



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.1 OF 2011

REPUBLIC
VERSUS
JOEL OMBACHO KIRAIGO.....ACCUSED

SENTENCING

1. The accused person **Joel Ombacho Kiriago** was charged with manslaughter contrary to **Section 202** as read with **205 of the Penal Code**. He pleaded guilty to this charge through the process of plea bargaining.

The particulars thereof were that on 28th day of May 2004 at Nyansore Sub-location in Gucha District within Nyanza Province (*as it was then*) caused the death of **Edward Moseti**.

2. The accused admits that he committed the said offence and agrees that the facts in the statements as true.

3. Brief facts of the case are that on 28th day of 2004 at 2.00 p.m., the deceased herein, Edward Moseti Otero, confronted the accused over the grass used for thatching which the deceased felt should not have been cut. It is at this point that the accused who was holding a panga which he had using to cut the grass cut the deceased on the left hand. The deceased was rushed to Kisii District Hospital where he succumbed to his injuries. The accused was subsequently arrested and charged for murder. The post-mortem on the body on 4th June 2004, revealed cardio pulmonary arrest, following massive haemorrhage.

4. In mitigation, the accused says:

1. **He is remorseful**
2. **At the time of his arrest he was married with one child.**
3. **He was a sole bread winner**
4. **He has been in custody for now 11 years**
5. **He was initially convicted but the conviction was quashed by the court of appeal, and the**

trial ordered to start afresh.

6. He urges the court to treat him as having suffered enough and now reformed.

7. Wants the court to give him non-custodial sentence.

8. He undertakes to make peace with the deceased's family

9. He undertakes to be a law abiding citizen to respect every member of society while out of custody.

10. He will seek to be a God fearing person through his church.

11. He will seek baptism to be full fledged member of the Christian church.

5. Accordingly, in view of the fact that the accused has been in custody for now 11 years and in view of his mitigation, this court releases the accused person, Joel Ombacho Kiringo, to serve 1 year non-custodial sentence under the supervision of the Probation Officer of the area.

6. It is so ordered.

Dated, signed and delivered in open court this 31st day of July 2015

HON. C. B. NAGILLAH

JUDGE.

In the presence of:

- Sepele for State
- M/S Sagwe holding brief for M/S Omwega for accused
- Samuel Omuga: court clerk