



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.100 OF 2014

REPUBLIC..... PROSECUTOR

VERSUS

JARED MOGA AYAKO.....ACCUSED

SENTENCE

1. The accused herein **JARED MOGAKA AYAKO** was charged with offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. It is alleged that on **1st October, 2014** at Nyozia village in Kisii Central District within Kisii County he murdered Dominic Nyachae Ayako.
2. By a plea bargain agreement entered into between the accused and the state on **29th February, 2016**, the charge of murder was reduced to that of manslaughter whereupon the accused pleaded guilty to a lesser charge of manslaughter and was consequently convicted on his own plea of guilty.
3. The offence took place when the deceased, who was the brother of the accused confronted and physically assaulted the accused on **1st October, 2014** while the accused was weeding his shamba. In the course of the confrontation, the deceased who was accompanied by another brother called **DENNIS AYAKO**, hit the accused on the chest and the accused fought back by hitting the deceased with the jembe that he was using on the farm. The blow floored the deceased to the ground and he lost consciousness. Efforts to save the deceased's life came to a cropper when he was declared dead upon arrival at Keumbu Level IV Hospital.
4. In mitigation, Mr. Okenye for the accused submitted that the accused was a fairly young man aged 36 years old and he has a family consisting of a wife and 2 children. Mr. Okenye pleaded for leniency on behalf of the accused, whom he stated, was very remorseful for the accidental death of his own brother. Mr. Okenye added that the accused acted purely in self defence after he was attacked by his two brothers.
5. The Probation officers pre-sentencing and victim impact assessment report filed in court on **10th March, 2016** found the accused suitable for a non- custodial sentence as his family and community had forgiven him and are willing to accept him in their midst.
6. I have taken due consideration of the circumstances surrounding this case and the fact that the accused acted in self defence after his two brothers confronted and attacked him while he was busy weeding in the shamba. I however find that the accused had a chance to flee from his attackers instead of using lethal force in retaliation. The accused's reckless actions led to the loss of his own brother's life.
7. In view of the above findings, I hereby sentence the accused to 3 years probation during which period he will be supervised by the Probation Officer of his area.

8. It is so ordered.

Dated, signed and delivered in open court this 24th day of March, 2016

HON. W. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

N/A Mr. Okenye for the Accused

Omwoyo - court clerk