



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.95 OF 2014a

REPUBLIC - - - - PROSECUTOR

VERSUS

ROBERT MOMANYI NYABUTO - ACCUSED

SENTENCE

1. The accused person herein, **ROBERT MOMANYI NYABUTO** was initially charged with the offence of **Murder contrary to Section 203** as read with **Section 204 of the Penal Code**.
2. By a plea bargain agreement entered into between the accused person and the State, the charge of Murder was reduced to that of **Manslaughter contrary to Section 202** as read with **Section 205 of the Penal Code**.
3. The particulars of the offence are that on 21st September 2014 at Kegochi Sub-Location within Nyamache Sub-County in Kisii County, unlawfully caused the death of **JOSEPHAT OBOGI KIMAIGA**.
4. The accused pleaded guilty to the charge and was consequently convicted on his own plea of guilty.
5. The circumstances surrounding the case were that deceased and accused were father and son respectively and that on 21st September 2014 at about 9.00 p.m. both the accused and deceased were drunk when they disagreed over food. In the course of a verbal confrontation, the deceased slapped the accused who retaliated by pushing the deceased, who fell to the ground.
6. After the fall, the deceased started complaining of stomach pains that led to his death two days later on 23rd September 2014. A post mortem examination report disclosed the cause of death as Cardio-respiratory arrest secondary to rupture gut leading to shock.
7. In mitigation, Mr. Ondari for the accused submitted that the accused was very remorseful for the accidental fall and death of his father. He added that the accused was a fairly young man who had not married. He pleaded for leniency on behalf of the accused who had been in custody for over 1 year while awaiting his trial.
8. The Probation Officer's pre-sentencing and victim impact assessment report was sought for by the court in a bid to determine the most appropriate sentence. The said report recommends that the accused person is suitable for a non custodial sentence.

9. I have taken into account all the circumstances surrounding the offence as narrated by the State Counsel when giving the facts of the case. I note that the accused never intended to harm his father and that their small disagreement over food led to the death of the deceased. The incident was aggravated by the fact that both the deceased and accused were drunk.

10. Accordingly, I hereby sentence the accused person herein to 1 year Probation during which period he will be supervised by the Probation Officer of his area.

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

HON. W. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Ondari for Accused
- Mr. Omwoyo: court clerk