



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 59 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

JOHNSON ONDIEK.....ACCUSED

SENTENCE

1. The accused persons herein **JOHNSON ONDIEK** was 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 entered into between the accused and the state on 24th July, 2015, the said charge was reduced to that of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
2. It is alleged that on 6th May, 2013 at Emborogo Sub-location in Masaba South District within Kisii County jointly with others not before the court, he unlawfully caused the death of **BENARD SILO CHEKO**.
3. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty.
4. The facts of the case were narrated by Mr. Majale state counsel who stated that the deceased after attending a burial ceremony his mother in-law left the ceremony before the burial ceremony was over and in the process took off with the child of the accused who was then playing in the compound. The mourners who included the accused noticed the strange action of the deceased and followed the accused, caught up with him and meted out mob justice on him thereby injuring him fatally.
5. In mitigation, Mr. Moseti for the accused submitted that he was remorseful about the unfortunate death that was precipitated by the deceased who stole the accused's 5 year old child thereby inviting the wrath of the members of the public upon him. Mr. Moseti pleaded for leniency on behalf of the accused while stating that he was a family man aged only 33 years and that his wife and children solely depended on him for their up-keep and education.
6. This court on 24th July, 2015 ordered for the Probation Officer's pre-sentencing and victim impact assessment report to assist in passing the most appropriate sentence but quite unfortunately, as at the time of preparing this ruling, 8 months later, the said report had not been filed.
7. Be that as it may, I have considered the circumstances that led to the death of the deceased and noted that the deceased invited the wrath of the members of the public upon himself by stealing the accused's child. I however note that the accused together with the irate mob had the option of observing the due process of the law by handing over the deceased to the relevant authorities instead of taking the law into

their hands and beating him up thereby causing death.

8. This court opines that Mob Justice is a very primitive and barbaric form of punishment that has no place in a modern and civilized society.

9. The tragedy for the accused in this case is that he is the one whose child was stolen by the deceased and even though it is clear that an irate mob participated in the lynching of the deceased, the accused has had to pay the heavy price for the mob none of whom was charged in conjunction with him in this case. The bottom-line however, is that the accused herein has under the plea bargain agreement admitted to having committed the offence.

10. I am certain that the more that 2½ years that the accused has been in custody while awaiting his trial is enough lesson to him to keep off violent crimes.

Consequently, the sentence that commends itself to me under the above stated circumstances is that of unconditional discharge. The accused shall be set at liberty forthwith unless he is otherwise lawfully held.

Delivered, dated and signed in at Kisii on **9th day of May, 2016.**

W.A. OKWANY

JUDGE

In the presence of:

- Otieno for the State
- Magara for Ondari for the Accused
- Omwoyo court clerk