



**REPUBLIC OF KENYA**

**High Court at Kisumu**

**Murder Case 30 of 2012**

**REPUBLIC .....PROSECUTOR  
VERSUS**

**CHARLES AJODE ADEMBE.....1<sup>st</sup> ACCUSED**

**BENARD OCHIENG AJODE .....2<sup>nd</sup> ACCUSED**

**JUDGMENT**

Both accused persons are charged with the offence of manslaughter. The particulars are that on the 2<sup>nd</sup> day of May 2012 at Kibigori Sub location, Nyando District within Nyanza Province unlawfully killed one **George Ouma Juma**.

The State had earlier own charged them with the offence of murder. Both accused persons are father and son respectively.

The facts were that both the accused persons on the material day were heading to the shamba to farm. They were carrying a panga, jembe and wooden blanks. They decided to go to the home of one Benta who had been inherited by the deceased.

While in Benta's house an argument arose over the boundary issue which had been simmering between the two families and which had not been resolved. The accused persons attacked the deceased who succumbed to the injuries while being rushed to Chemelil Hospital.

The above facts were admitted by the accused persons. The probation report which is on record showed that the 2<sup>nd</sup> accused who is aged fifteen (15) years old is a student at Kibigori Primary School in class eight (8).

The 1<sup>st</sup> accused is a peasant farmer. Both reports are favourable to the accused persons.

From the facts read in court and admitted by the accused persons it is evidently clear that there was a long standing dispute between the accused and the deceased or one Benta. However I do not find any sufficient reason why the accused persons and in particular the 1<sup>st</sup> accused decided to go through the house of Benta on the material morning. Obviously, he knew that there was a problem of land between him and Benta and by extension the deceased. I do find that this was an act of provocation.

Beside both of them were armed with a jembe, panga and wooden blank.

Although the probation reports are favourable to both parties the 1st accused who was mature ought to

have conducted himself in a mature and in a civil manner and not to provoke Benta and the deceased.

For the above reasons I shall make the following orders:-

- (a) **The 1<sup>st</sup> accused Charles Ajode Adembe shall serve a custodial sentence of five (5) years.**
- (b) **The 2<sup>nd</sup> accused Bernard Ochieng Ajode shall serve a probation period of two (2) years. The same to be supervised by the Probation Office Kisumu East.**

Orders accordingly.

**Dated, signed and delivered at Kisumu this 7<sup>th</sup> day of May 2013.**

**H.K. CHEMITEI**

**JUDGE**

In the presence of:

.....for State

.....for the Accused

*HKC/aao*