



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO.94 OF 2013**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**MIKE ORONI NYANCHOKA.....ACCUSED**

**SENTENCE**

1. MIKE ORONI NYANCHOKA pleaded guilty and was convicted of a lesser charge of manslaughter following a plea bargain agreement executed between him and the state on 28<sup>th</sup> February 2017 that saw the earlier charge of murder contrary to **Section 203** as read with **Section 204** reduced to a lesser charge of manslaughter. The particulars of the offence were that on 11<sup>th</sup> August 2013 at Bombure Sub location in Gucha South District within Kisii County unlawfully caused the death of OLPHA NYABONYI BOERA.

2. The facts of the case as narrated by Miss Ouko, learned counsel for the state, were that on 5<sup>th</sup> August 2013 the accused was reprimanded for having stolen maize belonging to the deceased herein OLPHA NYABONYI and in a fit of anger, the accused armed himself with a jembe and attacked the deceased by hitting her on the head in the full view of the deceased's grandchild, one Moraa. The accused later surrendered himself to the local administration police officers who in turn took him to Ogembo Police Station.

3. On 7<sup>th</sup> August 2013, the accused was charged before Ogembo Law Courts with the offence of assault which was later on amended to the offence of murder following the subsequent death of the deceased on 11<sup>th</sup> August 2013 while undergoing treatment for the injuries she sustained during the assault.

4. In mitigation, Mr. Okenye for the accused submitted that he was a young man aged 31 years, was remorseful and pleaded for a non-custodial sentence in view of the fact that he had been in custody for 3½ years while awaiting his trial.

5. The probation officer's report filed on 28<sup>th</sup> March 2017 reveals that the accused's community are still reeling in shock following the death of the deceased and could lynch him if he got out on probation. The report also indicates that the accused may not benefit from non-custodial sentence owing to his past bad record of drug and alcohol abuse. His community is not willing to accept him back in their midst as they fear that he could kill again.

6. I have considered the circumstances of this case and the fact that the deceased met her untimely and cruel death in the hands of the accused merely because she had complained to the local chief that her maize had been stolen by the accused. I note that the accused took the law into his own hands and in a fit of unbridled anger, pounded the deceased, then a helpless and defenseless old lady aged 70 years, on the head with a jembe.

7. The postmortem report produced by the state as Pexhibit 1 shows that the deceased died as a result of cardio-thoracic failure due to massive inter-cerebral bleeding on the left hemisphere secondary to blunt trauma on the head.

8. I have perused the probation officer's report filed in court on 28<sup>th</sup> March 2017. I am of the view that the accused's vicious attack on the deceased was totally uncalled for as he was old enough to understand that there are better ways of resolving disputes instead of resorting to violence. The accused's violent actions led to the death of the deceased. Manslaughter is a serious offence which attracts a maximum sentence of life imprisonment upon conviction, however, in this case, I note that the accused has agreed to enter into a plea bargain agreement thereby saving the court the time and resources that would have been spent in conducting a full trial.

9. In view of the above considerations and further taking into account the recommendations of the probation officer and the fact that the accused has been in custody for 3½ years while awaiting his trial, I am still convinced that a custodial sentence would be appropriate in this case. Consequently, I sentence the accused herein to 10 years imprisonment.

10. It is so ordered.

**Dated, signed and delivered in open court this 29<sup>th</sup> day of March, 2017**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Miss Ouko for the State
- Mr. Okenye for accused person
- Omwoyo -court clerk