



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**  
**HIGH COURT Criminal Case No. 2 Of 2016**  
**(MANSLAUGHTER)**  
**(CORAM: J.A. MAKAU – J.)**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**PETER OMONDI OJWANG’ .....ACCUSED**

**SENTENCING**

1. The Accused **PETER OMONDI OJWANG’ alias TOTI** was initially charged with an **offences of murder contrary to section 203 as read with 204 of the Penal Code**. That before the hearing of the murder case the prosecution reduced the charge from murder to **manslaughter contrary to section 202 as read with section 205 of the Penal Code (Chapter 63) Laws of Kenya**. The particulars of the offence are that on 26<sup>th</sup> day of December 2015, at Muhola Village, Yiro Weste Sub-Location, in Ugunja Sub-County, jointly with others not before Court, murdered **ESAU OPIYO ONYANGO**.

2. The Accused pleaded guilty to the charge of manslaughter and upon facts being given, he admitted all facts as correct, consequently, he was convicted on his own plea of guilty.

3. The facts of the Prosecution case are as follows:- that on 26.12.2015, at around 9.00 p.m. the Accused together with Samuel Moroko, Bernard Odhiambo, Oluoch Ajwanga, and Opiyo Aketch while armed with runigus, pangas and slasher went to the home of Phiesta Akumu Anyango, looking for her son, one Esau Opiyo Onyango, (deceased) and on arrival went straight to her son’s, “Simba” house, broke the door, entered inside and removed various properties of the deceased outside and set them ablaze. That at around 9.20 p.m. one Manaseh Oketch Odhiambo, on his way from the Market, met and asked the deceased about the fire at his home. The two proceeded to the deceased’s home, to check on the source of fire and on arrival they found the Accused with his group of five(5) people, which included Bernard Odhiambo, who was armed with a panga, Opiyo Akoth with a slasher, Samuel Maroko, Oluoch Ajwang and Accused all armed with the runigus and upon seeing the deceased, they all started beating him, all over the body and more specifically on the head, from which he sustained some injuries. The assault continued as the deceased’s mother and Manaseh were pleading with the group to stop assaulting the deceased. They screamed for help but no one turned up. The group of five then carried the deceased to his samba house and left him on the floor. After the group left the mother to the deceased gave him water and upon taking it he passed on. She informed the Area Assistant Chief, who came to the scene, informed Ugunja Police Station, who came to the scene and collected the deceased’s body, and took it to Yala Level IV Hospital Mortuary. The Accused was arrested the following day, by A.P’s from Chief’s Camp while, the other members of the Accused’s group disappeared and who are still at large. Post mortem examination was done on 29.12.2015 after the identification of the body of the deceased. The

cause of death as per Postmortem Report exhibit 1, was due to sudden and severe brain injury following heavy blunt force injury of the head coupled with asphyxia probably from strangulation.

4. M/s. Odumba, for the State, stated the Prosecution do not have previous record of the Accused and that the Accused may be treated as a first offender urging that group fighting are in the increase in the area and asked for deterrent sentence.

5. Mr. Wakla, Learned Advocate, in his mitigation on behalf of the Accused pleaded for leniency, urging the deceased and Accused are cousins, that the Accused did not abscond like the other members of his group, that the Accused and his group were avenging the assault of the Accused's brother who had been assaulted by the deceased, but in the process lost their control. That Accused has been in custody since 27<sup>th</sup> December, 2015. That the Accused is aged 38 years and unmarried.

6. The Probation Officer report was filed on 27<sup>th</sup> June 2017, which copy this Court served, upon the Accused who stated, the matters stated in the report are correct as they were in favour of the Accused.

7. I have taken into account of the Probation Officer's Report. That the Accused is a first offender, at his youthful age, that he is remorseful, however young life was also lost due to irresponsible acts of the Accused and his illegal group on an illegal revenge mission. That the revenge resulting into the death of the deceased, was well planned and executed in view of the way the Accused and his group were armed with dangerous weapons. That after the group started assaulting the deceased, they did not care which part of the deceased body they were hitting nor did they heed to the plea made to them, by the deceased's mother and another, to stop beating the deceased till he could not move. That after immobilizing the deceased they did not care to take him to the hospital but left him at his "Simba" house to die. The Accused and his group acted like a wild beast and showed no mercy to his cousin. These beastly acts are in the increase in the area and must be stopped.

**8. The Upshot is that the Accused deserves custodial sentence to enable him to be rehabilitated. I have taken into account of all mitigation in favour of the Accused and that he has been in custody for 1 year and 6 months, I sentence the Accused to serve 3 years imprisonment.**

**DATED AT SIAYA THIS 29<sup>TH</sup> DAY OF JUNE, 2017.**

**J. A. MAKAU**

**JUDGE**

**DELIVERED IN THE OPEN COURT THIS 29<sup>TH</sup> DAY OF JUNE, 2017.**

**IN THE PRESENCE OF:**

**MR. WAKLA FOR THE ACCUSED**

**MR. ODUMBA FOR STATE**

**COURT ASSISTANTS:**

**1. L. ODHIAMBO**

**2. L. ATIKA**

**J. A. MAKAU**

**JUDGE**