

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT KISII

CRIMINAL (MANSLAUGHTER) CASE NO. 12 OF 2020

REPUBLIC.....PROSECUTION

VERSUS

JAPHETH ORONYI AUKA..... ACCUSED

SENTENCE

1. **Japheth Oronyi Auka(the accused)** pleaded guilty to the offence of manslaughter and was convicted accordingly on the 23rd of June 2020. 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. 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 facts as presented by the DPP were as follows; *the deceased Elmelda Sarange was the mother of the accused who is the 5th born in a family of six siblings. The accused and the deceased had been in a disagreement over a family land. The accused wanted the family land subdivided but the deceased refused. On the 17/2/2020 the accused arrived home at 11.30pm from Tabaka trading centre from where he had been drinking. Again a disagreement arose between the accused and the deceased over the same issue of subdivision of the land and the deceased told the accused to get out and she went to sleep. The accused then went back to his house and took a panga and went where the deceased was sleeping and cut her severally with the panga. The accused then ran away immediately thereafter. Early the next morning the accused's father Auka came home at 6.20am and found the lifeless body of the deceased in their table room. He called out to neighbors who responded and a search for the accused commenced after seeing blood stains in his house. He was later arrested by boda boda and brought back to the scene he was almost lynched if it were not for the police officers at the scene. A post mortem was done on the 20/2/2020 and the cause of death was a head injury due to s sharp force trauma. (The post mortem form was produced in court as an exhibit). The accused was arrested and charged with murder which is reduced to manslaughter.*

3. The accused person admitted the aforesaid facts and was convicted on his own plea of guilty of the offence of manslaughter for the unlawful death of Elmeda Sarange on the 17/2/2020.

4. The prosecution indicated that the accused is a first offender. Miss Gogi for the accused in mitigation informed this court that this is the first time the accused is charged with an offence. That the accused person is remorseful and that at the time of commission of the offence he was drunk and was not in his right mind. That he seeks a non-custodial sentence and that he promised not to repeat the offence. Before sentencing the accused person this court called for a pre-sentence report from the Probation Department in accordance with section 137I of the CPC. The pre-sentence report dated 28/7/2020 is very unfavorable. The report states that the accused is 29 years old, he is s first offender as per social inquiry carried out according to the area chief the accused once stabbed a lady with a knife several times but she was saved by the doctors. That the accused was not arrested because he disappeared from home. That the accused smokes bhang and he is not remorseful as he says that the deceased was the one obstructing him from getting his rightful share. That the major victim who is the father now a widower has requested that the court hands him 50 years. He is bitter as he is now the one who fetches firewood, vegetable and water yet he is old. His siblings too are very bitter. The area chief has too requested for a deterrent sentence. That the accused is not suitable for a non-custodial sentence.

5. The offence of manslaughter is punishable by the maximum penalty of life imprisonment under section 205 of the Penal Code. This is the maximum sentence which is usually reserved for the worst cases. I do not consider this to be a case falling in the category of the most extreme cases of manslaughter. It has been indicated by the state that the accused is a first offender. I have for that reason discounted life imprisonment.

6. I have considered the sentencing guidelines. I have also taken into account that the accused pleaded guilty to manslaughter and that he is a young person however the accused person used a deadly weapon to cause the death of his own mother. The report say he is not remorseful and that his father wants him to be jailed for 50 years.I do not consider it appropriate to place the accused on probation.

7. Upon conviction for the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code, the accused Japheth Oronyi Auka is sentenced to serve an imprisonment (twenty-five) 25 years' imprisonment.

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

R.E. OUGO

JUDGE

In the presence of;

Japheth Oronyi Auka Accused

Miss Gogi For the Accused Person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms. Rael Court Assistant