



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 15 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

FRED WAGARE MAJONI.....ACCUSED

SENTENCE

1. The accused was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code** which was by a plea bargain agreement dated 24th May 2016 reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
2. The particulars of the charge are that on 5th April 2015 at Nyabondo village, Mosocho division in Kisii Central District unlawfully caused the death of **BONFACE MOCHOGE ONDIEKI**.
3. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty. The facts of the case were that the accused and deceased were very good friends and that on 5th April 2015, the deceased left his home at about 1 p.m. on a mission to collect a debt that the accused owed him and that at around 10p.m. the same day the deceased was found lying dead in pool of blood at the accused's home. The deceased had very deep cut wounds on the head, right hand and right wrist.
4. The accused presented himself at Mosocho AP Camp wearing a white shirt drenched in blood and still holding the blood- stained panga. He reported to the administration police officers that he had killed a thief who had broken into his house to steal a radio.
5. A postmortem examination on the body of the deceased disclosed that he had died due to cardio respiratory arrest secondary to cerebral tissue damage following multiple cut wounds on the head.
6. In mitigation, Mr. Momanyi for the accused submitted that the accused, was a first offender, was a young man aged 24 years and was married with one child aged 2 years. Mr. Momanyi added that the accused had been in custody for one year while awaiting his trial and that the killing was as a result of mistaken identity as the accused fully believed that the deceased was a thief when he found him carrying radio speakers from his house in the dead of the night. Mr. Momanyi added that the accused was very remorseful for killing his best friend and pleaded for leniency and a non-custodial sentence.
7. This court called for a Probation Officer's report to assist it in arriving at the most appropriate sentence which report recommended that the accused could benefit from a non-custodial sentence.
8. I have taken due consideration of the circumstances surrounding this case and the fact that the deceased

was killed when he was found in the home of the accused in the dead of the night at 10 p.m.. It is clear to me that it was dark at the time the deceased was killed and therefore one cannot rule out the possibility that the deceased could have been a victim element of mistaken identity. No explanation was given as to why the deceased was at the home of the accused at that ungodly hour, as it were. Nevertheless, I note that the accused used excessive and deadly force on the person he suspected to be a thief only to realize much later, after the damage had already been done, that he had killed his best friend.

9. This case is a classic demonstration of the dangers/consequences that taking the law into one's own hands can cause.

10. The accused had the chance to apprehend the deceased and hand him over to the law enforcement authorities if he indeed suspected him to be a thief as we have not been told that the deceased was violent or resisted arrest.

11. The accused attacked the deceased in the most ruthless and vicious manner thereby killing him on the spot. The accused actions were macabre and barbaric to say the least. The deceased did not deserve to die in the manner that he did even if it was established that he was actually a thief.

12. Having considered all the circumstances of this case, I come to the conclusion that a non-custodial sentence would be the most appropriate punishment for the crime in question. Consequently, I sentence the accused to serve 2 years probation during which period he will be supervised by the Probation Officer of his area.

13. It is so ordered.

Delivered, dated and signed in at Kisii on **20th** of **July**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

Mr. Sagwe for Mr. Momanyi for the Accused

Omwoyo court clerk