



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.90 OF 2014

REPUBLICPROSECUTOR

VERSUS

KELVIN AMATA OMBOTO.....1ST ACCUSED

ANDREW ONDIEKI NYABWANGA.....2ND ACCUSED

SENTENCE

1.The two accused persons herein, KELVIN AMATA OMBOTO and ANDREW ONDIEKI NYABWANGA, were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code. The particulars of the offence were that on the night of 23rd and 24th February 2013 at Bosinange Village in Gucha South Sub-County within Kisii County jointly with others not before the court murdered OEKO OYONGO. Both the accused persons pleaded not guilty to the charge but before the trial commenced, an offer for plea bargain was on 21st March 2016 made to the accused persons which saw the charge initial charge of murder reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.

2. Only the 1st accused herein, KELVIN AMATA OMBOTO, accepted the plea bargain agreement by pleading guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty. The 2nd accused, on the other hand, opted to continue with his case on the initial charge of murder.

3.The facts of the case, as stated by Miss Ouko counsel for the state, were that on 23rd February 2013 the deceased herein, **Oeko Oyongo**, was ejected from a funeral meeting at about 9pm for the reason that t he was drunk and had become a nuisance to others as he kept on interrupting the speakers at the said gathering. Less than 30 minutes after the deceased left the funeral venue, smoke was seen billowing from the house of one Jackson Oganga which had apparently been set ablaze. The deceased was then suspected to be the arsonist and an alarm was raised after which the people gathered at the funeral, including the 1st accused, went out to search for the deceased whom they found next to his (deceased) mother's house. The irate mob set upon the deceased with all manner of crude weapons and killed him on the spot despite desperate pleas from his mother.

4. In mitigation, Mr. Soire for the accused pleaded for leniency on behalf of the 1st accused while stating that the killing was a spontaneous overreaction to the arson incident by the mob that included the 1st accused. He added that the 1st accused was a family man, a first offender and was remorseful for his actions.

5.The probation officer's report filed on 12th May, 2017 recommended a non-custodial sentence for the accused.

6. I have however considered the circumstances under which the deceased herein met his untimely death and I note that he was clearly a victim of what is often touted as mob justice but what should ideally be "mob injustice". It is quite unfortunate that the mob descended on the deceased with all manner of weapons and killed him on the spot on mere suspicion that he was the arsonist. The irate mob had outnumbered and subdued the deceased and had ample opportunity to apprehend him and present him to law enforcement agents for appropriate action but they instead opted to take the law into their own hands with very catastrophic results. Mob justice is a very primitive and barbaric method of meting out justice that should be discouraged and condemned in the strongest terms possible as it has no place in a civilized society that observes the rule of law.

7. I note that the 1st accused has been in custody for more than 4 years while awaiting his trial and I am certain that he has had ample time to reflect on his actions and has learnt a lesson or two on why it pays to be a law abiding citizen. The 1st accused participated in the killing of the deceased and has pleaded guilty to a lesser charge of manslaughter thereby saving this court the valuable time that could have been spent on a lengthy trial.

8. Manslaughter is serious felony which attracts a maximum of life sentence upon conviction. In the instant case, however, I note that the arson attack on the house of one of the people at a funeral precipitated the events that led to the killing of the deceased. Under the above circumstances and taking into account the recommendations of the probation officer, the time already spent by the accused in custody and the mitigation by the defence counsel, I am of the view that a non-custodial sentence will be appropriate in this case.

9. Consequently, I hereby sentence the 1st accused herein, KELVIN AMATA OMBOTO, 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 23rd May, 2017.

HON. W. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Accused present in person
- Omwoyo -court clerk