



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

HIGH COURT CRIMINAL CASE NO. 15 OF 2017

(MANSLAUGHTER)

(CORAM: J.A. MAKAU – J.)

REPUBLIC..... PROSECUTOR

VERSUS

PETER OMONDI OCHIENG.....1ST ACCUSED

B A O.....2ND ACCUSED

SENTENCING

1. The Accused **PETER OMONDI OCHIENG (1st Accused)** and **B A O (2nd Accused)** were jointly initially charged with an offences of **Murder** contrary to **Section 203 as read with Section 204 of the Penal Code**. That before the hearing of the murder case the prosecution reduced the charge from murder to **Manslaughter** contrary to **Section 202 as read with Section 205 of the Penal Code (Chapter 63) Laws of Kenya**. The particulars of the offence are that on the 22nd day of July, 2017 at Nyamila Sub-Location, Siaya Sub-County within Siaya County, jointly with another not before court killed one **SAMUEL ONDOO ABUGA**.

2. Each of the accused pleaded guilty to the charge of manslaughter and upon facts being given, each of the accused admitted all facts as correct, consequently, each of the accused was convicted on his own plea of guilty.

3. The facts of the Prosecution case are as follows:- that on 22/7/2017 at around 8.30 pm, the Accused, in company of another not before court, one Kevin Omondi were on their way to a disco matanga, when the deceased Samuel Ondoo Abuga, was from a home of Francis Ochieng Adino where he had gone to make a telephone call following a radio announcement of the death of a person whose names was similar to his father's, met the three. That after by-passing each other, after 5 metres, the three turned back and attacked the deceased, using a panga and bricks near the gate of Wasonga Obuyo, who with the use of the motorbike lights was able to see and recognized the three beating the deceased. The deceased proceeded to his employer's home, one Jerusha Auma Adhiambo, knocked the door and on Jerusha opening the door, she found the deceased leaning on the wall supporting himself and who told her, he was attacked by 3 boys known to him. She called a neighbour, John Oduor Adala, who came and the two proceeded to the home of Kevin Omondi, but on the way they met Wasonga Obuyo, who gave the names of the three attackers of the deceased. They organized with the village elder and youth to arrest the three boys but only managed to arrest the two accused as Kevin Omondi, went missing. They took the two accused persons to Siaya Police Station.

4. On Jerusha Auma Adhiambo waking up in the morning and knocking the deceased's house, she did not get any response. She called a neighbour Francis Ochieng Adino and Stephen who had brought the boy to her, broke the door open and found the deceased in a critical condition. He was taken to Siaya County Referral Hospital from where he was referred to Sagam Hospital for an X-Ray, from where he succumbed. Postmortem was done by Dr. Shivachi David who opined the cause of death as unnatural as a results of massive brain contusion with haemorrhage due to blunt head trauma. Postmortem Report was produced as (exhibit P1). The investigation was conducted and weapons were recovered being panga (exhibit P2) and two bricks (exhibit P3). The two were subsequently charged with the offence of murder.

5. The State Counsel M/s. M. Odumba, stated they accepted the offer of manslaughter because the parents of the deceased were agreeable to reduction of the charge and have forgiven the accused, that at the time of commission of the offence, the 2nd accused was then a minor and that the accused have expressed their remorse and accepted to plead to the charge of Manslaughter.

6. M/s. Odumba for the State, stated the Prosecution do not have previous record of the Accused and that the Accused may be treated as a first offenders.

7. M/s. Opondo, Learned Advocate, for the Accused urged that the Accused are remorseful and regrets the death of the deceased, a young person. That when the incident occurred, the 2nd accused who was a minor was out of school and keeping bad company. That by the very fact of the accused conviction their future life is affected and that by itself is quite a punishment in view of a fact a life was lost. The 1st accused was then a school going student; now in Form III at [particulars withheld] Secondary School. That he is an orphan and lives with his uncle. That the 2nd accused is now attending a welding course. The Counsel prayed for leniency and prayed the two be placed under probation.

8. I have considered all the mitigation in favour of the Accused person herein, and note the two at the time of incident were keeping bad company and had no direction in life but I note that a young life was lost due to Accused's bad behavior and for no apparent reason. I have perused the pre-sentencing Probation Officer's Report which has a great bearing on the sentence to be imposed.

9. I have taken into account of circumstances surrounding the commission of the crime; that the incident arose out of accused persons having been keeping bad company and attacking of the deceased for undisclosed reason. No reason was given why the two assaulted the deceased. I have also considered the pre-sentencing Probation Officer's report which is favourable to the Accused. I have considered the two accused are young men at the stage of building their future life. Both of the two are students, they are remorseful and the conviction will hurt their future life. It is part of the punishment that they will undergo in their life and it will always have serious consequences in their lives.

10. The Upshot is that the Accused deserves non-custodial sentence to enable each of them to be rehabilitated. I have considered the Probation Officer's Report and mitigation in favour of each of the Accused. I sentence each of the Accused to serve 3 years probation period under the supervision of the Probation Office, Siaya County.

DATED AT SIAYA THIS 8TH DAY OF MARCH, 2018.

HON. J. A. MAKAU

JUDGE

DELIVERED IN THE OPEN COURT.

IN THE PRESENCE OF:

M/S. Opondo for the Accused

M/S. Odumba for the State

HON. J. A. MAKAU

JUDGE