



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO.2 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

EVANS OMBATI MOGAMBI.....ACCUSED

SENTENCE

1. The accused herein **EVANS OMBATI MOGAMBI** was initially charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code** which was, by a plea bargain agreement entered into between the accused and the State on 13th July 2015 reduced to **Manslaughter** contrary to **Section 202** as read **with Section 205** of the **Penal Code**.

The particulars of the charge are that on 29th December 2011 at Bokoma village, Nyamwari Sub-Location in Kisii South District within Kisii County in the Republic of Kenya unlawfully caused the death of **MOGAMBI OMBATI**.

2. The accused pleaded guilty to the charge of Manslaughter and was consequently convicted on his own plea of guilty.

3. The deceased and the accused are father and son respectively.

4. The circumstances surrounding the case are that on 29th December 2011 the accused and the deceased picked up a quarrel over the issue of family land that the deceased had allegedly sold. In the course of the quarrel, the deceased chased away the accused while armed with a panga. In retaliation, the accused armed himself with a knife which he used to stab the deceased whose dead body was discovered in the house the following day.

5. The post mortem report established the cause of death to be severe haemorrhage due to a cut wound on the neck.

6. In mitigation, Mr. Moseti for the accused submitted that the accused blamed his actions on drunkenness, was very remorseful and regretted the incident. Mr. Moseti added that the accused was a young man aged 27 years old and had a young family who solely depended on him. He prayed for a non-custodial sentence to enable him get back to his family back home and fully reconcile with them.

7. The Probation Officer's report filed on 10th November 2015 had a recommendation that the accused was suitable for a Probation sentence as he was remorseful and was a first offender who was willing to

reform. The Probation Officer further observed that the members of the accused's family were ready to accept him back home as they did not consider him as threat to them. It was also noted in the probation report that both the deceased and the accused were drunk at the time of the offence.

8. I have considered all the circumstances surrounding the case, the mitigation tendered by Mr. Moseti counsel for the accused and the contents and recommendation made in the Probation Officer's pre-sentencing report. I have further noted that it is now almost 4 years since the accused was arrested following the commission of the crime.

9. The reckless actions of the accused which were fuelled by drunkenness led him to kill his own father. I am certain that the 3 years 11 months that the accused has spent in custody while awaiting his trial is enough lesson to him to keep off alcohol and to respect human life.

10. Accordingly, I sentence the accused herein **EVANS OMBATI MOGAMBI** to **1 year non-custodial sentence** during which period he will be supervised by the Probation Officer of his area.

11. It is so ordered.

Dated, signed and delivered in open court this 1st day of December, 2015

HON. W. OKWANY

JUDGE

In the presence of:

- Otieno for the State
- Moseti for the Accused
- Njoroge: Court clerk