



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.133 OF 2012**

REPUBLIC - - - - - PROSECUTOR

VERSUS

KENNEDY MATIBA OKETCH - - ACCUSED

**SENTENCE**

1. The accused herein **KENNEDY MATIBA OKETCH** was charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code** which was by a plea bargain agreement entered into between the State and the said accused on 25<sup>th</sup> May 2015 reduced to manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code**.
2. The particulars of the charge are that on 19<sup>th</sup> October 2012 at Moita Location in Transmara District within Narok County unlawfully caused the death of **EZEKIEL OKETCH**.
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 the accused were father and son respectively.
5. The brief facts of the case are that on 19<sup>th</sup> October 2012 at about 1.00 p.m., the deceased went to the accused's house where a disagreement arose over the payment of school fees of the accused's younger brother called PIWA OKETCH. In the course of the argument between the deceased and the accused, the deceased hit the accused on the head with his hand and in a lot of anger, and in retaliation the accused got hold of a panga and cut the deceased on the head thereby inflicting injury and eventually caused his death later that same day.
6. A post-mortem examination of the body established the cause of death as cardio-respiratory arrest secondary to shock after excessive blood loss, and brain injury due to assault.
7. In mitigation, Mr. Mosei for the accused submitted that the accused was very remorseful and deeply regretted his actions. The accused pleaded for leniency and forgiveness from the court and his family. Mr. Mosei added that the accused was married with one child aged 4 years and that he was the sole breadwinner for his family who have suffered a great deal during his incarceration.
8. The pre-sentence and victim impact assessment report filed by the Probation Officer recommended that the accused was suitable for a non-custodial sentence. The report revealed that the deceased was a drunkard and he is the one, who in his drunken state, provoked the accused who was in his own house thereby igniting the physical confrontation that led to his accidental

death. The Probation Officer added the family of the accused and his community had forgiven him and were willing to accept him back in their midst if he was given a non-custodial sentence.

9. I have considered the circumstances under which the offence was committed, the mitigation tendered by Mr. Moseti counsel for the accused and the recommendations made by the Probation Officer. I note that even though the accused could have been provoked by the deceased, he used excessive and brutal force against his own father.

10. I however, note that the 3 year period that the accused has stayed in custody awaiting his trial will serve as sufficient lesson to him to tame his anger.

11. Accordingly, I sentence the accused herein **KENNEDY MATIBA OKETCH** to 3 years probation. He will be supervised by the Probation Officer of his area during the said probation period.

**Dated, signed and delivered in open court this 11<sup>th</sup> day of December 2015**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Imbali for the State
- Moseti for the Accused
- Ogega: court clerk