



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA

HIGH COURT CR. CASE NO. 45 OF 2015

(CORAM: J. A. MAKAU – J.)

REPUBLIC PROSECUTION

VERSUS

MICHAEL OHERA AHAYOACCUSED

SENTENCE

1. The accused **MICHAEL OHERA AHAYO** was initially charged with an offence of **Murder contrary to section 203 as read with Section 204 of the Penal Code**.
2. That by a plea-bargain agreement entered into on 14th July 2016 between the accused 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 6th day of March 2015 at Olongi village in Yimbo, Bondo District within Siaya County the accused unlawfully killed **FRANCIS OLOO AHAYA**.
3. The accused pleaded guilty to the charge and upon facts of the case being given he admitted that the facts were all true and that he accidentally killed the deceased. The court convicted the accused on his own plea of guilty.
4. The facts leading to the commission of the offence pleaded to, are that the accused who is young brother to **FRANCIS OLOO AHAYO (deceased)** were staying in one compound, that on 6th March 2015, a disagreement arose between the two brothers. The deceased picked a spear and approached the accused person and in the process of the disagreement a struggle ensued, and the spear that the deceased had with him, fell to the ground, the accused person picked it up and speared the deceased, who later died as a result of the injuries sustained. The charge was therefore reduced from Murder to Manslaughter on that basis leading to the plea-bargain.
5. That a postmortem report produced in court as exhibit P1, show that the cause of death was due to collapsed left lung from punctured wound, left hemopleura from stab wound.
6. Mr. E. Ombati Learned State Counsel appearing for the State urged court to consider in sentencing the accused that both the deceased and the accused were close relatives, that the accused was young brother to the deceased and that the accused person was used to using bhang at the material time. He urged the court to consider referring the accused to rehabilitation center so that he can reform and have peaceful co-existent with the other family members.
7. In mitigation Mr. Onyino defence Advocate, submitted on behalf of the accused that he is remorseful, apologetic and that he seeks court's leniency. That the accused is aged 29 years old and a young person

who needs to shape up his future. He prayed for non-custodial sentence adding that at one time the accused used to use bhang and urged the court to consider referring the accused to any rehabilitation centre. He further submitted the accused is the only surviving son of his mother after the death of his elder brother, whose wife has also left the matrimonial home. He prayed for non-custodial sentence so that the accused can go home and help his mother.

8. I have taken into account the circumstances surrounding the crime in question and the fact that both the accused and the deceased were brothers, that the deceased was the aggressor, that he armed himself with a spear which he intended to use against the accused at the time of their disagreement, that at the time of the struggle, the spear fell down and the accused used it to spear his brother who unfortunately died. I have also considered that the accused is apologetic and remorseful, that in their family he is the only surviving son and his widowed mother is elderly and alone at home with no one to support her. I have also taken into account the accused is a young man aged 29 years who need to be guided and be given an opportunity to shape up his future and contribute to the development of the nation. I am further made to know that the accused before the incident had taken to bad company and became an abuser of drugs in engaging in using bhang and as such needs to be rehabilitated to be a useful citizen.

9. Accordingly and taking into account that the accused has been in custody for 1 year and four (4) months upto now, I will sentence the accused person to three (3) years non-custodial sentence and order that during such period, the accused be referred to a specific rehabilitation Centre so that he can be helped to come out of the use of drugs, and learn how to co-exist with other family members. I take that the accused will be sufficient punished by the cumulative effect of 1 year and 4 months served in remand custody and further probation sentence combined with attending rehabilitation center to be helped to come out of the drugs, in accordance with section 7 and 8 of the Probation offenders **Act Cap 84**, the accused will not commit any other offence or breach the terms of the Probation Order while the Probation Order is in force. The Probation period will also afford the accused the necessary counselling for which both the State Counsel and the defence counsel sought.

10. The Upshot is that the accused is sentenced to serve a continued probation sentence during which period he will also be subjected to rehabilitation for a period of three (3) years all in all under the 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:

Mr. E. Ombati for State

Mr. Onyino for the Accused

Accused present in person.

Court Clerk – Kevin Odhiambo

Court Clerk – Mohammed Akideh

J. A. MAKAU

JUDGE