



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.126 OF 2013

REPUBLIC-----PROSECUTOR

VERSUS

DENNIS MORIMI ONCHIEKU-----ACCUSED

SENTENCE

1. The accused herein **DENNIS MORINI ONCHIEKU** was initially charged with the offence of **Murder** contrary to **Section 204** as read with **Section 204 of the Penal Code**.

By a plea bargain agreement made between the State and the accused on 15th July 2015, the said charge was reduced to that of **Manslaughter** contrary to **Section 202** as read with **Section 205 of the Penal Code**.

2. The particulars of the charge are that on 15th November 2012, at Muma Sub-Location in Gucha South District within Kisii County, unlawfully cause the death of **JUSTINE ONSASE ONCHIEKU**.

3. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.

4. The deceased and accused were brothers being sons of different mothers but one father. On the fateful day (15th November 2012), the accused quarreled with the mother of the deceased during the day and in the evening when the deceased came back and learnt of the quarrel, he decided to confront the accused who was already in his house.

5. A physical fight ensued in which the accused stabbed the deceased on the back and as a result, the deceased succumbed to the injuries the following day.

6. The post mortem examination conducted on the body of the deceased established the cause of death to be hypoleintrinsic shock due to penetrating abdominal injury.

7. Mr. Bigogo, advocate for the accused mitigated on his behalf stating that he was a young man aged only 25 years with a young family who needed his support.

8. The pre-sentence and victim impact assesment report filed by the Probation Officer on 23rd October 2015 did not give a very impressive picture of the situation back at the home of the accused. The report shows that the family and community of the accused are still a very bitter and hostile lot who are not ready to have him back in their midst. The report shows that the accused's mother had in fact been ex-communicated from her matrimonial home and was forced to go back to her parent's home.

9. The Probation Officer feared for the accused's safety if he was released back to the society as his relatives back at home are still hostile.

10. I have taken into account the circumstances surrounding the case. I note that it was the deceased who went to confront the accused in his house following an already resolved quarrel that the accused had with his (deceased's) mother during the day.

11. The facts presented before the court by the prosecution was not clear on what exactly transpired between the accused and the deceased, while in the accused's house that led to the stabbing of the deceased.

12. Needless to say, the crime was violent and an innocent life was lost in the process. I have taken into account the youthful age of the accused and the fact that he is very remorseful for his actions, which have resulted in his mother being ostracized by her husband's family, the victim's mother is also the co-wife to the accused's mother and therefore, one cannot rule out the fact that this has heightened the bitterness between the two families.

13. I note that in this case, the court must exercise the delicate balance of punishing the offender for his crime while bearing in mind the feelings and sentiments of the victim's family.

14. The bottom line however, is that an innocent life was lost due to the reckless actions of the accused. I also note that the accused has been in custody since November 2013.

15. Accordingly, I hereby sentence the accused herein **DENNIS MORINI ONCHIEKU** to **5 years imprisonment** which sentence period will run from the date of his first appearance in court being 19th November 2013.

16. It is so ordered.

Dated, signed and delivered in open court this 17th day of November, 2015

HON. W. OKWANY

JUDGE

In the presence of:

- Mr. Mbelete for the State
- N/A for the Accused
- Mr. Ogega: court clerk