



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.51 OF 2014

REPUBLIC - - - - - - - - - -PROSECUTOR

VERSUS

ROBERT ONSONGO ACHOKA ALIAS MOI - ACCUSED

SENTENCE

1. The accused person herein **ROBERT ONSONGO ACHOKA alias MOI** was initially charged with one count of **Murder contrary to Section 203** as read with **Section 204 of the Penal Code**. The charge was however, on 14th July 2015 reduced to a lesser charge of **Manslaughter** after a successful plea bargain agreement was entered into by the State and the accused.
2. The particulars of the charge are that on 3rd May 2014 at Monga village, Bomanyanya Sub-location in Nyamira District within Nyamira County, unlawfully caused the death of **JOSEPH MAUTI NYAUNDI**.
3. The accused was accordingly convicted after pleading guilty to the lesser charge of Manslaughter.
4. The incident took place when the accused confronted and physically assaulted the deceased, who was his uncle, over a boundary dispute. The accused beat the deceased on the head, hands and back using a rungu. The deceased was hospitalized for 5 days before succumbing to his injuries on 8th May 2014.
5. The post mortem examination done on the deceased's body established the cause of death to be cardio-respiratory arrest secondary to sub-dural haematoma and intracranial haemorrhage following severe closed head injury.
6. In mitigation, Mr. Bigogo counsel for the accused stated that the accused was remorseful for accidentally causing the death of his own uncle over a boundary dispute. Mr. Bigogo added that the accused was married with one child and he was the sole bread winner for his family who have undergone untold suffering during his incarceration.
7. The Probation Officer's pre-sentencing report filed in court on 18th November favoured the release of the accused on Probation Order in view of the fact that his family, and community had forgiven him and were ready to welcome him back home.
8. I have considered all the circumstances surrounding the Commission of the offence, the mitigation tendered by the advocate for the accused and the Probation Officer's Report. I note that the accused took the law into his own hands by resorting to violence to settle a boundary dispute

thereby leading to the loss of his own uncle's life. The actions of the accused can be attributed to the lack of respect for law and order the total breakdown of the societal and family values.

9. I am however certain that the more than one year that the accused has been in custody is adequate lesson to him to keep of violence and always maintain peace, law and order.

10. Accordingly, I sentence the accused herein **ROBERT ONSONGO ACHOKA** to 2 ½ years probation. He will, during his probation period be supervised by the Probation Officer of his area.

11. It is so ordered.

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
- Accused in person
- Mr. Omwoyo: court clerk