



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO.69 OF 2013

REPUBLIC

VERSUS

VASTIC MOGENI MAUTIA1ST ACCUSED

ERICK MASIGARI KIRERA 2ND ACCUSED

GILBERT NYANSERA MASIUGE.....3RD ACCUSED

SENTENCE

1. The accused persons herein **VASTIC MOGENI MAUTIA, ERICK MASIGARI KIRERA** and **GILBERT NYANSERA MASIUGE** were initially charged with the offence of **Murder** which was, by a plea bargain agreement entered into on 15th July 2015 reduced to **manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.**

The particulars of the charge was that on 4th June 2013 at Nyankoba Location in Masaba North District within Nyamira County in the Republic of Kenya, jointly with others not before the court, unlawfully caused the death of **GEOFFREY NYACHWAYA OBWOGE.**

2. The accused persons were convicted of the charge of manslaughter on their own plea of guilty.
3. The circumstances surrounding the incident were that one NYABUTI MANDERA, a suspect who is currently still at large informed the three accused persons that the deceased had defiled his 3 year old daughter thereby prompting the accused persons to descend upon the deceased with all manner of weapons which caused him fatal injuries.
4. In mitigation, Mr. Okenye, counsel for all the three accused persons stated that the accused were young men aged 22 years, 23 years and 25 years respectively. According to Mr. Okenye, the accused persons merely wanted to arrest the deceased following the defilement allegations when a fight broke out that led to the death of the deceased. He pleaded for leniency on behalf of the accused while stating that they were remorseful for the offence.
5. The Probation Officer's pre-sentence and victim impact assessment report was favourable to the 3 accused persons as the officer recommended that they were all suitable for non-custodial sentence.
6. In respect to the 2nd accused, ERICK MASIGARI KIRERA, the Probation Officer noted that he

was a repeat offender having been incarcerated at Shikusa Borstal Institution for 3 years. However, the Probation Officer was still of the view that he would benefit from a non-custodial sentence.

7. I have taken into account the circumstances surrounding the commission of the offence in question. I have further perused the Probation Officer's pre-sentence reports in relation to all the accused persons and taken note of the fact that in all the instances, the accused's families, community and the victim's family are not averse to them being granted non-custodial sentence.
8. I have also specifically noted that the accused persons are young men who can still be rehabilitated and be useful to the society. In the end, I sentence each accused person herein to serve **2 years non custodial sentence** under the supervision and guidance of the Probation Officers of their area.
9. It is so ordered.

Dated, signed and delivered in open court this 27th day of October, 2015

HON. W. OKWANY

JUDGE

In the presence of:

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