



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL CASE NO.29 OF 2015**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**THOMAS ONCHIRI MICHAEL.....ACCUSED**

**SENTENCE**

1. The accused person herein **THOMAS ONCHIRI MICHAEL** was convicted of **manslaughter** after a plea bargaining agreement entered in between the accused and the State on 30<sup>th</sup> September 2015. The deceased and the accused were brothers. The incident occurred when the two disagreed over the issue of alcohol when the deceased confronted the accused with the question on why he (accused) always fell ill after taking alcohol, a question which infuriated the accused who in turn hit the deceased with a jembe thereby injuring him fatally.
2. Mr. Kaburi, counsel for the accused mitigated on his behalf and stated that the accused was a first offender, was married with a young family, was remorseful and blamed the incident on drunkenness.
3. A detailed social enquiry report filed by the probation officer on 19<sup>th</sup> November 2015 stated that the accused had a mental problem which his community members understood but had not been treated. The report recommended psychiatric treatment for the accused. The report further revealed that the accused was a repeat offender who had another case in which he unknowingly hit a teacher on his way to school and was subsequently placed on probation which he was still serving.
4. The Probation Officers report was categorical that the accused was at a great risk of being attacked or even killed by members of the public who still feared him and were hesitant to accept him back in their midst.
5. The Probation Officer recommended that the court considers referring the accused to a psychiatric medical checkup considering the mental status of the accused that could make him have violent moments.
6. From the report of the Probation Officer, I would have been inclined to give a non-custodial sentence to the accused, however, that would be tantamount to punishing him for being mentally ill because the offence was committed due to his mental illness. Punishing a person who is mentally ill would clearly defeat the very purpose for which punishment was laid down. Mental illness was said to run in the accused's family which his family attributes to witchcraft.

7. I concur with the Probation officers finding that a non-custodial sentence could have dire consequences on the accused's life should he relapse and commit another offence.

8. Although the accused was incapable of formulating an intention to kill, he killed his own brother in his insane moments. He was therefore not responsible for his own actions.

9. Under the above circumstances, the applicable law is **Section 166(2) of the Criminal Procedure Code** which states that this court shall report this case for the order of the president of the Republic of Kenya, until such a time that His Excellency the President will direct the place at which the accused will be held in custody, I direct that until then, the accused shall remain in prison custody.

10. It is so ordered.

**Dated, signed and delivered in open court this 20<sup>th</sup> day of January 2016**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

Otieno for the State

Kaburi for the Accused

Omwoyo: Court clerk