



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.66 OF 2013

REPUBLIC..... PROSECUTOR

VERSUS

FRANCIS SHEM ONGWE'NYA.....ACCUSED

SENTENCE

1. The accused person herein **FRANCIS SHEM ONGW'ENYA** was initially charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204 of the Penal Code**.
2. The said charge of Murder was by a plea agreement entered into between the accused and the State on 15th July 2015 reduced to the charge of **manslaughter** contrary to **Section 202** as read with **Section 205 of the Penal Code**.
3. The particulars of the charge are that on 18th May 2013, at Omikirondo village in Bonyakoni Sub-location in Nyamira North District within Nyamira County, unlawfully caused the death of **VERONICA NYANCHAMA ONGWENYA**.
4. The accused pleaded guilty and was consequently convicted on his own plea of guilty.
5. The accused and the deceased were husband and wife respectively.
6. The facts of the case, as narrated by the counsel for the State were that the accused and the deceased were on 18th May 2013 at about 5.00 p.m. in the kitchen together when the accused hit the deceased on the head thereby killing her on the spot.
7. A post-mortem examination conducted on the body of the deceased revealed that the cause of death was cardio-respiratory arrest due to severe head injury.
8. An initial psychiatrist report made on 20th May 2015 showed that the accused was of unsound mind. However, a further mental assessment conducted on 30th March 2015 found the accused mentally fit to stand trial. Both the reports were produced as exhibits in court.
9. In mitigation, Mr. Okenye advocate for the accused submitted that the accused was remorseful as he did not intend to kill his wife. Mr. Okenye reiterated that the accused was an old man aged 71

years and that he had been in custody for over 2 ½ years. He pleaded for a non-custodial sentence.

10. The Probation Officer's report filed on 2nd November 2015 however placed the accused's age at 58 years. The Probation Officer recommended a non-custodial sentence for the accused while observing that he was remorseful, was a first offender and had become deaf and dumb. The report also showed that the deceased was mentally unstable at the time he committed the offence.

11. I have taken due consideration of all the facts and circumstances surrounding this case. I have taken special notice of the fact that the accused was mentally unstable at the time he committed the offence and that this could have made him oblivious of the consequences of his own actions.

12. I further take note of the fact that the accused has been in custody for over 2 years while awaiting his trial and that his family and community are ready to receive him back home as they do not consider him a threat to their peaceful co-existence.

13. Accordingly, I sentence the accused herein **FRANCIS SHEM ONGW'ENYA** to 1 year non-custodial sentence during which period he will be supervised by the Probation Officer of his area.

14. It is so ordered.

Dated, signed and delivered in open court this 20th January 2016

HON. W. OKWANY

JUDGE

In the presence of:

Otieno for State

Okenye for Accused

Omwoyo: court clerk