



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO. 29 OF 2014.**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOVENSIA GECHEMBA RATEMO .....1<sup>ST</sup> ACCUSED**

**JOEL MAEBA ONSATI.....2<sup>ND</sup> ACCUSED**

**GEORGE NYAKUNDI alias GUTO.....3<sup>RD</sup> ACCUSED**

**CHARLES MAKORI ONTONYI.....4<sup>TH</sup> ACCUSED**

**SENTENCE**

**1. JOEL MAEBA ONSATI and CHARLES MAKORI ONTONYI** were charged with the offence of murder which was, by a plea bargain agreement executed on 7<sup>th</sup> November 2016, between the state and the accused reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**. The particulars of the offence were that on the night of 17<sup>th</sup> and 18<sup>th</sup> February 2014, at unknown time at Bonyangatanyi sub-location in Kisii Central District within Kisii County, jointly with others not before the court caused the death of WIDEN MAEBA NYAATA.

2. Both the accused persons pleaded guilty to the lesser charge of manslaughter and were subsequently convicted on their own plea of guilty.

3. The circumstances surrounding the case were that the accused persons and the deceased went on a drinking spree on the material night only for the body of the deceased to be found lying dead on the wayside and at the same spot, the 2<sup>nd</sup> accused herein Joel Maeba was deep asleep next to the body of the deceased.

4. A post mortem examination on the body of the deceased revealed that the cause of death was cardio-respiratory arrest secondary to asphyxia due to strangulation.

5. In mitigation, Mr. Sagwe advocate for the accused submitted that the offence occurred when the accused persons were in a drunken stupor and that while the 2<sup>nd</sup> accused was an elderly man aged 64 years, the 4<sup>th</sup> accused was a very young man aged 24 years. Mr. Sagwe pleaded for leniency on behalf of the accused persons.

6. The court called for the probation officer's report before judgment which was however not filed as at the time of delivering this sentence.

7. I have considered the circumstances surrounding this case and the mitigation tendered by the accuseds' advocate. It is very clear to me that the deceased and accused persons were totally drunk on the night of the offence to the extent that the 2<sup>nd</sup> accused was found fast asleep next to the deceased's body. To my mind, the offence can be attributed to drunkenness and this case is a classic demonstration of the harmful and devastating effects of alcoholism in the society.

8. I note that the accused persons have been in custody since 201 and I am satisfied that they have sobered up during their long stay in remand custody and learnt a lesson on how to be law-abiding citizens. I am satisfied that a non-custodial sentence will be appropriate punishment for the accused persons.

9. Consequently, I sentence both accused JOEL MAEBA ONSATI and CHARLES MAKORI ONTONYI two years probation during which period they will be supervised by the probation officer of their area.

Delivered, dated and signed in at Kisii on **28<sup>th</sup> of November**, 2016.

**W.A. OKWANY**

**JUDGE**

**In the presence of:**

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