

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 11 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

ALFRED NYAKUNDI ONDARAACCUSED

RULING ON SENTENCE

The accused herein, ALFRED NYAKUNDI ONDARA, was charged with the offence of murder which took place on 17th February 2018 at Kiamerega Village, Nyamagesa of Masaba South Sub-County within Kisii County. He pleaded guilty to a lesser charge of manslaughter following a plea bargain agreement.

The incident arose out of a physical confrontation in a changaa den after the deceased annoyed the accused.

I am now called upon to impose an appropriate sentence noting that the maximum sentence for manslaughter is life imprisonment.

The accused is aged 64 years old. He prays for leniency and states that he was drunk on the material day and that the deceased provoked him. He is a father of young adults and he prays for a non-custodial sentence to enable him take care of his family as he is the sole bread winner.

The family of the deceased represented in court by the deceased's brother Samwel Nyanguti pray for a custodial sentence and aver that the accused's family has been threatening them since this case commenced.

The Sentence Review Report states that the accused did not have any criminal record and all the persons interviewed described him as a person who only became violent after intoxication. The officer recommended a non-custodial alternative sentence.

I have considered both aggravating and mitigating factors which I have outlined above. I cannot ignore the fact that a life has been lost for which the court must state is disapproval. I also note that the accused is aged 64 years and unlikely to offend.

Considering all these factors I sentence the accused ALFRED NYAKUNDI ONDARA to one (1) year imprisonment.

Ruling read and delivered in open Court this 15th August 2018.

D.S Majanja

Judge

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions

Mr. Bigogo, Advocate for the Accused