



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**Criminal Case 16 of 2005**

**REPUBLIC:.....PROSECUTOR**

**VERSUS**

**ABRAHAM ENOI HASSAN:.....ACCUSED**

**JUDGEMENT**

The accused, Abraham Ewoi Hassan was charged in this court on 23<sup>rd</sup> February,2005 with murder contrary to section 203 as read together with section 204 of the Penal Code. He was accused of murdering one Silas Oremo Esuba on 19<sup>th</sup> January,2005 at Chemororoch village, Tarakwa Location, Soy in Uasin Gishu District.

On the 9<sup>th</sup> November,2006, the Prosecution applied for substitution of the offence of murder with that of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The new charge was read to the accused and he pleaded guilty to the same. The facts were read out to him and he accepted them to be true and correct. This court then convicted him of the offence of manslaughter.

The facts are that on the 19<sup>th</sup> January,2005, the accused was at Chemororoch village in Tarakwa Location, Uasin Gishu. At about 7p.m, the accused picked a quarrel with one David Etyang. This culminated in a fight between the accused and the said David Etyang. David then fled to his uncle's house, Daniel Esuba.

The deceased heard the commotion and went out to find what was happening. He was a cousin to David Etyang and the son of Daniel Esuba. Another quarrel ensued between the accused and the deceased. This led to a fight breaking out. In the course of this fight the accused stabbed the deceased with a knife. The deceased bled profusely. He soon died due to the injury and excessive bleeding. The post-mortem report showed that the deceased died as a result of a stab wound of the left shoulder with severance of the subclavicular artery and vein. There was excessive external hemorrhage.

I have considered the facts of the case and the submissions in mitigation presented by the accused counsel. It was submitted that the accused was under the influence of excessive alcohol at the time of the incident.

I have considered that what took place was an ordinary quarrel which led to a fight. There was no justification for the use of a knife. It cannot be said that the accused's life was in danger. From the facts, there is no particular allegation that the deceased provoked the accused. The injuries were severe demonstrating that the accused used great force. There was certainly unnecessary force using a dangerous weapon in circumstances.

The accused was wreckless and severed the shoulder artery and vein of the deceased. He did not care as to the extent of injury that could be sustained by the deceased. The alleged excessive use of alcohol did not justify the accused's conduct.

Considering all the said facts, the mitigation and the age of the accused and taking into account that the

life of an innocent human being was taken away due to the accused's rage and unjustified use of the knife, I think that this court must mete out a sentence that will deter the accused from being a danger to the members of his community and the society in general. A custodial sentence is appropriate.

Having taken into account the period the accused has been in custody since he was arrested, charged and the period from then up to date, I do hereby sentence him to imprisonment for a period of four (4) years.

Orders accordingly.

The Accused has a right of Appeal which may be exercised within FOURTEEN (14) DAYS from the date hereof.

DATED AND DELIVERED AT ELDORET ON THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2006.

**M.K.IBRAHIM**

**JUDGE**

**FURTHER ORDER**

Certified copies of the Judgement to be supplied.