

REPUBLIC OF KENYA

High Court at Nakuru

Criminal Case 47 of 2010

REPUBLIC.....PROSECUTOR

VERSUS

NELSON KIMUTAI NGENO.....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*). He was on the evidence found not guilty of that offence, and the charge of murder was reduced to one of manslaughter contrary to Section 202 as read with Section 205 and was convicted accordingly.

Upon the promotion of Hon. Ouko to the Court of Appeal I took over this matter under Section 201 of the Criminal Procedure Code (*Cap. 75, Laws of Kenya*) and heard the mitigation from counsel of the accused as well as the State Counsel.

The accused is said to be a family man and alleged sole bread winner. Both he and the deceased were drunk, that there was no malice or motive to kill the deceased, out of shock, he even tried to give first aid to his friend and that he has learnt his lesson, and he will not again touch alcohol.

For the prosecution learned State Counsel submitted that the accused was a first offender.

The punishment for the offence of manslaughter is imprisonment for life. The circumstances are described in the judgment of Hon. Justice Ouko, as he then was. PW1, heard the accused screaming, and ran towards the direction of where the screams were coming from, and found the accused assaulting the deceased, both of whom were drunk. PW1 separated them and helped to take him (*the deceased*) to his home.

The condition of the deceased however deteriorated over the night and he was found dead in his house the next morning, and the accused was handed over to the Police, and was consequently charged with the offence of murder.

It is clear that there was no intention to kill the deceased, and there are no aggravating circumstances. Drunkenness however leads to many an unnecessary fights, and deaths like in this case. To deter such occurrences, I would sentence the accused to seven (7) years imprisonment, the sentence to commence running from the date of his arrest.

It is so ordered.

Dated, signed and delivered at Nakuru this 10th day of May, 2013

M. J. ANYARA EMUKULE

JUDGE