



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL CASE NO. 64 OF 2012**  
**REPUBLIC .....PROSECUTOR**  
**VERSUS**  
**EZEKIEL OTACHI AKEYA.....ACCUSED**  
**SENTENCE**

1. The accused person herein **EZEKIEL OTACHI AKEYA**, 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 16<sup>th</sup> 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 13<sup>th</sup> April 2012 at Nyangusu Sub-location in Nyamache District within Kisii County in the Republic of Kenya unlawfully caused the death of **DOUGLAS MOGUSU AKEYA**.
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 13<sup>th</sup> April 2012, the deceased picked a quarrel with his brother, the accused, over water that they were using to bake bricks. The deceased ran into the house and armed himself with a spear which he threw at the accused, and it missed him. The accused in retaliation picked up the same spear and threw it back at the deceased piercing him on his left upper side and injuring him fatally.
6. A post mortem report determined the cause of death as cardio-respiratory arrest due to internal haemorrhage.
7. In mitigation, Mr. Bigogo, counsel for the accused submitted that the accused was remorseful over the death of his own brother and that it was the deceased who provoked the accused by attacking him with a spear. He stated that the accused was a family man with three young children who still needed his care and protection.
8. The court ordered for pre-sentence and victim impact report which was filed on 24<sup>th</sup> September 2015 which report states that the accused's family and community at large had no objection to his being released back to the society so that he could take care of his young children who had been abandoned by his wife who left the matrimonial home following the accused's arrest.

9. I have considered the circumstances under which the offence was committed. The deceased threw the first salvo at the accused who retaliated by returning the same weapon back to the deceased. Clearly, the deceased was felled by his own spear which he had intended to use to hurt and probably kill the accused. The accused's actions were, however, not justifiable as he could have avoided the confrontation through other ways other than using the same brutal force that the deceased used on him. I note that the actions of the accused were ignited by his quest for revenge, due to the breakdown in family values and lack of respect for human life.
10. I am however certain that the three year stint that the accused has had in custody is adequate lesson to him to keep off violence and crime.
11. Accordingly, I sentence the accused person herein **EZEKIEL OTACHI ATEYA** to two (2) years non-custodial sentence. He will, during this period be supervised by the Probation Officer of his area.
12. It is so ordered.

**Signed, Dated and Delivered** on this 27<sup>th</sup> day of October, 2015

**HON. W. A. OKWANY**

**JUDGE**

**In the presence of:**

- Mr. Majale for the State
- Mr. Bigogo for the Accused
- Omuga: court clerk