



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 16 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

J N O.....ACCUSED

SENTENCE

1. The accused person herein J N O alias O was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204**. By a plea bargain agreement struck on 22nd June 2016, the charge was reduced to that of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
2. The particulars of the offence are that on 31st January, 2011 within Kisii County unlawfully caused the death of **JAMES OGADO OMBATI**.
3. The accused pleaded guilty and was convicted on the lesser charge of manslaughter.
4. The facts of the case were that on the material day the accused and the deceased picked up a quarrel and in the process, the accused picked up a jembe and hit the deceased who fell to the ground and succumbed to his injuries while being rushed to hospital.
5. In mitigation, Mr. Ondari advocate for the accused submitted that the accused was a first offender and that he suffered from mental illness and therefore he may not have been aware of the consequences of his actions. Mr. Ondari added that the accused had been in custody for long and pleaded for his being released on a non-custodial sentence.
6. This court called for the Probation Officer's report as a precursor to the sentencing which report was filed on 7th September 2016. The said Probation Officer's report shows that indeed the accused suffers from mental illness and requires proper management to restore his sanity so that he is not a danger to himself and to the society.
7. The Probation Officer recommended the accused's committal to Mathare Mental Hospital for specialized treatment. I note that the accused's mental assessment report dated 30th March, 2016 revealed that he was fit to stand trial. Be that as it may and in line with the recommendations made by the Probation Officer. I do find that the accused is guilty of the offence of manslaughter but he was insane when he committed the offence.
8. In line with Section 166 of the Criminal Procedure Code, I do order that the accused be kept in custody at Mathare Mental Hospital for treatment and to await an order from the President of the Republic of Kenya under Section 166 of the Criminal Procedure Code Chapter 75. The prison authorities shall notify

the office of the President of this finding, so that the legal procedures can take effect.

Delivered, dated and signed in at Kisii on **13th of September**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Accused present in person
- Omwoyo court clerk