



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL CASE NO.08 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JAMES LEKAKENY BARNGETUNY.....ACCUSED**

**SENTENCE**

1. The accused person herein **JAMES LEKAKENY BARNGETUNY** was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. By a plea bargain agreement entered into between the accused and the state on **23<sup>rd</sup> February, 2016**, the said charge of murder was reduced to that of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code.
2. It is alleged that on **3<sup>rd</sup> December, 2009** at Bongonta village Ikorongo Location in Masaba South District within Kisii County, the accused unlawfully caused the death of **EVANS OIRA MATUNDURA**.
3. The deceased herein, who was the Assistant Chief of Riamichoki Sub-Location, on the material day engaged in an argument with the accused at a changaa drinking den and in the course a heated exchange, the accused drew a knife from his belt and stabbed the deceased thereby causing him fatal injuries that resulted in his instant death.
4. In mitigation, Mr. Okenye for the accused submitted that he was a young man aged 26 years, he was remorseful and pleaded for leniency. Mr. Okenye added that the drunken state of the accused was to blame for his irrational act of stabbing the deceased which act the accused deeply regretted. Mr. Okenye added that the accused was married with 2 children.
5. The Probation officer's pre-sentencing and victim impact assessment report filed in court on **10<sup>th</sup> March, 2016** favoured a non-custodial sentence for accused. The Probation Officer noted that the accused was a first offender and that members of his family and community were willing to accept him back in their midst.
6. I have noted the circumstances that led to the commission of the offence of manslaughter. It is quite clear to me that both the deceased and the accused were intoxicated having been in a changaa den at the time of the incident.
7. I have taken due consideration of the mitigation tendered on behalf of the accused by Mr. Okenye, the Probation Officer's report and the fact that the accused has been in custody since **March, 2015** while awaiting his trial. I am certain that the time the accused has stayed in custody will serve as adequate lesson to him to tame his tempter and keep of violent confrontations. I also note the probation officers

report to the effect that both the accused person and his wife are ailing from HIV related complications

8. Consequently, I hereby sentence the accused herein to 3 years non custodial sentence during which period he will be supervised by the Probation Officer of his area.

9. It is so ordered.

**Dated, signed and delivered in open court this 24<sup>th</sup> 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