



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO.79 OF 2012**

**REPUBLIC.....APPLICANT**

**VERSUS**

**AUGOSTINO KIROCHI.....RESPONDENT**

**SENTENCE**

1. The accused person herein, **AUGOSTINO KIROCHI**, on 16<sup>th</sup> July 2015 pleaded guilty to a lesser charge of **manslaughter** after a plea bargain agreement.

The particulars of the charge were that on 7<sup>th</sup> May 2012 at Nyansara village, Sengera Location within Kisii County in the Republic of Kenya, unlawfully caused the death of **BENSON MONARI KIROCHI**.

2. The deceased in this case was the son of the accused person herein.

3. The incident took place in the accused's home when the accused confronted the deceased when armed with a panga and accused the deceased of having stolen his fertilizer. No sooner had the deceased responded to the accused's allegation of theft than the accused cut him violently with a panga thereby injuring him fatally.

4. In mitigation, Mr. Kaburi advocate for the accused submitted that the accused was remorseful for killing his own son and blamed anger for his heinous deeds. He submitted that the accused has been in custody for over three years awaiting his trial and pleaded for a non-custodial sentence.

5. The Probation Officer's pre-sentence and victim impact assessment report filed on 6<sup>th</sup> October 2015 recommended the non-custodial sentence for the accused taking into account the fact that the accused is fairly old man of 62 years, and his family and community had already forgiven him and were willing to accept him back to their midst.

6. I have taken into account the mitigation of the accused, the Probation Officer's report and the circumstances surrounding this case. I note that this offence was precipitated by the total breakdown in family and society values that upheld the peaceful resolution of disputes. The accused person in this case lost his cool and hacked his own unarmed son to death in an extremely violent manner. I am satisfied that the more than 3 years that he has been in custody is adequate lesson to him to manage his anger and lead a respectable life befitting a man of his age.

7. Consequently, I hereby sentence the accused to 2 years non-custodial sentence during which period he will be closely supervised by the Probation Officer of his area.

8. It is so ordered.

**Dated, signed and delivered in open court this 16<sup>th</sup> day of November, 2015**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

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