



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT SIAYA**  
**HIGH COURT CRIMINAL CASE NO. 37 OF 2015**  
**(MANSLAUGHTER)**  
**(CORAM: J.A. MAKAU – J.)**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ERIC OWINO OMOLLO.....ACCUSED**

**SENTENCING**

1. The Accused **ERIC OWINO OMOLLO** 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 the 25<sup>th</sup> day of December, 2014 at Tingare East Sub-Location, North Uhoho Location in Ugunja Sub-County within Siaya County killed one **JACKSON ODHIAMBO MURUKA**.

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 25.12.2014 at about 8.00 p.m, the Accused, a Boda Boda rider lent his motor cycle to one **JACKSON ODHIAMBO MURUKA** to operate the same on that day. That after a short while the Accused, was informed by one of his customers that the deceased had damaged the said motor cycle. The Accused was by then at Tingare (**Ewaya Market**) and after a short while the deceased arrived at the said centre, where the Accused and other motorcycle riders were. That when the Accused saw his motorcycle head lamp was missing, he got angry and started beating the Deceased. The Deceased fell down and Accused followed him on the ground, from where the Accused was pulled up by one George Murithi Otieno. The Deceased who was lying on the ground could not move or get up. The Accused and other Boda Boda riders noting the deceased could not move or talk they decided to rush him to the hospital. He was carried on a motorbike supported by the Accused, however on the way to the hospital the Deceased became unconscious forcing them to rush to inform the father to the Deceased from where they called for taxis services. They then took the deceased to Buhum Dispensary from where he was pronounced dead. The Deceased's body was then returned to his parent's home. On 26.12.2014, the Accused surrendered himself to Tingare Police Patrol Base, was arrested, put in cells and later charged with the offence of murder.

4. Meanwhile on 25.12.2014 Police Officers from Tingare Patrol Base received information of the death

of the deceased herein, following an assault and that the body was lying at his father's home, they proceeded there, collected the body and took it to Sega Mission Hospital Mortuary. Postmortem examination was done on the Deceased's body after identification of the body by Joseph Muruka, father to the Deceased. The Post Mortem examination established the respiratory failure due to massive Respiratory defunction/failure from massively increased intracranial, pressure secondary to massive left sub-dural hematoma. Report was produced as exhibit P1.

5. The State Counsel M/s. M. Odumba, stated they accepted the offer of manslaughter because the incident occurred spontaneously without any plan of murder and that the two were close friends. That the State could not prove malice aforethought as there was no evidence of the Accused having planned to kill the deceased.

6. 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.

7. M/s. Alinaitwe, Learned Advocate, for the Accused urged that the Accused is remorseful and regrets the death of the deceased. That when the incident occurred the accused was amongst the first people to take the deceased to the hospital. That after the death of the deceased the Accused took himself to Police and urged the incident took place at the heat of the moment as the Accused was angry as his source of livelihood had been damaged. She urged the Accused has learned his lesson and he is managing his temper. She pleaded for non-custodial sentence and urged the Accused is aged 28 years and his children depends entirely on him. The Probation Officers, report reveals that the accused was well-behaved man with no criminal history although he was known to be quite temperamental. That on the fateful day both the Accused and the deceased were drunk and were under influence of alcohol when the incident happened. That the two were good friends, both had been sharing the accused Boda Boda for a long time and that their two families were close but were torn apart by the incident. The victim's family took issue with the fact that neither the offender nor his family had made any attempt to seek forgiveness from them nor have they offered to compensate them or offered to reimburse them for funeral expenses. The probation officer's report noted that the Accused needs general guidance and counseling on legal issues and anger management.

8. I have considered all the mitigation in favour of the Accused herein, but I note that a young life was lost due to Accused's drunkardness and his temperamental nature as noted by the Probation Officer. I find that the Accused needs custodial sentence to rehabilitate him and to be a warning to others, that it does not pay to take law into ones hands and that violence do not pay at all.

9. I have taken into the account of circumstances surrounding the commission of the crime, that the incident arose out of damage of the Accused's motorbike which he had lent the deceased, his friend, to use for the day which was the source of livelihood. I have also considered the damaged was so minimal and the damaged headlight could easily have been repaired or replaced. I have also considered the Probation Officer's report which is favourable to the Accused. He is married with three young children, however I cannot fail to lament that a young person was killed by the Accused, and his children have lost fatherly love whereas his wife has lost her husband.

**10. The Upshot is that the Accused deserves custodial sentence to enable him to be rehabilitated. I have considered the Probation Officer's Report and mitigation in favour of the Accused. I sentence the Accused to serve 5 years imprisonment.**

**DATED AT SIAYA THIS 27<sup>TH</sup> DAY OF JULY, 2017.**

**J. A. MAKAU**

**JUDGE**

**DELIVERED IN THE OPEN COURT THIS 27<sup>TH</sup> DAY OF JULY, 2017.**

**IN THE PRESENCE OF:**

**M/S. ALINATWE FOR THE ACCUSED**

**M/S. ODUMBA FOR STATE**

**COURT ASSISTANTS:**

**1. L. ODHIAMBO**

**2. L. ATIKA**

**J. A. MAKAU**

**JUDGE**