



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
HIGH COURT CRIMINAL CASE NO. 2 OF 2017
(CHILD OFFENDER)
(CORAM: J.A. MAKAU – J.)

REPUBLIC PROSECUTOR
VERSUS
FREDRICK OYALA ODUOR ACCUSED

SENTENCING

1. The Accused **FOO** was initially charged with an **offences of murder contrary to section 203 as read with 204 of the Penal Code**. That before the hearing of the murder case the prosecution reduced the charge from murder to **manslaughter contrary to section 202 as read with section 205 of the Penal Code (Chapter 63) Laws of Kenya**. The particulars of the offence are that on the 5th day of January, 2017, at 8.00 pm at Lela Village, Siriwo Sub-location within Siaya County killed one Richard Omondi Odhiambo.
2. The Child Offender was found guilty of the charge of manslaughter and upon facts being given, he admitted all facts as correct, consequently, a finding of guilty was entered against him.
3. The facts of the Prosecution case are that the Child Offender and others were heading home on 4.1.2017 after watching a football match between Manchester United and Arsenal, in which Arsenal beat Manchester 1-0, when they started arguing about the match. The Child Offender who is a fun of Manchester United had a stick, with which he tried to hit Ouma, a fun of Arsenal but Richard Omondi Odhiambo, went to shield the stick from hitting Ouma but instead was hit on the head. He fell down and was assisted by the other children, taken home from where he was taken to Yala District Hospital, then transferred to Avenue Hospital Kisumu from where he passed on 6.1.2017. Post mortem was subsequently conducted 17.1.2017 and the cause of death established as severe head injury due to blunt trauma to the head that led to intracranial bleeding (subdural and intracranial hemorrhage) The Post mortem Report was produced as P. exhibit I.
4. Meanwhile the Child Offender had on 5.1.2017 proceeded to visit the deceased but got scarred on the way, returned home sending his mother to check on the condition of his friend since they were very good friends. That his mother persuaded the Child Offender to seek refuge at his grandmother’s home at Kisumu but he declined asking his mother to take him to Yala Police Station which she did not do. On 15.1.2017, the Child Offender learned from the villagers of the death of the deceased prompting him to go to his grandmother’s home at Kisumu, and asked her to take him to Yala Police Station, which she did.
5. M/s. Odumba learned State Counsel, stated the State accepted plea bargain because the offender Child

was a friend of the deceased and secondly because the State could not prove malice aforethought. That the Child Offender had not planned to kill the deceased as the incident was accidental

6. M/s. Odumba, for the State, stated the Prosecution do not have previous record of the Child Offender and that the Child may be treated as a first Child Offender.

7. Mr. Wakla Advocate, for the Child Offender urged that the Child Offender is remorseful and regrets the death of the deceased who was his closest friend. That the death was not planned, that the death arose accidentally it was unfortunate incident. That since the incident the child did not hide but availed himself to the Police and that his action demonstrates exceptional remorse. He urged that his action further explained a traumatized person by what happened. He added the Child Offender sat his KCPE examination last year (2016) and urged that he be given a chance to reconstruct his life with having a baggage.

8. I have taken into account the circumstances surrounding the commission of the crime, that the incident was accidental and that the Child Offender is remorseful, that he cooperated with Police and even did not attempt to abscond. That his acts are exceptional remorse and that he is traumatized by his friends death. That he took his KCPE examination last year and needs to be given an opportunity to reconstruct his life. He is between 16 – 17 years old. I therefore find that the Child Offender needs to be put under Probation under the provisions of the Probation of Offenders Act.

9. The Upshot is that the Child Offender deserves non-custodial sentence as provided for under Section 190 (1) and 191 (1) of the Children Act. That as the Child Offender is above 15 years, I shall place him under Probation for a period of 3 years under the supervision of the Probation Office Siaya County.

DATED AT SIAYA THIS 20TH DAY OF JULY, 2017.

J. A. MAKAU

JUDGE

DELIVERED IN THE OPEN COURT THIS 20TH DAY OF JULY, 2017.

IN THE PRESENCE OF:

MR. WAKLA ADVOCATE FOR THE ACCUSED

M/S. ODUMBA FOR STATE

COURT ASSISTANTS:

1.L. ODHIAMBO

2.L. ATIKA

J. A. MAKAU

JUDGE