OF 2010

REPUBLIC PROSECUTOR

VERSUS

DAVID MWANGI NDIRANGU ACCUSED

ORDER ON SENTENCE

David Mwangi Ndirangu, the accused person herein was initially arraigned before this court on the information of the Honourable Attorney General dated 25th February 2010 to face a charge of murder contrary to **section 203** as read with **section 204** of the penal code. When the case came up for hearing a plea bargain agreement was registered in which the accused pleaded guilty to the lesser charge of manslaughter contrary to **section 202** as read together with **section 205** of the penal code. The particulars of the offence are that on the 14th day of January 2010 at Gathaithi sub-location in Murang'a North District within Central Province, unlawfully killed **John Muragu Ndirangu**.

The facts outlined by **Miss Ngalyuka**, learned Senior State Counsel indicated that the accused had a long standing land dispute with the deceased. It is also apparent from the facts that the accused killed the deceased in the farm in dispute when the deceased allegedly interfered with the accused's boundary. The accused used a panga to slash the deceased who was his brother and as a result he died. The postmortem report prepared by **Dr. Gatu** indicated that the cause of death was due to multiple injuries on the head.

In mitigation, the accused through his advocate **Mr. Gathiga Mwangi**, urged this court to be lenient to him. He indicated that he has two wives with three children who depend on him. The learned advocate informed this court that the accused regrets the incident hence he is remorseful.

I have considered the facts given in mitigation. I have also considered the fact that the accused is a first offender. The facts outlined by **Miss Ngalyuka** shows that the accused killed his brother due to a dispute over land. He had even attempted to cut the deceased's daughter while he was on his way to where his late brother was. It would appear the accused did not restrain himself. He was expected as a reasonable member of society to control his temper. He will of course remain with the stigma of having killed his brother for the rest of his life. The manner in which he executed his heinous act is so savage that I can only infer that the deceased died painfully. The accused should be kept in custody for a while to enable him take time to reflect on his actions. Even if he is a first offender, I think he should attract little sympathy from this court. I hereby sentence the accused to 10 years imprisonment.

Dated and delivered this 23rd day of July, 2010

J. K. SERGON

JUDGE

In open court in the presence of Mr. Gathiga Mwangi for the Accused, Miss Ngalyuka for the state.