



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 60 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

HESBON NYAMBANE NYASANI.....1ST ACCUSED

MARY MONG'ARE NYASANI.....2ND ACCUSED

SENTENCE

1. The accused persons herein, **HEZBON NYAMBANE NYASANI** and **MARY MONGARE NYASANI** were jointly charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. Following a plea bargain agreement between the accused and the state the accused persons pleaded guilty and were consequently convicted of a lesser charge of manslaughter.
2. The particulars of the charge are that on 25th May, 2014 at Bosoti Sub-location in Kenyena Sub-county within Kisii County, they jointly unlawfully caused the death of **KENNEDY NYASANI NYASANI**.
3. The circumstances surrounding the case are that the deceased was the father and husband of the 1st and 2nd accused respectively. On 25th May, 2014 at about 4 p.m. the deceased accused the 2nd accused of serving him with poisoned food whereupon a quarrel ensued between the two but later on at about 7 p.m. on the same day, the deceased attacked the 2nd accused with a jembe and as he was on the verge of hitting her, his son, the 1st accused intervened and grabbed the jembe. Relentlessly, the deceased picked an iron rod with which he attempted stab the 2nd accused but he was stopped by the 1st accused who was then armed with a kitchen knife and the 2nd accused who had a jembe. A vicious fight ensued between the 3 members of the same family that resulted in the death of the deceased.
4. Postmortem examination results revealed that the cause of death was cardio- pulmonary arrest following muscular bleeding into the abdominal cavity following injury to the liver and kidney caused by a sharp object.
5. In mitigation, Mr. Magara for the accused urged the court to take note of the special circumstances surrounding the case and the fact that the deceased, who was at the time of his attack drunk, was the father of the 1st accused and the husband to the 2nd accused.
6. Mr. Magara submitted that the accused persons acted in self defence upon being attacked

repeatedly by the deceased.

7. I have taken due consideration of the fact that the offence in question involves immediate family members and that the 1st accused came to the rescue of his mother, the 2nd accused, who was under a vicious attack by the deceased.
8. This case is a classic demonstration of the total breakdown of the family unit and societal values which has been exacerbated by uncontrolled consumption of alcohol.
9. The deceased relentlessly attacked his wife, the 2nd accused, and one can only shudder at the thought of what could have happened to the 2nd accused if the 1st accused did not come to her rescue.
10. I also note that the accused persons herein used excessive force in restraining the deceased from attacking the 2nd accused and this led to the unfortunate death of the deceased.
11. I am however satisfied that the 2 years that the accused persons have spent in custody will serve as adequate lesson to them to keep off violent confrontations.
12. Consequently, I sentence the 2 accused persons to 1 year probation each during which period they will be supervised by the Probation Officer of their area.

Delivered, dated and signed in at Kisii on **24th day of May, 2016.**

Hon W.A. OKWANY

JUDGE

In the presence of:

Otieno for the State

Magara for the Accused

Omwoyo court clerk