



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 13 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

JAMES OGORA NYATWORI.....ACCUSED

SENTENCE

- 1. JAMES OGORA NYATWORI, the accused herein,** was charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. Before the commencement of the murder trial, the accused and the prosecution on 16th January 2018 entered into a plea bargain agreement in which the said charge of murder was reduced to a lesser charge of manslaughter.
2. The particulars of the case were that on 7th May 2017 at Emesa village in Kenyenia Sub-County within Kisii County, he unlawfully caused the death of **EVANS NYATWORI NYANGENYA**.
3. The accused pleaded guilty to the lesser charge of manslaughter and was as a result thereof convicted on his own plea of guilty.
4. The facts of the case, as narrated in court by Mr. Otieno learned counsel for the state, were that the deceased and the accused were father and son respectively and that on the material date at about 7.30 p.m., the deceased was on his way home when he accused accosted him while armed with a hammer and an iron bar.
5. It turns out that the duo had earlier that day had a disagreement over the sub-division of the family land and to perpetuate the disagreement, the accused attacked the deceased using the weapons that he had whereupon he hit the deceased on the head thereby causing him injuries that led to his death a few days later on 18th May 2017. The post mortem report established the cause of death to be head injury secondary to blunt trauma on the head.
6. In mitigation, Miss Kerubo learned counsel for the accused stated that he was remorseful for the offence and pleaded for leniency on his behalf. Miss Kerubo informed the court that the accused was the sole breadwinner to his wife and school-going children.
7. In his report filed in court on 8th March 2018, the Probation Officer did not paint a very rosy picture of the character of the accused. He stated that the accused was a violent man and a habitual drunkard whose return and presence at home would cause more harm than good. In fact the probation officer noted that the accused's immediate family members were happy and relieved that he was in custody and dreaded the possibility that he could be released from custody.

8. The probation officer stated as follows, in part, in his said report:

“During my social enquiry, I observed that the offender is more of a liability than an asset in the community. His home environment is not conducive for his rehabilitation.

All those interviewed talked negative about him where he was described as dangerous to other peace-loving citizens.”

9. In a nutshell, the probation officer was of the view that the accused is not suitable for a non-custodial sentence.

10. I have considered the circumstances under which the accused killed his own father, the deceased herein. The accused had no qualms about attacking his defenseless father using dangerous weapons and his actions portray him as a person who has no respect for human life. In turn, the accused should not expect to get sympathy from this court.

11. Manslaughter is a serious offence that attracts a maximum of life sentence upon conviction. In the instant case, the accused pleaded guilty under a plea bargain agreement thereby saving the court the time and resources that could have been spent in a protracted trial.

12. In view of the above factors and taking into consideration all the circumstances surrounding this case, I find that a custodial sentence would be appropriate punishment for the accused

13. Consequently, hereby sentence the accused to 10 years imprisonment which period shall begin to run from the time the accused first appeared in court.

Delivered, dated and signed in at Kisii on 20th of March 2018.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

Miss Kerubo for the Accused

Omwoyo court clerk