



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.103 OF 2012

REPUBLIC

VERSUS

PASCAL ONDIEKI AMENYA - ACCUSED

SENTENCE

1. The accused person herein, **PASCAL ONDIEKI AMENYA** was charged with the offence of **Murder** which was, by a plea bargain agreement entered into on 21st July 2015 reduced to **Manslaughter contrary to Section 202** as read with **Section 205 of the Penal Code**.

The particulars of the charge were that on 2nd August 2012 at Suguta village, Ramasha Location in Masaba South District within Kisii County unlawfully caused the death of **BONIFACE AMENYA**.

2. The accused pleaded guilty to the charge of manslaughter and was consequently convicted of the said offence.

3. The accused person herein and the deceased were brothers.

4. The incident took place when the two brothers picked up a quarrel which degenerated into a bitter argument that led to both of them picking up arms. The deceased was armed with a panga while the accused person had a knife. The two engaged in a physical confrontation in which the deceased slashed the accused on the head with a panga while the accused retaliated by stabbing the deceased severally on the stomach, neck, throat and head. The deceased fell down and bled to death.

5. In mitigation, Mr. Morache, counsel for the accused submitted that the accused was a first offender, he was remorseful and acted in self defence after the deceased attacked him with a panga.

6. He pleaded for a non-custodial sentence taking into account the long stint the accused had stayed in custody while awaiting his trial.

7. The Probation Officer's pre-sentencing and victim impact assessment report filed in court on 24th September 2015 was favourable to the accused person. The Probation Officer recommended that the accused be given a non-custodial sentence in view of the fact that the accused was remorseful and his immediate family members and community were ready to welcome him back home.

8. I have taken into account the fact that the accused has been in custody since August 2012 which is more than 3 years now.

9. I have also considered the circumstances surrounding this case and the fact that the accused acted in self defence when the deceased attacked him with a lethal weapon, to wit, a panga and in fact, slashed him on the head.

10. In view of the above, I sentence the accused person to serve 1 year Probation term during which period, he will be supervised by the Probation Officer of his area.

11. It is so ordered.

Dated, signed and delivered in open court this 24th day of November, 2015

HON. W. OKWANY

JUDGE

In the presence of:

- Otieno for the State
- Kaburi for Moracha for the Accused
- Ogega: court clerk