



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 125 OF 2012

STATE.....PROSECUTOR

VERSUS

ISAIAH OGOTI KIMARI.....ACCUSED

SENTENCING

1. This is a case of manslaughter- through the plea bargaining agreement under S.137A of the Criminal Procedure Code entered into on 5th February, 2015. The facts briefly are that on 30th September, 2012 at around 10.30p.m. at Amabuko village in Kisii Masaba North District within Nyamira County, jointly with others not before court murdered John Mogere Orangi. The accused, Isaiah Ogoti Kimari together with the deceased, John Mogere and another had a common intention of committing a felony, i.e. the theft of an electricity pole belonging to Kenya Power & Lighting Company.
2. They were carrying the electricity pole from Amabuko primary school and heading towards the accused's homestead. As they were walking, carrying the pole, Julius Orangi who was in front from where he was holding the pole, shouted that the pole was too heavy and requested that it be put down. The other two persons threw down the pole as a result, it hit the deceased on the head. He fell down and the pole rolled towards him. He succumbed to his injuries.
3. According to the prosecutor, the accused has no previous convictions. He is therefore, treated as a first offender.
4. In mitigation, his counsel, Anyona, says the accused is remorseful over the incident which led to the loss of life.
5. The facts read to the court indicate, the accused and others, not before the court, had no common intention of killing the accused. Upon the occurrence of this incident, the accused did not run away, he surrendered himself to the authority and subsequently charged with murder.
6. Considering the circumstances of this case, the accused had no intention of causing death. He was charged in 2012 been in custody for about three years. He urged the court to consider a lenient sentence.
7. The probation officer's report.

The accused is 51 years old. He is married and has seven (7) children. The younger children are still toddlers. The offender is said to be a responsible and hardworking man who had not exhibited criminal traits before. But he habitually drinks.

His family expressed their willingness to receive the accused and assist in his rehabilitation plan. In the other words his family are receptive of him. The community at large have no objection if the offender is given non-custodial sentence. The area chief Kennedy Ngege is also receptive and welcomes the accused

person to be given non-custodial sentence.

8. Accordingly, the convict is hereby sentenced to one year non-custodial sentence at his home under the supervision of the probation officers.

9. It is so ordered.

Dated and delivered at Kisii this 20th day of March, 2015

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Otieno for the state

Kaburi holding brief for Anyona for the accused

Edwin Mongare Court Clerk.