



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 26 OF 2013**

REPUBLIC.....PROSECUTOR

**VERUSS**

M O.....ACCUSED

**SENTENCING**

1. This is a case of manslaughter- through plea bargaining agreement, under S.137A of the Criminal Procedure Code entered into on 20<sup>th</sup> November, 2014. The accused was initially charged with murder contrary to Section 203 as read with 204 of the Penal Code. The particulars were that on the 7<sup>th</sup> day of March, 2013 at Bomanyama sublocation in Gucha south District within Kisii County, murdered O M O.

2. At 7.30p.m. G K, S O O, T M R and P O, and the accused, while in their house ready to take supper, the deceased stormed in with a panga and threatened the father. The accused intervened to rescue his father. The deceased turned to the accused. He managed to take the panga and cut the deceased on the neck. He ran away with a panga into darkness. The deceased attempted to follow him but collapsed and succumbed to his injuries.

3. The accused has no previous criminal records and so he be treated as first offender.

4. Mr. H. Kaburi in mitigation says the accused is remorseful and regrets the incident which was accidental in nature. From the facts, the accused was defending his father that was under attack from his elder brother. He- the accused- had no intention to injure the deceased.

5. The other surviving brother has also since died, leaving the accused as the only surviving brother in the family with very aged parents. Since being in custody from 2013 in March, he is praying for compassion and for non-custodial sentence. He is 16 years old. He is a child offender but this was not noticed by the court. He prays for the court to consider non-custodial sentence.

**6. Probation officer's report.**

This was file don 10<sup>th</sup> January, 2015. The accused is a child offender. He killed his brother in both defence of his father and self-defence. His deceased brother ran for a panga in order to hurt his brother who was stopping the deceased beating his elderly father. The accused restled a panga from the deceased and hit him with it. He succumbed to the injuries. He is survived along with an eldest brother who is unmarried but a habitual drunk. The father says the accused is an organized person and has never been involved in anti-social activities, so did the local administration's position that the accused has no bad record.

7. Accordingly, the accused- convict is hereby sentenced to one year non-custodial sentence under the supervision of the probation officers.

8. It is so ordered.

Dated and delivered at KISII this 20<sup>th</sup> day of March, 2015.

**C.B. NAGILLAH,**

**JUDGE.**

**In the presence of:**

Otieno for the state

Nyawencha for the accused

Edwin Mongare Court Clerk.