

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT KISII

CRIMINAL CASE NO. 11 OF 2020

REPUBLIC.....PROSECUTION

VERSUS

BERNARD ONKUNDI OGAMBOACCUSED

SENTENCING

1. Bernard Onkundi Ogambo (the accused) was charged with the murder of Gabriel Onsombi Onsinsi. The accused had been initially charged with murder contrary to section 203 as read with 204 of the Penal Code which was later reduced to manslaughter upon a plea bargain agreement. On the 28th May 2020 the accused pleaded guilty to a charge of manslaughter on the 15th July 2020. The accused was convicted on his own plea of guilty to the offence of manslaughter on a charge prepared following the acceptance by the court of the plea agreement pursuant to section 137H of the Criminal Procedure Code (CPC).

2. The accused is said to be a first offender. Mr. Kaba for the accused submitted during mitigation that the accused is a first offender, he is 45 years old, he is a family man and the sole bread winner. That the offence took place 7 years ago and to show his remorse he has been in touch with the deceased's family and that the issue was revived after some differences. That he has stopped taking alcohol. He seeks a non-custodial sentence and that he pleaded guilty in order not to waste the court's time.

3. The court sought a pre-sentence report before sentence. The accused as per the report is 45 years old and is a father of 2 children. He has no previous record and it is stated that he is very remorseful for what he did and said that it was out of alcohol influence. That he requests for leniency. The report further indicates that the deceased's family had left the matter but since his uncle has taken him to the police and revived the case the matter had to proceed. That it looked like there was underground arrangements between some members of the family to settle the matter without the knowledge of others. The reports recommend that the accused can be given a custodial sentence of a lesser magnitude.

4. The sentence for manslaughter is life imprisonment. In sentencing the accused, I have taken into account the facts and circumstances surrounding the death of the deceased. The accused and the deceased were taking busaa an argument arose between the accused and the deceased. They held each other they were separated. Later the accused threw a stone at the deceased, the deceased fell and he ran away. The deceased died the next day due to massive internal haemorrhage. I have also considered the sentencing guidelines, the fact that the accused is a first offender, his mitigation and the recommendation by the probation officer.

5. Bearing in mind all the above I find that custodial sentence is in order. The accused Bernard Onkundi Ogambo is therefore sentenced to 5 years' imprisonment. He has a right of appeal with 14 days.

Dated, signed and delivered at KISII this 29th day of July 2020.

R.E.OUGO

JUDGE

In the presence of;

Bernard Onkundi Ogambo Accused

Mr. Kaba For the Accused

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms. Rael Court Assistant