

IN THE HIGH COURT OF KENYA AT KISII

(CORAM: D.S. MAJANJA J.)

CRIMINAL CASE NO. 22 OF 2018

CONSOLIDATED WITH

CRIMINAL CASE NO. 23 OF 2018

BETWEEN

REPUBLIC.....PROSECUTOR

AND

HENRY NYABUTO NYAGOSIA alias ELIKANA1ST ACCUSED

JACKSON ONAMI OMWOYO2ND ACCUSED

RULING ON SENTENCE

1. On 20th May 2019, I convicted **HENRY NYABUTO NYANGOSIA alias ELIKANA** and **JACKSON ONAMI OMWOYO** (“the accused”) for the offence of manslaughter for the unlawful killing of **DAVID NYABUTO** (“the deceased”). **The accused were involved in what is normally referred to as “mob justice”.**
2. Prior to sentencing I directed that Probation Service prepare a Pre-sentence review report for consideration by the court. According to the report both accused are married with children. They support their respective families and are well regarded members of the society. They are also related to the deceased. They are both remorseful and claim that they were involved in the incident as a result of mob psychology. Jackson Omwoyo is aged 59 years while Henry Nyabuto is 34 years old.
3. According to the report, the families of the accused and deceased were involved in reconciliation efforts. Indeed, there was an indication that all the deceased’s widow wanted was peace and harmony restored between the families. The prosecutor informed that court that the widow was reluctant to appear in court. The Probation Officer recommended that the accused be released on probation.
4. Counsel for the accused, supported the contents of the report and reiterated that the accused were remorseful and were asking the court for leniency and a non-custodial sentence. He emphasized that the families were already involved in reconciliation activities. He pointed out that the families of the accused would suffer if they were incarcerated.
5. The Pre-sentencing reports are positive and in favour the accused. However, this court must also consider the position of the deceased who died when the accused took the law into their own hands. This court, on his behalf and on behalf of the society, must express its disapproval and send a message that “*mob justice*” is not right. In these circumstances, I find that a custodial sentence is deserved.
6. I therefore sentence the accused, **HENRY NYABUTO NYANGOSIA alias ELIKANA** and **JACKSON ONAMI OMWOYO** to **three (3) years** imprisonment.

DATED and DELIVERED at KISII this 14th day of JUNE 2019.

D.S. MAJANJA

JUDGE

Mr Bigogo, Advocate for the 1st accused.

Mr Kaburi, Advocate for the 2nd accused.

Mr Otieno, Senior Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the State.