



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CRIMINAL CASE NO. 17 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JACKSON ONGAGA OYONGO.....1<sup>ST</sup> ACCUSED**

**DOMINIC OMUNDI OMBOTO.....2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The accused persons herein **JACKSON ONGAGA OYONGO** and **DOMINIC OMUNDI OMBOTO** were 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 made on 2<sup>nd</sup> March, 2016 between the state and the accused persons, the said charge was reduced to that of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
3. It is alleged that on the night of 23<sup>rd</sup> and 24<sup>th</sup> February, 2013 at Bosinange village in Gucha South District within Kisii County with others not before the court, unlawfully caused the death of **OEKO OYONGO**.
4. Both the accused persons pleaded guilty to the lesser charge of manslaughter and were consequently convicted on their own plea of guilty.
5. The circumstances surrounding this case, as narrated by Mr. Otieno, counsel for the state were that the deceased, who was an uncle to the 1<sup>st</sup> accused, set the house of the said 1<sup>st</sup> accused on fire on the 23<sup>rd</sup> February, 2013 while the 1<sup>st</sup> accused was attending a burial meeting. Irate members of the public that had attended the burial meeting including the 1<sup>st</sup> and 2<sup>nd</sup> accused meted out “mob justice” on the deceased thereby leaving him unconscious. The deceased’s dead body was thereafter discovered in a nearby farm the following morning.
6. In mitigation, Mr. Momanyi for the accused persons pleaded for leniency on their behalf while stating that they were both young men who were attending school at the time of the incident and as such, their education had been cut short by the instant case. Mr. Momanyi stated that the accused persons were desirous to continue with their studies.

7. The Probation Officer, in his reports filed in court on 23<sup>rd</sup> March, 2016 noted that both the accused persons were suitable for a non-custodial sentence.

8. I have taken full consideration of the circumstances that led to the assault of the deceased by members of the public that included the 1<sup>st</sup> and 2<sup>nd</sup> accused herein. Indeed I note that this was a case of mob justice provoked purely by the actions of the deceased in setting the house of the 1<sup>st</sup> accused on fire. I also note that the accused persons have been in custody for 2 years now while awaiting their trial.

9. I am certain that the two year period that they have been in custody will serve as adequate lesson to them to keep off violent confrontations and to desist from taking the law into their own hands.

10. Consequently, I hereby sentence the two accused persons herein **JACKSON ONGAGA OYONGO** and **DOMINIC OMUNDI OMBOTO** to **1 year probation** during which period they will be supervised by the Probation Officer of their area.

Delivered, dated and signed in at Kisii on 31<sup>st</sup> day of **March**, 2016.

**W.A. OKWANY**

**JUDGE**

**In the presence of:**

- Mr. Otieno for the State
- Momanyi for the Accused
- Omwoyo court clerk