



REPUBLIC OF KENYA

High Court at Nakuru

Criminal Case 125 of 2010

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL ONYIEGO OSORO.....ACCUSED

RULING

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, the offence of murder was not proved, but the evidence was found sufficient to prove the offence of **manslaughter** contrary to Section 202 as read with Section 205 of the Penal Code, and the Appellant was convicted of that offence. The punishment for the offence of manslaughter under Section 205 of the Penal Code is life imprisonment.

Before sentencing the accused, the court called for a Probation Report to establish the accused's background, including his family, personal history, the circumstances of the offence, and sentiments by the family of the deceased.

The Probation Report **POR/13/16**, filed in court on 11.04.2013, records the family of the deceased stating that the entire incident was unfortunate, and one that was not meant to happen, that -

***“the two families have already reconciled with the help of the Area Chief, and that the family of the deceased have relocated to Dundori in Bahati North District, that they wish the offender the best and they have no problem with him being released on a non-custodial sentence.”***

The circumstances are described concisely in the evidence PW1, PW2 and PW7 as summarised at p.1 of the judgment. The date was 8.12.2011, the time was 8 p.m. the accused visited the home of PW7, Michael Mwangi, where there was a circumcision ceremony. The deceased, Joseph Kamau Ngugi, told the accused that being a non-Kikuyu he (*the accused*) was not welcome at the ceremony. The accused who was drunk insisted on entering the room forcing the deceased and others to throw him out. After a short while the accused returned, and again, the deceased and his colleagues John Ndirangu (PW1) and Joseph Kariuki Waweru (PW2) once more forcibly ejected him. The Probation Report adds that -

***“as they were trying to eject him forcibly, they also assaulted him and in the event of defending himself he grabbed the knife which he used to stab the deceased, and then ran away.”***

In the circumstances described in the judgment and the Probation Report, I accept that the whole incident was wholly unfortunate. Indeed as the family of the deceased say, it was unplanned but remains regrettable.

The Probation Report reiterates that the accused was caught in an unfortunate situation, that he is well spoken of by his neighbours, and generally of good conduct.

I have considered the evidence as recorded and Judgment by the Hon. Mr. Justice Ouko, now Judge of Appeal, as well as the Probation Report. I accept that this was indeed an unfortunate incident. The accused was however drunk. That is a situation he must watch out against. I therefore put the accused to three (3) years probation, and he must report to the nearest Police Station once, on a Monday of every month, and in default he will be liable to serve a term of imprisonment for three (3) years.

There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 10<sup>th</sup> day of May, 2013**

**M. J. ANYARA EMUKULE**

**JUDGE**