



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CRIMINAL CASE NO.98 OF 2013
REPUBLIC.....PROSECUTOR
VERSUS
JOSEPHAT MBOGA MOMANYI.....ACCUSED
SENTENCE

1. The accused person herein **JOSEPHAT MBUGA MOMANYI**, 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 3rd August 2013 at Kiagware Sub-location in Gucha South District within Kisii County in the Republic of Kenya, unlawfully caused the death of **DANIEL MOMANYI OBURE**.
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 pleaded to were that on 16th June 2013 the accused had an argument with his father **DANIEL MOMANYI**- deceased. In the middle of the argument, the accused started beating the deceased and then went to his house, took a panga and cut the deceased on the head and the leg before fleeing. The deceased was rushed to hospital on the same day but succumbed to his injuries on 3rd August 2013.
6. A post mortem report produced in court as exhibit 1 established the cause of death as cardio-pulmonary arrest following septemia due to bed sores.
7. In mitigation, Mr. Bigogo, counsel for the accused submitted that the accused was a young man aged 27 years and was married with 2 children aged 4 years and 2 years. He added that the accused was remorseful for killing his own father and was willing to reconcile with his family and further, that his children were left destitute after his wife deserted his home after the incident thereby leaving the children in the care of his aged mother. Mr. Bigogo pleaded for a non-custodial sentence so that the accused could take care of his young children.

8. The pre-sentence and victim impact report filed in court on the 24th September 2015 revealed that both the accused and the deceased were drunk at the time of the offence and the accused's family and community were willing to forgive him and accept him back to their midst as he was a first offender who was not a security threat to them.

9. I have taken into account the circumstances surrounding this case, the accused's mitigation and the Probation Officer's report. I have also taken into account that the accused has been in custody since August 2013 when the offence was committed. The accused inflicted serious injuries on his own father that led to his slow and painful death almost two months after the attack. While the accused is still a fairly young man who can be useful in the society and his family if he changes his wayward character, the crime he committed was so bizarre and barbaric that it should not go unpunished in order to deter others who lack respect for their own parents and for human life.

10. Accordingly I sentence the accused person herein **JOSEPHAT MBOGA MOMANYI** to five (5) **years imprisonment** to be back-dated to run from the date of his first court appearance being 27th August, 2013.

11. It is so ordered.

Signed, Dated and Delivered in open court this **28th day of October, 2015.**

HON. W. A. OKWANY

JUDGE

In the Presence of:

Mr. Boyon for the State

Mr. Kaburi for Bigogo for the Accused

Omuga: Court clerk