



REPUBLIC OF KENYA

High Court at Kisumu

Criminal Case 11 of 2012

ORIGINAL

REPUBLIC.....RESPONDENT

VERSUS

SIMON OUMA ABUOGA.....ACCUSED

J U D G M E N T

The accused person herein had earlier on been charged with the offence of murder. Afterwards he entered into a plea bargain with the prosecution and the charge reduced to manslaughter.

The particulars are that on the 16<sup>th</sup> February 2012 at Ligala sub location, Ugenya district within Nyanza province unlawfully killed one **Stephen Ochieng Mkungu**.

The facts as stated by the learned state counsel are that on the material day both deceased and the accused were drinking illicit brew at accused household. A quarrel ensued and the accused hit the deceased on the head resulting into nose bleeding.

The accused took the deceased to Got Nanga clinic where he was treated and discharged. Both the accused and the deceased walked back home. Unfortunately the deceased succumbed to the injuries and was found dead the following morning.

The post mortem report exhibit 1 shows that the deceased died as a result of internal bleeding.

While mitigating, the defence counsel conceded to the facts and argued that the deceased was remorseful and that his judgment must have been impaired by the intoxicants they were taking.

I did order for a bio-data report of the accused which was filed on 23-11-2012 by the probation officer. The same was favourable to the accused.

Having heard the facts that caused the death of the deceased and the circumstances obtaining at that time. I do not find any malice aforethought. Both the accused and the deceased appeared intoxicated and

although there is no evidence as to the cause of the quarrel their judgments seemed to have been impaired.

The actions taken by the accused of taking the deceased to the hospital and bringing him back does suggest an element of remorse and good faith.

For the foregoing reason I do acquit the accused person and hope that the period he has served in custody of one year or thereabouts has helped him reconcile to himself and his God.

The accused is thus set free unless lawfully held.

**Dated, signed and delivered at Kisumu this 13<sup>th</sup> day of March 2013.**

**H.K. CHEMITEI**

**JUDGE**

In the presence of:

Sang for state

.....for appellant

*HKC/va*