



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 114 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH TOBIKO KALASINGA.....ACCUSED

SENTENCE

1. The accused, **JOSEPH TOBIKO KALASINGA**, was originally charged with murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. Following a plea bargain agreement dated 16th May, 2016, duly executed by the state and the accused, the accused was charged with the lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**. The particulars of the charge were that on 24th December 2014 at Olmotonyi Sub-location of Moyoi village in Transmara West District within Narok County unlawfully caused the death of **MUTOKA OLE SAI alias ONGEI**.
2. The Accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on his own plea of guilty and therefore the only issue pending the court's determination is one of sentence.
3. According to the facts provided by the state, on 24th December 2014 at about 2 p.m., the accused went to take some local brew and on returning home at about 8 p.m. and without uttering a word, he picked up a knife and stabbed the deceased on the chest before running away. The deceased died on 26th December 2014 two days after the attack and a post mortem examination conducted on the body revealed that the cause of death was cardio-respiratory arrest after a stab wound on the left side of the chest.
4. In mitigation, Mr. Kaburi advocate for the accused submitted that he was a first offender, was remorseful and had, for the period of more than 1 year that he has been in custody, learnt to tame his anger and keep off alcohol. Mr. Kaburi added that the accused was, prior to his arrest, the sole bread winner of his young family of a wife and 2 children. He prayed for a non-custodial sentence.
5. The court called for the Probation Officer's pre-sentence and victim impact assessment report which had not been filed as at the time this sentence was being prepared.
6. I have considered the circumstances surrounding the case and the mitigation tendered by the counsel for the accused. I note that the accused stabbed the deceased out of the blue and without any provocation whatsoever.
7. The violent actions of the accused can only be equated to the actions of a person who is of

unsound mind. The mental assessment carried out on the accused before his trial, however, showed that he was of sound mind and was therefore fit to stand trial.

8. The mitigation tendered by the accused counsel notwithstanding, I still believe that this is a case where non-custodial sentence would not be appropriate so that the accused, together with others who are in the habit of attacking others without provocation, can learn that such actions attract the heavy wrath of the law.
9. I therefore sentence the accused to 7 years imprisonment. Such time will take into account the time he has served while in remand. (From date of his first appearance in court).

Delivered, dated and signed in at Kisii on **2nd** of **June**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

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