

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NO. 44 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES OMWAKA NDUNDE.....ACCUSED

SENTENCE

1. Charles Omwaka Ndunde (*the accused*) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (*Cap. 63, Laws of Kenya*). On the evidence adduced by the prosecution, he was found guilty of the lesser offence of manslaughter and duly convicted. The judgment is dated 31st October 2014.
2. Thereafter the court called for a Probation Report. A Probation Report was therefore filed on 1st December 2014, and has been read and considered by both the Prosecution and Defence Counsel. The court has also considered the Report.
3. The accused was, essentially on the grounds of provocation, convicted of the lesser offence of manslaughter contrary to Section 202 of the Penal Code, as read with Section 205 thereof. The accused pleads for leniency. The Probation Report states that the accused dropped out of school after only reaching Standard V. He is now 38 years of age. He started eking life early in Kakamega his home town, moved to Nakuru, did casual work until he graduated into a newspaper vendor and climbed the informal sector ladder, and became a boda boda, motor bike operator. He is a father of three children, and his wife is also a casual laborer, specializing in laundry work.
4. The punishment upon conviction for the offence of manslaughter is life imprisonment. The accused is remorseful. He has a young family. The family of the deceased has moved away from the area, and there is likely to be no danger of revenge attack, and therefore a spiral of violence. The accused has been in detention since his arrest 2.05.2009, that is now a period of over 5 years and six months.
5. In light of the circumstances of this case, I think, that is sufficient time spent in prison custody. In addition thereto, I would place the accused to three (3) years probation, to serve under the Probation Officer Nakuru with a warning that should he commit any offence during that period he shall be liable to serve jail term for three years.
6. Subject as aforesaid, he be released to serve the probation time outside jail.
7. It is so ordered.

Dated, signed and delivered at Nakuru this 5th day of December, 2014

M. J. ANYARA EMUKULE

JUDGE