



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA

HCCR NO.31 OF 2015

REPUBLIC.....STATE

-VERSUS-

JACKSON ONDIEKI OIGO.....ACCUSED

SENTENCING

The accused person, **Jackson Ondieki Oigo**, was initially charged for murder, contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars thereof were that on the 11th day of August 2013 at Kianungu village, Nyambogo Sub-location in Manga District within Nyamira County in the Republic of Kenya murdered **Josphat Maosa Machoka**.

However, through the legal process of plea bargaining and agreement, the accused was able to plead to a lesser offence of manslaughter on 14/12/2015.

He was therefore found guilty and convicted on his own plea of causing death to Josphat Maosa Machoka, contrary to **Section 202** as read with **205 of the Penal Code**.

The facts of the case were narrated to the court by the prosecution. There being no records of previous convictions, the accused was therefore treated as the first offender.

Mitigation by the accused person, Mr. Nyamwange for the accused instigated as here below:

That the accused being a first offender is a married person with four (4) children aged between 10, 7, 5 and 3 respectively.

That he was a sole support of the family.

That it was his humble submission to sentence the accused to a non-custodial sentence, so that he joins his family and partake his role of supporting, caring and maintaining them.

In this regard, the court called for probation report - the same was filed on 20/01/2016- to facilitate the court in arriving at a just sentence to be meted to the accused person.

The following information is elicited from this probation, for our consideration, victim's attitude towards the accused: they have forgiven him as he never intended to kill the deceased. Some payments towards restitution has been paid.

Family Attitude towards the accused: they are willing to support him psychologically so that he comes in terms with the incident. The offence was precipitated by differences arising out of drinking spot.

Community Attitude: they state that the accused is not a person with criminal tendencies. He is not considered a threat to both peace and security. They are not opposed to him being accorded leniency. They are willing to welcome him into their community.

Conclusion: we find him suitable for non-custodial sentence and recommend him for probation sentence for intensive guidance and counseling towards positive behavior changes, deterrence of recidivism and facilitation of sustainable reconciliation.

Accordingly, being guided by the above report and taking all factors into account, -judiciary discretion being the overriding factor, this court will sentence the accused person to three years non-custodial sentence to be supervised by the Probation Officer of his area.

It is so ordered.

Dated 26th day of February, 2016.

C.B. NAGILLAH

JUDGE

In the presence of:

Nyamwange for the accused person

Malesi for the State

Mercy Court Clerk