



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.79 OF 2014

REPUBLIC - - - - - PROSECUTOR

VERSUS

ERICK NYANGARESI alias DAUDI - ACCUSED

SENTENCE

1. The accused herein **ERICK NYANGARESI alias DAUDI** was initially charged with the offence of **Murder contrary to Section 203** as read with **Section 204 of the Penal Code** which charge was by a plea bargain agreement struck on **7th October 2015** between the State and the accused reduced to a lesser charge of **Manslaughter contrary to Section 202** as read with **Section 205 of the Penal Code**.
2. The particulars of the offence are that on **20th July 2014** at Nyaramba sub-location, Gucha South District within Kisii County in the Republic of Kenya, unlawfully caused the death of **ZACHARY ORENGE**.
3. The accused was convicted of the offence of **manslaughter** after his own plea of guilty. The accused and the deceased were step-brothers.
4. The circumstances surrounding the case are that on **20th July 2014** at about 4.00 p.m., the accused was at home with his wife when the deceased came in brandishing a panga and picked a quarrel with their grandmother whom he hit with the blunt side of the panga thereby prompting the accused to intervene in order to save the old lady. However, in the process of attempting to disarm the deceased and take the panga from him, the deceased cut the accused several times. The accused managed to push the deceased away and grab the panga from him, but the deceased continued to charge back at the accused thereby leaving him with no choice but to cut him with the same panga.
5. Both the deceased and the accused were severely injured in the incident and were taken to hospital but the deceased died before he could be treated.
6. The post mortem examination conducted on the body of the deceased determined the cause of death to be cardio-respiratory arrest secondary to external haemorrhage due to deep cut wounds on the body.
7. In mitigation, Mr. Kaburi, counsel for the accused submitted that the accused was a 1st offender, was remorseful and had no intention whatsoever of killing his own step-brother, but that the accused acted in self defence in order to save his own life and that of his grandmother who had

been attacked by the deceased. Mr. Kaburi added that the accused was a fairly young man with a young family who solely depended on him.

8. The Probation Officers pre-sentencing and victim impact assessment report filed in court on 16th November 2015 recommended a non-custodial sentence for the accused.
9. I have taken into account the very disturbing circumstances that led to the commission of the offence in question. The deceased can be said to have fallen on his own sword when he deliberately went on the war path by arming himself with a panga and attacking his defenseless grandmother. It can be said that it was by the grace of God that the accused herein intervened and saved the life of the old lady only for the deceased to turn to the accused in a murderous rage and cut him severally using the same panga.
10. I find that the accused acted purely in self defence in order to save his own life and that of his grandmother as was evident from the fact that he (accused) also suffered severe cut wounds for which he was hospitalized.
11. I further find that the deceased was solely for blame for the misfortune that befell him.
12. In view of the above circumstances I hereby unconditionally discharge the accused of the offence of manslaughter. He will be set free unless otherwise lawfully held.
13. It is so ordered.

Dated, signed and delivered in open court this 22nd January 2016

HON. W. OKWANY

JUDGE

In the presence of:

- Miss. Mochama for the State
- Kaburi for the Accused
- Omwoyo: court clerk