



REPUBLIC O KENYA.

IN THE HIGH COURT OF KENYA A NYAMIRA

CRIMINAL CASE NO. 23 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

SOSTHENES MATWERE NYANGAU.....1ST ACCUSED

JOSEPH NYANCHONGI NYANGAU2ND ACCUSED

SENTENCING

The two accused persons **Sosthenes Matwera Nyangau**, aged 30 years and **Joseph Nyanchongi Nyangau**, aged 23 years have pleaded to less offence of manslaughter, contrary to **Section 202** as read with **Section 205** of the **Penal Code** through the legal process of plea bargaining.

The facts of the case is that on the **8th day of November, 2011** at 4.00 p.m., the accused persons descended on their brother, **John kebaso Nyangau** and killed him on the allegation that the deceased had earlier killed their mother and disappeared for three(3) years. The deceased was drunk and he could not defend himself. The injuries he sustained resulted to his death. A post mortem was conducted and the doctor formed an opinion that the cause of death was cardio pulmonary arrest due to extra dural haemorrhage/fracture of the skull as a direct cause of trauma to the head.

They were charged for murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Through the process of plea bargain, the two accused brothers pleaded to the lesser offence of manslaughter.

The court then called for the pre-sentencing probation report. The same was filed today the **12th October, 2015**. It says the following:

in respect of **Sosthenes Matwera Nyangau**.

The first accused is a married person. The deceased was his brother. He hails from low income earners family. The family have no objection to the accused being considered for non-custodial sentence. They are willing to help him settle and reintegret him.

His family blame him because of the temperaments love for his late mother whose death sparked the differences between him and the deceased.

The community is positive and ready to receive. They balme him for his uncontrolled anger. They however, consider him hard working person who was never involved in criminal actions. They expressed no objection for being accorded leniency.

In respect of **Joseph Nyanchongi Nyangau**

He is unmarried. He is aged 23 years. He is a brother to the co-accused and to the deceased. The victim family have no objection to the two accused being considered for non-custodial sentence. They are willing to assist him resettle and integret through the community so that they can assist of their ailing father.

His direct family are positive and are willing to assist him resettle and restart his life. The community as whole are also positive.

The local administration Area Assistant Chief, **George Magata** says he has no objection.

The probation that the accused persons are suitable for non-custodial sentence of probation so as to intervene with guidance and counseling and empowerment with information on amicable dispute resolution.

The two accused persons have been in remand since **November 2011** – almost four (4) years to-date.

This court will sentence them to two years non-custodial sentence, each under the supervision of the Probation Officer the area **Mr. Omanga Elijah**.

Dated and Delivered at **Nyamira** this 9th day of November 2015

C.B NAGILLAH

JUDGE

In the presence of:

Malesi for the state

Okenye for the accused persons

Mr. Omayio Court Clerk