



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL CASE NO. 23 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ENOCK NYABUTO.....1<sup>ST</sup> ACCUSED**

**JOHN OCHWARI OBAE.....2<sup>ND</sup> ACCUSED**

**RICHARD OMBIRO RESI.....3<sup>RD</sup> ACCUSED**

**ALLOYS OGEO.....4<sup>TH</sup> ACCUSED**

**SENTENCE (In respect to the 1<sup>st</sup> accused)**

1. The accused persons herein, **ENOCK NYABUTO, JOHN ONCHWARI OBAE, RICHARD OMBIRO RESI** and **ALLOYS OGEO**, were jointly charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**.
2. The particulars of the charge were that on diverse dates between 18<sup>th</sup> and 19<sup>th</sup> January, 2014, at Gesabakwa village, Onywere sub-location in Marani District within Kisii County, jointly murdered **OSUMA MENGE**.
3. By a plea bargain agreement entered into between the 1<sup>st</sup> accused herein **ENOCK NYABUTO**, and the state on 23<sup>rd</sup> July, 2015, the charge against the 1<sup>st</sup> accused was reduced to that of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**. The 1<sup>st</sup> accused then pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.
4. The Circumstances of this case are that the 1<sup>st</sup> accused was in the company of other robbers when they attacked the deceased, a 95 year old man in his house with the intention of robbing whereupon the 1<sup>st</sup> accused hit the deceased with a rungu thereby injuring him fatally. They then robbed the deceased of Kshs. 15,000/= which they shared among themselves before leaving the deceased's house.
5. In mitigation, Mr. Sagwe for the 1<sup>st</sup> accused submitted that the accused was a young man aged 20 years old and that he was remorseful for the crime that he had committed.
6. Even though the Probation Officer had not filed a pre-sentencing report in respect to the 1<sup>st</sup> accused as at the time that I was preparing this ruling, I have had a chance, to peruse the Probation Officers pre-bail report about the 1<sup>st</sup> accused dated 26<sup>th</sup> January, 2015. The said report paints a very grim picture on the

criminal record of the 1<sup>st</sup> accused who is reported to be a repeat offender having been convicted of being in possession of alcohol in criminal case no. 521 of 2012 for which he was placed on probation. The report also showed that the members of the public were hostile to him and threatened to lynch him if he was released on bond.

7. Even though this ruling is not about an application for bond, I am confident that the Probation Officers Report is relevant to the sentence in so far as it gives an insight on the criminal record of the 1<sup>st</sup> accused and the feelings of the members of his community on his being released on bond/probation.

8. I have considered the circumstances leading to the death of the deceased in this case. The 1<sup>st</sup> accused in the company of other people brutally attacked a helpless old a man in his own house at night and robbed him of cash. The 1<sup>st</sup> accused and his gang members planned their evil acts and executed it with deadly force. The actions of the 1<sup>st</sup> accused together with his group led to the death of an innocent old man who was sleeping in his own house.

9. I find the actions of the 1<sup>st</sup> accused totally inexcusable and despicable to say the least. The members of the accused's community are unwilling to receive him back in their midst.

10. Accordingly, I sentence the 1<sup>st</sup> accused herein, **ENOCK NYABUTO ONGEO** to 7 years imprisonment, the sentence shall run with effect from the date of 1<sup>st</sup> appearance in court being 10/2/2014.

11. It is so ordered.

Delivered, dated and signed in at Kisii on **9<sup>th</sup> day of May, 2016**

**W.A. OKWANY**

**JUDGE**

**In the presence of:**

- Otieno for the State
- Mr. Magara for Sagwe for the Accused
- Omwoyo court clerk