



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.19 OF 2016

REPUBLICPROSECUTOR

VERSUS

PAUL ONKOBA NYAKONA.....ACCUSED

SENTENCE

1. PAUL ONKOBA NYAKONA was charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the charge were that on 2nd July 2016 at Mogenda village in Gucha South Sub-District within Kisii County, he murdered DENNIS NYAKWEBA ORENGO.
2. Through a plea bargain agreement made between the accused and the state on 29th March 2017, the charge of murder was reduced to a lesser charge of manslaughter after which the accused pleaded guilty to the said charge and was consequently convicted on his own plea of guilty.
3. The facts of the case were that on 1st July 2016, the accused, the deceased and 3 other people were engaged in a gambling game in which the accused lost to the deceased who won Kshs. 300/=. The accused did not immediately have the money to pay the deceased thereby prompting him to give up his mobile phone to the deceased to hold as security on the promise that he would pay the deceased the following day. On the following day, the accused was able to raise the Kshs. 300/= which he took to the deceased only to find that the deceased had already sold his mobile phone and a verbal confrontation ensued followed by a physical duel that ended in the death of the deceased.
4. A post mortem report established the cause of death to be severe head injury secondary to blunt trauma.
5. In mitigation, Mr. Okemwa for the accused submitted that he (the accused) was a young man aged only 27 years, and was married with a very young family to whom he was the sole bread winner. He added that the accused was remorseful for the offence and was ready to apologize to the deceased's family.
6. The probation officer in his report filed in court on 23rd May 2017 reveals that even though the accused is a first offender and is remorseful for his actions, the local administration and his community are not ready to accept him back in their midst. The Probation Officer is categorical that the victim's family have vowed to avenge the death of their kin at an opportune time should the accused person be released from custody. It is the recommendations of the Probation Officer that the accused remains in custody for his own safety.
7. I have considered the circumstances under which the offence was committed I note that the accused killed the deceased over a debt arising from a gambling game. The accused's irrational behavior led to the

death of his own friend. The accused took the law into his own hands by killing the deceased over a matter that they could have resolved in an amicable manner. Manslaughter is a serious offence which attracts a maximum sentence of life imprisonment, however, in this case, I note that the accused cannot be said to have been wholly responsible for the sequence of events that led to the death of the deceased who was his friend with whom they had been engaged in gambling. The deceased provoked the accused by not only selling off his (accused's) phone which they had mutually agreed the deceased would hold as security for the payment of the Kshs. 300/= win due to the deceased, but also by insulting the accused when he asked him why he had sold the phone.

8. It is quite unfortunate that the deceased lost his life because of a debt of Kshs. 300/=. This court notes that gambling is a pass-time activity that has gained a lot of attraction with the youth of this country probably because of the high unemployment rates that is being experienced at the moment. Pundits have also attributed the gambling and betting addiction that has seized many young people to the "get-rich-quick" mentality that is associated with gambling. Unfortunately, not all gambling expeditions have had happy endings as was evidenced in the instant case.

9. Having regard to the circumstances surrounding this case, the mitigation tendered by Mr. Okemwa learned counsel for the accused and the probation officer's report, I am satisfied that a custodial sentence would be appropriate in this case.

10. Consequently, I sentence the accused herein to 5 years imprisonment.

11. Dated, signed and delivered in open court this 23rd day of May, 2017

HON. W. OKWANY

JUDGE

In the presence of:

- Miss Mbelete for the State
- Mr. Kaburi for Okemwa for accused person
- Omwoyo -court clerk