

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.17 OF 2014

REPUBLICPROSECUTOR

VERSUS

SAMUEL NYAKUNDI NYANG'AU.....ACCUSED

SENTENCE

1. Following a plea bargain agreement executed by the accused herein, SAMUEL NYAKUNDI NYANGAU and the state on 15th November 2016, the accused pleaded guilty and was convicted for a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**. It was alleged that on 26th January 2014 at Kiagware Sub-location in Gucha South District within Kisii County, he unlawfully caused the death of SAITOTI NYANGENA.

2. The facts of the case, as explained by Miss Ouko Counsel for the state, were that deceased overheard the accused seducing his (deceased's) wife by telling her that he (the accused) wanted her to be his wife. This infuriated the deceased who then engaged the accused in a verbal confrontation that saw the accused ran away to his house, but the deceased followed him while armed with a stick and the accused fought back by stabbing the deceased on the head with a metal rod.

3. The deceased later died on the following day on 27th January 2014 and the cause of death was established to be cardio-pulmonary arrest secondary to brain tissue damage due to head injury.

4. In mitigation, Mr. Okenye for the accused submitted that the accused was a young man aged only 30 years, he was remorseful for the offence and had been in custody for over 3 years. The probation officer's report filed in court on 28th March 2017 indicates that the accused can benefit from a non-custodial sentence in view of the fact that he acted in self-defence at the time he committed the offence and that both the family of the accused and that of the deceased had reconciled and were willing to accept the accused back in their midst.

5. I have considered the circumstances of this case, the probation officer's report and the fact that the accused has been in custody for over 3 years while awaiting his trial. I note that what began as a casual flirt between the accused and the deceased's wife infuriated the deceased who argued with the accused before the verbal confrontation snow- balled into a fully fledged physical duel which ended in the deceased pursuing the accused upto to his (accused's) house while armed with a stick. Feeling cornered, the accused fought back using a metal rod and stubbed the deceased on the head thereby injuring him fatally. It is clear to me that the accused acted in self defence and had no intention of killing the accused.

6. I am satisfied that the over 3 years that the accused has been in custody will serve as a good lesson to him to stick to his own wife and avoid flirting with other men's wives. The accused used deadly force on the deceased that led to the unfortunate loss of his life.

7. Under the above circumstances and bearing in mind the probation officer's recommendation, I am of the view that a non-custodial sentence would be appropriate in this case. Consequently, I sentence the accused herein to 2 years probation during which period he will be supervised by the probation officer of his area.

Dated, signed and delivered in open court this 29th day of March, 2017

HON. W. OKWANY

JUDGE

In the presence of:

- Miss Ouko for the State
- Accused in person
- Mr. Kinyosi Probation Officer
- Omwoyo -court clerk