



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CORAM : R.E. OUGO J**

**CRIMINAL CASE NO.109 OF 2012 (MURDER)**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**DENNIS ARUBA ONYERI.....1<sup>ST</sup> ACCUSED**

**CHARLES ONDIBA.....2<sup>ND</sup> ACCUSED**

**BENARD OYUGI.....3<sup>RD</sup> ACCUSED**

**BONFACE NYABERI.....4<sup>TH</sup> ACCUSED**

**RULING –SENTENCING**

The accused persons **Dennis Aruba Onyeri, Charles Ondiba, Bernard Oyugi & Boniface Nyaberi** have been convicted of the offence of murder of **Bernard Nyambati**. The accused persons jointly attacked the deceased and cut him on the neck and the face. The neck was completely cut, he also had a fracture on the spinal column. I have taken into account that the deceased was completely helpless at the time the accused persons attacked him. The defence counsels, have mitigated on behalf of the accused persons and asked the court to consider that he accused persons are young persons with young families and that the father of the deceased had forgiven them. The Probation report are favourable, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused person are first offenders but not the 4<sup>th</sup> accused person. The reports state they are remorseful and that they related. I have considered all the factors and their plea for a non-custodial sentence. The offence of murder is a grave offence and the law provides for death penalty as the maximum sentence. Considering the circumstances of this case a non-custodial sentence is out of consideration. The death of the deceased cannot be swept away by a light sentence, it was done in a brutal and vicious manner as evidenced from the injuries the deceased sustained. I have noted that they have been forgiven by the deceased father however the deceased did not deserve to die in such a manner.

Taking into account all the circumstance of the case, I sentence each accused person **Dennis Aruba Onyeri, Charles Ondiba, Bernard Oyugi** and **Boniface Nyaberi** to each serve 25 (twenty five) years imprisonment. Each accused person has a right of appeal.

**Dated, signed and delivered at Kisii this 9<sup>th</sup> day of August 2019.**

**R.E OUGO**

**JUDGE**

**In the Presence of;**

Mr. Kaburi for 3<sup>rd</sup> accused h/b Mr. Omwenga For the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup>

Accused person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Accused 1: Dennis Onyeri - Present

Accused 2: Charles Ondiba – Present

Accused 3: Bernard Oyugi – Present

Accused 4: Boniface Nyaberi: Present

Rael Court Clerk