



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. 22 OF 2018 [MURDER]

(CORAM: HON. R.E. ABURILI - J)

BENSON OUMA ODHIAMBO.....1ST ACCUSED

FRANKLINE ODHIAMBO OYOLO.....2ND ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING ON SENTENCE

1. The Accused person **Benson Ouma Odhiambo** was charged with the offence of Murder contrary to **Section 203 as read with Section 204 of the Penal Code**.
2. He pleaded not guilty to the charge of Murder wherein he was alleged to have murdered James Ochieng Owuor on 29th September 2018 at 0030 hours at Ulumbi village, Jina sub-location within Yala Township, Gem Sub-County of Siaya County.
3. Before the trial commenced, a plea bargain agreement was reached between the accused and the State. The State reduced the Murder charge to Manslaughter to which the accused person pleaded guilty and he was convicted accordingly.
4. The accused person through his Advocate, Mr. Ochanyo holding brief for Miss Akinyi Advocate mitigated and informed the court that the accused was remorseful. He regrets killing his cousin. He is a motorcycle rider, he is an orphan and has 2 younger siblings, one in Class 5. The other is 17 years old. He has saved the court judicial time of hearing the entire case and he is aged 26 years.
5. On 19/7/2019, the Prosecution led by Mr. Okachi, Senior Principal Prosecution Counsel requested for time to file Victim Impact Statements and previous records. Today, the Probation Officer, Siaya Mr. Odumba David filed a report dated 19/7/2019 in which he reports that he interviewed the accused person's relatives and relatives of the deceased and that the accused person is not suitable for non-custodial sentence as the deceased's family who are related to him have never come to terms with the death of their son. In addition, they threaten to eliminate him should he be released on Probation.
6. The DCIO Gem also filed his Victim Impact Report today in which he echoes the sentiments of the Probation officer. He has also filed three Victim Impact Statements (unsigned) recorded from Charles Owuor Oyolo, the Area Assistant Chief of Jina sub-location stating that the society is not ready to receive the accused. He also filed the statement of Daniel Opondo, the Village elder of Ulumbi Central Unit who says that the accused will not be accommodated in the society and that he requires rehabilitation. Walter Omondi Oduor is also said to have recorded a statement urging this Court to hand the accused custodial sentence as he has a lot of grudges with members of the society hence he should be assisted in prison.
7. The Court has also considered the Probation Officer's Pre-bail Assessment Report filed on 8/11/2018 which rejected the accused person's quest for release on bail pending trial.
8. The court has considered the mitigations by the accused person and the fact that he is a first offender. The family of the deceased are justifiably better for losing their beloved son. The accused unlawfully killed his cousin and he regrets the offence.
9. Taking into account all the above and circumstances surrounding this case and offence, and the age of the accused person who pleaded guilty to the charge of Manslaughter, which attracts life imprisonment, I hereby sentence the accused person to serve 10 years imprisonment to be calculated from the date of his arrest on 1st October, 2018.

Orders Accordingly.

Dated, signed and Delivered at Siaya, this 22nd Day of July 2019.

R.E. ABURILI

JUDGE

In the presence of:

Mr. Okachi, SPPC for the State

Mr Ooro Advocate holding brief for Miss Akinyi for the Accused person

The Accused person,

Court Assistants: Brenda and Modestar