



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.85 OF 2013

REPUBLICPROSECUTOR

VERSUS

JOSHIAH BOR KIBET.....ACCUSED

SENTENCE

1. The accused person herein 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 state and the accused on 15th July, 2015, the said charge was reduced to that of manslaughter contrary to **Section 202** as read with section **205 of the Penal Code**.
3. The particulars of the reduced charge are that on 8th July, 2013 at Isokon village in Transmara West District within Narok County in the Republic of Kenya unlawfully caused the death of **WESLEY KIPLAGAT MUTAI**.
4. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.
5. The circumstances surrounding the offence were that on 7th July, 2013 at about 8 p.m. the deceased went to his brother's house complaining that the accused had hit him with a stick whereupon he (deceased) sought refuge and accommodation at the brother's house out of fear that the accused would attack him again.
6. The condition of the deceased deteriorated the following day due to the injuries he sustained as a result of being beaten by the accused and he died on 9th July, 2013 while undergoing treatment at Logorian sub-District Hospital.
7. A post mortem examination on the body of the deceased established the cause of death to be cardio respiratory failure due to blunt head injury. The accused was arrested and charged with the offence of murder which was subsequently reduced to manslaughter.
8. In mitigation, Mr. Okenye for the accused stated that the accused was deeply remorseful as the deceased was his good friend but he had a disagreement with him after the deceased stole his maize which disagreement degenerated to a physical confrontation that led to the accused's injuries and eventual death. Mr. Okenye prayed for a non-custodial sentence for the accused while stating that he was a fairly young man who could reform if given a second chance at life.

9. I have considered the unfortunate chain of events that culminated into the death of the deceased. It is noteworthy that the accused neither planned nor intended to harm the deceased from the statement of the facts as read by the state counsel. It is clear that a spontaneous physical confrontation arose between the deceased and the accused over allegations of stolen maize.
10. I have further taken into account the mitigation tendered by Mr. Okenye for the accused and further noted the fact that the accused has been in custody for over 2 years while awaiting his trial. I am certain that the over 2 year period that the accused has been in custody will serve as adequate lesson to him to keep off violent confrontations.
11. This court ordered for a probation officers pre-sentencing and victim impact assessment report in order to come up with the most appropriate and fair sentence. However, unfortunately, as at the time of writing this ruling, over 8 months after the probation officers report was called for, no such report had been availed to this court. Be that as it may, this court still believes that a non custodial sentence would serve a better corrective purpose/measure bearing in mind the circumstances of the case.
12. Consequently, I hereby sentence the accused person herein **JOSIAH BOR KIBET** to 2½ years non custodial sentence during which period he will be supervised by the probation officer of his area.

Dated, signed and delivered in open court this 30th day of March, 2016

HON. W. OKWANY

JUDGE

In the presence of:

- Mochama for the State
- Okenye for the Accuseds
- Omwoyo court clerk