

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

CRIMINAL CASE NO. 7 OF 2007

REPUBLIC PROSECUTOR

VERSUS

C O W ACCUSED

SENTENCE

The accused, C O W, was on 12th November 2007 convicted of the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code, Cap 63, on his own plea of guilty in this case. The particulars of the charge are:

“C O W: On the 16th day of October, 2006 at Dudi market, Dudi sub-location, Kisa West Location in Butere-Mumias District within the Western Province, caused the death of KEVIN OTIENO by an unlawful means.”

The facts giving rise to the offence which the accused admitted show that on 16th October 2006 at 8 p.m. the accused and the deceased, KEVIN OTIENO, were watching Television in Dudi market in the house of one Odhiambo when an argument ensued over a TV programme which resulted in the deceased slapping the accused. The accused got angry and held the deceased but they were separated by their host, Mr. Odhiambo. When the accused left the house, the deceased followed him and a scuffle ensued outside Mr. Odhiambo’s house between the deceased and the accused. In the process the accused stabbed the deceased with a knife in the chest and walked away. The deceased collapsed and died. A report was made in Dudi Police station which carried out investigations. Postmortem on the body of the deceased was carried out by Dr. Kowunga. He found that the cause of death was bleeding from the left lung into the chest cavity. A post mortem report was produced as an exhibit to prove the cause of death.

The accused was examined by Dr. Adabi and found to be fit to stand trial. A P3 form was produced as exhibit No.2.

Mrs. Shinyada, learned counsel for the accused, pleaded for a lenient sentence on his behalf and pointed out that the accused had pleaded guilty and was a first offender who was a minor aged 15 years. In October 2006 when he committed the offence, the accused was in Form I. Mrs. Shinyada told the court that the accused wished to continue with school. He has been in custody for one year and has learnt his lesson, said Mrs. Shinyada. The offence was blamed on his temper which Mrs. Shinyada said the Accused was working on with a view to rein it in.

I have considered these mitigating factors in considering sentence. In particular, I have considered the fact that the accused is a minor who pleaded guilty and is remorseful. I have also taken into account the circumstances in which the offence was committed and the fact that the accused was not the aggressor. He was walking away when the deceased pursued him and caught up with him. The presence of the knife was not explained by the prosecution or the defence and it remains a mystery. Admittedly, the accused has a bad temper which he says, through his counsel, he is going to work on. The altercation between the deceased and the accused outside the house of Mr. Odhiambo did not have to end tragically. The accused’s temper, the knife and the deceased’s bellicose or pugnacious attitude contributed to it. Having regard to these mitigating factors, I think the accused who is a minor and has been in custody for a year should be given another chance at life to help him rectify his ways with a view to developing into a better and more useful member of the society. For this reason, I sentence the accused to serve a period of three

years probation. A probation report shall be filed by 5th February 2008.

Delivered at Kakamega 15th day of November, 2007.

G. B. M. KARIUKI

J U D G E