



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CRIMINAL CASE NO. 29 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOVENSIA GECHEMBA RATEMO.....1<sup>ST</sup> ACCUSED**

**JOEL MAEBA ONSATI.....2<sup>ND</sup> ACCUSED**

**GEORGE NYAKUNDI alias GUTO.....3<sup>RD</sup> ACCUSED**

**CHARLES MAKORI ONTONYI.....4<sup>TH</sup> ACCUSED**

**SENTENCE**

1. The accused persons herein, **YOVENSIA RATEMO, JOEL MAEBA ONSATI, GEORGE NYAKUNDI and CHARLES MAKORI ONTONYI** were initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. By a plea bargain agreement made on 20<sup>th</sup> January, 2016 between the accused persons and the state, the said charge was reduced to manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.

2. The particulars of the charge are that the night of 17<sup>th</sup> February, 2014 and 18<sup>th</sup> February, 2014 at unknown time at Bonyangatanyi sub-location in Kisii Central District within Kisii County in the Republic of Kenya, unlawfully caused the death of **WIDEN MAEBA NYAATA**.

3. Despite their initial agreement to plead guilty to a lesser charge of manslaughter, the 2<sup>nd</sup> and 4<sup>th</sup> accused pleaded not guilty to the said charge while the 1<sup>st</sup> and 3<sup>rd</sup> accused pleaded guilty and were therefore convicted on their own plea of guilty while he 2<sup>nd</sup> and 4<sup>th</sup> accused now await their trial on the initial charge of murder.

4. The facts of the case were stated by Miss Mochama counsel for the state, revolve around a drinking spree, in which the deceased and the accused persons were engaged in on the night of 17<sup>th</sup> February, 2014. The following morning after the said drinking spree, the dead body of the deceased was discovered in a farm, 10 meters away from the house of the 1<sup>st</sup> accused who happens to be the wife of the 2<sup>nd</sup> accused. Investigations conducted by the police after the incident revealed that there were blood stains on the clothing of the 2<sup>nd</sup> accused and in the house of the 1<sup>st</sup> accused that was suspected to be the blood of the deceased.

5. Postmortem examination conducted on the body of the deceased showed that the cause of death was cardio respiratory arrest secondary to asphyxia due to strangulation.

6. In mitigation, Mr. Kaburi submitted that the 1<sup>st</sup> and 3<sup>rd</sup> accused were first offenders, were remorseful for the accidental death of the deceased and had learnt a lesson to keep off crime in the two years that they have been in custody while awaiting their trial. Mr. Kaburi added that the 1<sup>st</sup> accused is aged 72 years while the 3<sup>rd</sup> accused is her nephew aged 40 years. Counsel for the accused persons pleaded for their being given a non-custodial sentence to enable them go back to their homes and take care of their families.

7. This court asked for the Probation Officer's social enquiry and pre-sentencing report to enable it arrive at the most appropriate and fair sentence in respect to the accused persons.

8. Unfortunately, as at the time of preparing this ruling on sentence, the probation officer had not filed the said report despite the case being mentioned several times to find out if the said report was ready.

9. Be that as it may, I have considered the circumstances under which the offence is alleged to have taken place. While it is not very clear, from the said facts, the motive behind the killing of the deceased and the role played by each of the accused persons, the bottom-line is that the accused 1 and 3, have pleaded guilty to the lesser charge of manslaughter.

10. I have considered the mitigation tendered by Mr. Kaburi counsel for the accused, the fact that the 1<sup>st</sup> accused is aged 72 years, the fact that they were drunk at the time of the offence and have been in custody for the last 2 years while awaiting their trial. I am of the view that a non-custodial sentence is the most appropriate sentence in this case.

11. Consequently, I sentence accused 1 and 3 herein, **YOVENCIA RATEMO** and **GEORGE NYAKUNDI** alias **GUTO** to one (1) year non-custodial sentence during which period they will be under the supervision of the probation officer of their area. The case for the 2<sup>nd</sup> and 4<sup>th</sup> accused shall be mentioned on 4<sup>th</sup> July 2016.

Delivered, dated and signed in at Kisii on **11<sup>th</sup> day of MAY, 2016.**

**W.A. OKWANY**

**JUDGE**

**In the presence of:**

- Mbelete for the State
- Kaburi for the Accused
- Omwoyo court clerk