



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 16 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

ROBERT NYAGAME CHACHA..... ACCUSED

SENTENCE

1. The accused person herein **ROBERT NYAGAME** 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 on 14th March 2016 between the accused and the state, the said charge of murder was reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of Penal Code**. The particulars of the charge are that on 15th October 2013 at Bogitaa Sub-location Riana Location in Kisii District within Kisii County unlawfully caused the death of **DAVID CHACHA**.
2. The accused pleaded guilty to the lesser charge manslaughter and was consequently convicted on his own plea of guilty.
3. The facts of the case, as narrated by Mr. Otieno counsel for the state, were that upon returning home from a drinking spree, the deceased picked a quarrel with his wife and in the process assaulted his minor daughter with an iron bar thereby inflicting deep cut wounds on her head.
4. The deceased's wife and other children raised an alarm thereby prompting the accused, who was also a son to the deceased, to intervene in the matter by disarming the deceased and in the process also hit the deceased with the same iron bar on the head and stomach. The deceased died the following day and a postmortem report revealed that the cause of death was cardio-respiratory arrest following gut perforation due to assault.
5. In mitigation, Mr. Ayienda advocate for the accused pleaded for leniency on his behalf while stating that he was a young man with a young family to whom he was the sole breadwinner.
6. The Probation Officer, in his report recommended a non-custodial sentence for the accused while observing that he was remorseful for the offence.
7. I have considered the unfortunate circumstances surrounding the case and the fact that the deceased, in his drunken state, stirred trouble in his own family by assaulting a defenseless young girl thereby prompting the intervention of the accused who reacted by assaulting the deceased with the same weapon he had used to assault the young girl, albeit, with deadly force and consequences.
8. The accused had the option of disarming the deceased peacefully without retaliating by hitting him

with the same weapon. The violent actions of the accused led to the death of his own father, a burden which he will carry on his conscience for the rest of his life. All in all, it is clear to me that there was no intention on the part of the accused to kill his own father. I also note that the accused stayed in custody for 1 year while awaiting his trial before he was released on bond. I am certain that he has learnt a lesson or two about keeping peace and keeping off violent confrontations during his stay in custody.

9. A wholesome consideration of all the circumstances surrounding the case, the mitigation tendered by the accused's counsel and the Probation Officer's report lead me to conclude that a non-custodial sentence would be appropriate in this case.

10. Consequently, I sentence the accused herein ROBERT NYAGAME CHACHA to 2 years probation during which period he will be supervised by the Probation Officer of his area.

Delivered, dated and signed in at Kisii on **12th** of **July**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

- Otieno for the State
- Ayienda for the Accused
- Omwoyo court clerk