



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
HIGH COURT CRIMINAL CASE NO.39 OF 2015

REPUBLIC.....STATE

-VERSUS-

BERNARD OMBOGA ONDIEKI.....ACCUSED

SENTENCING

The accused person **Bernard Omboga Ondieki** was initially charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code.**

However by the process of plea agreement, he pleaded to a lesser offence of manslaughter contrary to **Section 202 as read with Section 205 of the Penal Code.**

The particulars thereof being that on 18th day of February 2010 at Kiabonyuru sub-location Nyangoge Location, within Nyamira County unlawfully caused the death of **JAMES MONGARE SAWEGI.**

On his own plea of the offence of manslaughter, he was found guilty and upon being explained his rights on the process of plea bargaining, he was subsequently convicted of the said offence of manslaughter.

The court recorded facts of this case as narrated by the prosecution. The accused having no previous criminal record, he is treated as the first offender.

In mitigation by the Defence Counsel Fredrick Ondigo, submitted as follows:

1. That the accused is remorseful.
2. That he had no malice aforethought in the commission of this offence.
3. That he is married and has two children
4. That he was pursuing a tailoring course at Kebirigo.
5. That he wishes to resume his role as a care giver to his children and also continue with his tailoring course.
6. That having been in custody for now (3) years, he has learnt very available lesson about life.

The court called for probation report to guide it on the issue of sentencing.

This report was filed on 2nd March, 2016. Below are the views contained therein:

Victim's attitude: They have come to terms with the incident as the deceased was not the first to be murdered. They have forgiven the offender and bear no grudge against him.

They are ready for reconciliation and at the same time willing to work together to prevent any future incident of the same. They are not opposed to the offender being accorded a lenient sentence.

Family attitude: They were positive and are willing to receive the offender and assist during the rehabilitation process while at the same time they work out preventive measures to avoid similar occurrence in the future.

Community Attitude: Most of those interviewed were of positive response in respect of the offender. This incident was attributed to alcohol abuse. It emerged that the accused's father killed his wife while under the influence of alcohol. They are of the view that the court to accord mercy to the offender.

Conclusion

That the accused is suitable for non-custodial sentence of probation, while he receives guidance from the right people.

Accordingly, this court will sentence the accused person to a non-custodial sentence of two years under the guidance of the probation officer of the area.

It is so ordered.

Dated at Nyamira this 22nd day of April, 2016.

C.B. NAGILLAH

JUDGE

In the presence of:

Fredrick Ondieki for accused person

Konga for the State

Mercy Court Clerk