



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL CASE NO. E010 OF 2021**

**CORAM: HON. R.E. ABURILL J**

**STATE.....PROSECUTION**

**VERSUS**

**POO.....ACCUSED**

**JUDGMENT ON PLEA BARGAIN**

1. The accused person herein POO is aged 19 years old and single. He is a secondary school dropout. He faces the charge of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Initially, he was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. He Plea bargained with the Prosecution and signed a Plea bargaining Agreement dated 21/9/2021 whereupon the charge of Murder was reduced to Manslaughter vide information dated 21/9/2021.
3. According to the Information, the accused, on the 15<sup>th</sup> day of May 2021 at around 22 hours in Nyamila sub-location North Alego Location in Siaya Sub County within Siaya County, he unlawfully killed one **Boaz Oduor Owino**.
4. Upon the charge of Manslaughter being read out to the accused person after Plea bargain agreement was signed, he admitted the charge and a Plea of guilty was entered against him. The Prosecution led by Mr. E. Kakoi Senior Principal Prosecution Counsel then read out to court the facts of the case which the accused person admitted as being correct upon which the court convicted him on his own plea of guilty of the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
5. The accused and his counsel Mr. Mirembe mitigated and this court called for a presentence report and Victim Impact Statement prior to sentencing.
6. The facts giving rise to this case as read out to court and admitted by the accused person are briefly that the accused person and the deceased are step brothers. The deceased Boaz Oduor Owino was older.
7. That the accused was suspected of having an illicit intimate affair with the deceased's wife hence friction between them became apparent.
8. On the night of 15/5/2021, the two brothers had a quarrel over the same matter upon which the accused attacked and stabbed the deceased on the chest with a sharp object and the deceased succumbed before being taken to hospital. Postmortem was carried out on his body which revealed the cause of death to be due to cardiac (tamponade) arrest due to sharp chest trauma. The postmortem report dated 27/5/2021 was produced as an exhibit No.1. Investigations were carried out and the accused was arrested and charged with Murder.
9. He was mentally examined and was found to be mentally fit to stand trial as per the mental assessment report dated 8/6/2021.
10. He was then arraigned for Murder which was reduced to Manslaughter, through Plea bargain Agreement.
11. Upon being convicted on his own Plea of guilty, in his mitigation, he stated that he is remorseful and regrets the offence. That he is aged 19 years old and could not complete fourth form. He is pained at losing a brother while defending himself.
12. In the presentence report filed in court today and signed by Mr. John Oyare Oyieko, Probation Officer, it is clearly stated that the

accused was suspected of having a love affair with his deceased brother's wife and that on the material night, the deceased set the accused person's grass thatched house on fire and attacked him. The accused managed to escape by knocking down the wall to his house only to be met by the deceased who was ready to kill him. The accused in return attacked the deceased and killed him.

13. The accused is a first offender and a young man aged only 19 years. His main mistake, giving rise to this case is that he had an illicit love affair with his late brother's wife and hence when the brother found out, he attacked the accused and in the process the accused killed his brother.

14. The accused and deceased are brothers and the family lost one of their favourite sons who was in defence of his family as the accused young man had no reason to take on his brother's wife while his brother was still alive and he knew or ought to have known the consequences of committing adultery with his brother's wife.

15. I have considered the Probation officer's report and the sentiments by the deceased's family. I have also considered the age of the accused person and being a first offender, and his mitigation before this court. I have given equal consideration to the Judiciary Sentencing guidelines.

16. Upon conviction for Manslaughter, the accused is liable to imprisonment for life.

17. However, taking into account the circumstances surrounding the commission of this offence and the age of the accused and mitigation and objectives of sentencing, I hereby sentence the accused person Paul Ochieng Owino to serve seven (7) years imprisonment to be calculated from the date of his arrest.

18. Upon his release from prison, the accused/convict shall serve a further 3 years on probation so that he is fully rehabilitated and reintegrated into society.

19. I so order. File closed.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 18TH DAY OF OCTOBER 2021**

**R.E. ABURILI**

**JUDGE**