



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 46 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

ROBERT M. OMURWA.....ACCUSED

SENTENCE

1. The accused person herein **ROBERT MWEBI OMURWA**, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. Following a plea bargain agreement made between the state and the accused on 30th March 2016, the accused pleaded guilty to a lesser charge of manslaughter contrary to **Section 202** as read with **205 of the Penal Code**. The particulars of the charge are that on 16th February 2014 at Bogenche Sub-location in Masaba South District in Kisii County unlawfully caused the death of **JEFFERSON NYABERI**. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on 30th March 2016.
2. The facts constituting the offence were that the accused who was a younger brother to the deceased on 16th February 2014 came to a family meeting armed with a panga and a jembe that he had been using at a farm. The deceased together with other people at the meeting ran away to different directions upon sensing that the accused was intent on attacking them because of allegations that the accused was mismanaging the family's property. In the process of running away, the accused pursued the deceased and caught up with him when he fell down upon being hit on the head by the accused's wife. The accused hit the deceased on the stomach before taking off. The deceased later collapsed and was rushed to Kisii Level 6 hospital where he died while undergoing treatment.
3. The postmortem examination conducted on the deceased body attributed the cause of death to cardio pulmonary arrest caused by abdominal injury due to assault. The accused underwent a mental assessment on 20th August 2014 and was found fit to stand trial.
4. Miss Mochama, counsel for the state informed the court that the accused was a first offender.
5. In mitigation, Mr. Bigogo advocate for the accused submitted that he (accused) was remorseful about causing the death of his elder brother and that the death was accidental. Mr. Bigogo pleaded for leniency on behalf of the accused while stating that his aged parents who were then present in court had informed him that there existed bad blood between the deceased and the accused since the deceased felt that his parents favoured the accused because he was a last born.
6. Mr. Bigogo added that the accused is married with 3 school-going children and that he was the

sole bread winner to his family who included his aging parents.

7. Mr. Bigogo pleaded for a non-custodial sentence for the accused while stating that the family of the deceased had forgiven him and he (accused) was ready, able and willing to support the deceased's widow and children
8. The Probation Officer's pre-sentencing and victim impact assessment report favoured a non-custodial sentence for the accused herein.
9. I have duly considered the circumstances surrounding this case and the mitigation tendered by the counsel for the accused. I give due consideration to the fact that the accused, a fairly young man had the audacity to physically attack his elder brother who was already running away from him. I also bear in mind the fact that he has been in custody for 2 years while awaiting his trial.
10. I take cognizance of the fact that manslaughter is a serious felony that attracts a maximum sentence of life imprisonment. It was reckless for the accused to pursue his elder brother who was unarmed, and hit him with such deadly force.
11. After weighing all the circumstances surrounding this case, I think that a non-custodial sentence is merited because I do not believe that the accused intended to kill his brother. I accordingly sentence the accused to 2 years Probation during which period, he will be supervised by the Probation Officer of his area.

Delivered, dated and signed in at Kisii on 25th day of May, 2016.

Hon W.A. OKWANY

JUDGE

In the presence of:

- Otieno for the State
- Bigogo for the Accused
- Omwoyo court clerk