



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 45 OF 2014

REPUBLICPROSECUTOR

VERSUS

CHARLES ONGENI OKEMWA alias DAVID.....ACCUSED

SENTENCE

- 1) The accused person herein **CHARLES ONGENI OKEMWA**, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**.
- 2) By a plea bargain agreement entered into on the 17th July 2015 between the accused person and the state, the said charge was reduced to **manslaughter contrary to Section 202** as read with **Section 205 of the Penal Code**.
- 3) The particulars of the charge were that on 27th March 2014 at Nyachogochogo village, Kegogi Sub-location in Nyamira North District within Nyamira County unlawfully caused the death of **DUKE NYABUTI OKEMWA**.
- 4) The accused person pleaded guilty to the said charge and was consequently convicted on his own plea of guilty.
- 5) The facts leading to the commission of the offence were that on 27th March 2014, the accused arrived at his home and found his younger brother (the deceased herein), quarrelling with his wife. The deceased started abusing the accused and a fight ensued leading to the accused stabbing the deceased in the stomach and thus killing him instantly.
- 6) A post mortem report produced in court as exhibit established the cause of death as cardio-pulmonary arrest due to deep stab wound to the right kidney.
- 7) In mitigation, Mr. Ondari, counsel for the accused submitted that the accused was a family man with 2 wives and 7 children who all depend on him. Mr. Ondari added that the accused acted in self-defense and was remorseful for his actions. He pleaded that the accused be given a non-custodial sentence to enable him fend for his family.
- 8) A pre-sentence and victim impact assessment report was sought for by the court before sentencing and the same was filed on 23rd September 2015. The said report reveals that the accused's family and community at large have no objection to him being released back to the society on a non-custodial

sentence as they have forgiven him. According to the Probation Officer's report, even the victim's (*deceased's*) wife has forgiven the accused and she is sympathetic to the accused's children who have suffered a great deal since his incarceration.

9) I have taken into account the circumstances under which the offence was committed. The deceased and accused were involved in a heated quarrel which led to a fight which would have resulted to either of them getting hurt or killed as was the case. I note that the accused person, used excessive force, to wit, a knife to stab his own brother which action he deeply regrets.

10) I have taken into account that the accused's family together with the victim's family have forgiven him and further the fact that he has young children to take care of. I have further taken into account the fact that the accused has been in custody since March 2014 and that the period of incarceration is adequate lesson to him to tame his anger and reflect on his life and that of his family.

11) Accordingly, I sentence the accused person herein, **CHARLES ONGENI OKEMWA** to two (2) years non-custodial sentence during which he will be closely supervised by the probation officer of his area.

12) It is so ordered.

Signed, Dated and Delivered on this **28th** day of **October, 2015**.

HON. W. A. OKWANY

JUDGE

In the Presence of:

- Mr. Boiyon for State
- Mr. Kaburi for Ondari for Accused
- Omuga:

Court

clerk