



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 79 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

DAVID OGEKA OMUNDI.....1ST ACCUSED

ABEL MORANGA MAKURUMA.....2ND ACCUSED

DAMACLIN KEMUNTO MARANGA.....3RD ACCUSED

SENTENCE

1. The 3 accused persons herein **DAVID OGEKA OMUNDI, ABEL MORANGA MAKURUMA and DAMACLIN KEMUNTO MARANGA** pleaded guilty and were convicted for the charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code** after the initial charge of murder was, following a plea bargain agreement dated 24th March, 2016, reduced to a lesser charge of manslaughter.
2. The particulars of the offence are that on 24th June, 2013 at Kegochi Sub-location in Nyamache District within Kisii County jointly with another not before the court murdered **ABIRI MOSE**.
3. The facts of the case, as stated by Mr. Otieno counsel for the state were that on 24th June, 2014 at about 9 p.m., the deceased herein **ABIRI MOSE** was in the house of his brother one **RICHARD MOSE**, the husband of the 3rd accused. The 3rd accused alleged that the deceased had defiled her daughter one **DAPHINE GESARE** then aged 6 years and a quarrel ensued.
4. The 1st and 2nd accused were called in and they entered into the fray by tying up the deceased with ropes before raining kicks and blows on him after which they left him lying naked out of the house the whole night. The following morning the deceased was found dead and a post mortem examination conducted on his body revealed that the cause of death was cardio-pulmonary arrest due to fatigue and hypoglycemia.
5. In mitigation, Mr. Okemwa for the accused persons submitted that they were very remorseful and regretted their actions. He stated that the accused persons did not intend to kill the deceased but were only disciplining him following his defilement of the minor.
6. Mr. Okemwa added that the deceased and the accused persons were close relatives. He prayed for a non-custodial sentence to enable the accused persons fend for their families since they had reconciled with the deceased's family.

7. On 1st July 2016, the probation officer filed a presentencing social enquiry report in respect to each of the accused persons in which he recommended a non-custodial sentence for all the accused persons while observing that the members of their community had forgiven them and were ready to accept them back in their midst.

8. I have considered the unfortunate circumstances under which the deceased met his death and the fact that he was then suspected of having defiled a minor and this is what resulted in his being assaulted by the accused persons. I have also taken note of the recommendations made by Probation Officer on non-custodial sentence.

9. This court observes that the accused persons had no right to mete out mob justice on the deceased even if he was suspected of having committed the heinous crime of defilement. The proper cause of action ought to have been that of handing over the deceased to the law enforcement agencies for appropriate action since mob justice is a barbaric and primitive form of punishment that has no place in a civilized society where the rule of law is observed.

10. In view of the above circumstances and observations, I find that a non custodial sentence would be appropriate in this case. Consequently, I sentence each accused person to 2 years probation during which period they will be supervised by the Probation Officer of their area.

Delivered, dated and signed in at Kisii on **18TH** of **JULY**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

Mr. Okemwa for the Accused

Omwoyo court clerk