



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT VOI**

**CRIMINAL CASE NO. 2 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JAMES WAMBUA MASILA.....ACCUSED**

**JUDGMENT**

1. The accused **JAMES WAMBUA MASILA** was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code.

2. The facts are that on 31/1/2019 at Rashia Village in Taveta Sub-County within Taita Taveta County while armed with a kitchen knife stabbed and murdered Shadrack Kioko Mutua.

3. However, pursuant to a plea agreement dated 14/7/2020 and filed herein on 21/7/2020, and made pursuant to Section 137 A-O of the Criminal Procedure Code, the accused agreed with the prosecution to plead to a lesser charge of manslaughter.

4. According to the said plea agreement at paragraph 3 thereof, the accused has admitted that he is guilty of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

5. This court has no reason to reject the said Plea Agreement, which I hereby accept and adopt.

6. The brief facts of the crime are that on 31<sup>st</sup> day of January 2019 at around 2100 hours the accused **JAMES WAMBUA MASILA**, the deceased and one Kim has gone on a drinking spree together. The three of them then headed back home where the accused and the deceased both lived. This is in Rashia Village where the two had rented houses. After a while, the deceased went to the house of the accused where he found accused preparing ugali. The deceased then started demanding for Kshs. 150/= which he claimed the accused owed him. The accused was heard by neighbours saying that he did not have the money. The deceased then refused to leave the accused's house without the money. The two started arguing loudly and fought in the process, with the accused using the kitchen knife he had to stab the deceased. The deceased then moved a few meters and fell down. He was taken to a nearby hospital where he was pronounced dead. The accused was subsequently charged with the offence of murder, which, pursuant to the Plea Agreement aforesaid, was commuted to manslaughter.

7. The accused, having pleaded guilty to the offence of manslaughter, the only issue now before the Court is that of sentencing.

8. **Mr. Ogeto**, learned counsel for the accused, submitted that the accused is a young man of 26 years. He committed the offence while under influence of alcohol. There was a disagreement with his drinking buddy and the stabbing of the deceased was not intentional. Further, it was his first offence. Mr. Ogeto submitted that the accused should be jailed for a period of between 7 and 12 years.

9. On her part **Ms. Mukangu**, learned counsel for the State submitted that the offence was committed by a drunk young man. He has spared court of long prosecution, and so he should be jailed for 5 years.

10. I have carefully considered counsel submissions. I have also considered that the accused has cooperated with the justice system and has helped to save scarce judicial time. However, the offence that the accused committed is a very serious one. Although it was committed in a spur of the moment and in an apparent self defence, the offence must still be punished appropriately. Further, it was an offence which could easily have been avoided had the accused person exercised some restraint. This Court must send a clear message that nobody is given the liberty of taking the life of another. After considering all the submissions and circumstances of the case, I am satisfied that a custodial sentence of six (6) years is adequate punishment for the crime in the circumstances of this case.

11. Accordingly, I jail the accused for six (6) years in prison from the date of this Judgment.

That is the Judgment of the Court.

**Dated, Signed and Delivered at Voi this 10<sup>th</sup> day of December, 2020.**

**E. K. O. OGOLA**

**JUDGE**

Ruling delivered in Chambers via MS Teams in the presence of:

Mr. Fedha for DPP

Appellant in person

Court Assistant – Peris

**NOTE:** This ruling was delivered by video-conference pursuant to various Practice Directives by the Honourable Chief Justice authorizing the appropriate use of technology to conduct proceedings and deliver rulings in response to the COVID-19 Pandemic.



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