



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CRIMINAL CASE NO. 13 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH ONSASE AURA alias KENNEDY ONSASE AURA.....ACCUSED

SENTENCE

1. **JOSEPH ONSASE AURA**, the accused person herein, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. By a plea bargain agreement made on 15th November 2016, the said charge of murder was reduced to that of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**. The particulars of the offence were that on 20th April 2016 at Boochi Location in Gucha Sub-County within Kisii County jointly with others not before the court unlawfully caused the death of JOSEPH MOSE MORANDE.
2. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.
3. The circumstances under which the offence was committed were narrated by Mr. Otieno, counsel for the state, to be that on 20th April 2016, at about 10p.m., the accused found the deceased in the act of uprooting his blue gum seedlings from his tree nursery whereupon the (accused) assaulted the deceased with a panga before calling 4 community policing members who also beat up the deceased all over the body with big pieces of wood. The deceased died as a result of the said beatings as efforts were being made to ferry him to hospital for treatment.
4. A post mortem examination report, which was produced as Pexhibit 1 revealed that the cause of death was severe head injury secondary to multiple soft tissue injuries.
5. In mitigation, Mr. Kaburi advocate for the accused submitted that the accused was a first offender aged 46 years and was married with 3 school- going children. Mr. Kaburi further submitted that it was clear from the facts of the case that the accused never intended to kill the deceased who was his neighbor, but that the deceased was guilty of stealing the accused's tree seedlings and that he was subjected to mob justice by members of community policing.
6. The probation officers report filed on 30th November 2016 recommended that the accused could benefit from a non-custodial sentence.
7. I have carefully considered the circumstances under which the deceased met his death, the probation

officer's report and the mitigation tendered by the accused's counsel. It is abundantly clear to me that the deceased was caught in the act of stealing the accused's seedlings in the dead of the night and this was the genesis of his (deceased's) beating by the accused and members of the community policing team that resulted into his death.

8. Under the above circumstances, the deceased can be said to have been the author of his own misfortune. However, two wrongs do not make a right as the accused had the opportunity to present the deceased to law enforcement agencies instead of taking the law into his own hands. It is also clear to me that the deceased was a victim of mob justice. I hasten to add that mob justice is a barbaric and primitive method of meting out punishment that should not be encouraged or condoned in a civilized society that observes the law of law.

9. After taking into account all the circumstances surrounding this case, I am of the view that a non-custodial sentence would be appropriate in this case.

10. In this regard, I hereby sentence the accused herein, JOSEPH ONSASE AURA 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 **30th of November**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Kaburi for the Accused
- Omwoyo court clerk