



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA

HIGH COURT CR. CASE NO. 26 OF 2015

(CORAM: J. A. MAKAU – J.)

REPUBLIC..... PROSECUTION

VERSUS

JAMES ODUOR OBAREACCUSED

SENTENCE

1. The accused herein **JAMES ODUOR OBARE**, was initially charged with an offence of **Murder contrary to section 203 as read with Section 204 of the Penal Code**.
2. By a plea-bargain agreement entered on 13th July 2016 between the accused person and the State, the said charge was reduced to **Manslaughter Contrary to Section 202 as read with Section 205 Of The Penal Code**. The particulars of the offence are that on 16th day of February 2014 at Maugo village in Got Osimbo sub-location, East Uholo Location in Ugunja District within Siaya County unlawfully killed **EMMANUEL OTIENO OBARE**.
3. The accused herein pleaded guilty to the said charge and was consequently convicted by the court on his own plea of guilty.
4. The facts leading to the commission of the offence pleaded to are that the deceased and the accused are biological brothers, that on 16th February 2014. at Maugo village, Got Osimbo sub-location, East Uholo location, in Ugunja District, Siaya Courty, the accused killed Emmanuel Otieno Obare, his brother. That at the material time of the commission of the offence both the deceased and the accused were drunk, and started abusing each other and at that particular moment both of them were armed. The deceased had a jembe whereas the accused was armed with a rungu. That a fight ensued between the two. That both sustained injuries from the fight. The deceased sustained serious injuries, the accused and his other brother helped in taking the deceased to Ambira Hospital where he passed on. That after the death of Emmanuel Otieno Obare, the accused surrendered himself to Ugenya Police Station and reported the death.
5. A postmortem report was not produced in court to reveal the cause of death and the defence counsel did not raise any objection or point out that the postmortem report was not produced.
6. In mitigation M/s Maureen Kibet Advocate for the accused submitted that the deceased and the accused were biological brothers, he is the only surviving son of his elderly and frail father who is very sickly, after his other brother died, that his father is a widower, that the deceased's death was accidental

following a fight between the brothers in which both sustained injuries, that the accused is remorseful and did assist in taking the deceased to the hospital, that after the death of the deceased the accused did not abscond but surrendered to police, that the accused has apologized to his father and his sisters, that the family members are ready to take the accused back home, that the accused is remorseful and regrets what happened to his late brother and that he is a first offender. M/s. Kibet Advocate prayed for leniency on behalf of her client urging that the accused had been in custody since February 2014 and prayed for non-custodial sentence.

7. The Probation Officer, in his Pre-bail assessment Report on victim Impact Report which was filed on 29th July 2015 observed that the deceased's family members were ready and willing to accept the accused back home. Similarly the community welcomed his release on bail

8. The maximum sentence for an offence of Manslaughter is imprisonment for life, as **prescribed under Section 205 of the Penal Code**. I have in this case taken into account the circumstances surrounding the crime in question and the fact that both the deceased and the accused were reported to have been drunk, that at the material time they picked a quarrel and were abusive to each other, that the deceased was armed with a jembe whereas the accused was armed with a rungu. That a fight ensued out of which both the deceased and the accused sustained injuries. I also take into account the condition explained by the defence Counsel about the frail Condition of the father to the deceased and the accused who is a widower and that right now the only surviving son of the widower is the accused. I have taken further into account that the accused helped in taking his brother to the hospital, that he did not abscond and he surrendered himself to police. That the deaths arose out of a fight between the two drunken brothers and that there was no intention to kill the deceased.

9. I have further considered that the accused had been in custody for a period of two (2) years and Five (5) months. I have also taken into the account the incident must have caused the accused to undergo a lot of psychological pain for the period the accused has been in custody and that he will undergo much pain through the remainder of his life knowing that his reckless action caused the death of his own brother and this in my view would be a sufficient and adequate lesson to tame his urge for alcoholic drinks and to shun fights.

10. Accordingly I sentence the accused herein to three (3) years non-custodial sentence during which period he will be under supervision and direction of the Probation Office, Siaya County.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF JULY, 2016.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT THIS 28TH DAY OF JULY, 2016.

In the presence of:

M/s. Mourine Odumba for the State

M/s. Maureen Kibet for the Accused

Accused present in person.

Court Clerk – Kevin Odhiambo

Court Clerk – Mohammed Akideh

J. A. MAKAU

JUDGE