

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Criminal Case 40 of 2008**

REPUBLIC PROSECUTOR

VERSUS

GEOFFREY MONYI SENELWA ACCUSED

SENTENCE

The accused herein is charged with the offence of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code. The particulars of the offence are that the accused on the 30th day of August, 2008 at Chepchechei village, Kapsotik Sub-location, Banja Location in Hamisi District of the Western Province, jointly with another not before court unlawfully killed **WISLON NJENGA KARANJA**. The accused pleaded guilty to the charge and was convicted on his own guilty plea.

On 30th August, 2008 at about 6.00 p.m. accused passed outside the deceased's gate. The deceased who was drunk came out and chased the accused, caught up with him and started beating him. one Cannon Kapkonga tried to intervene but was also beaten by the deceased.

The accused and the said Kapkonga defended themselves by beating the deceased. The deceased ran away but unfortunately fell into a deep ditch. He sustained injuries and became unconscious. The deceased was taken to Vihiga District Hospital and passed away the same night. A post mortem report by Dr. Kurgat conducted on 4th September, 2008 opined that the cause of death was due to cardiopulmonary arrest from blunt chest trauma.

Mr. Elung'ata for the accused submitted that the accused is very remorseful. He had no intention to kill the deceased. He is 22 years old and would like to further his education.

From the facts of the case and the circumstances under-which the deceased met his death, it is evident that the deceased was the aggressor. The accused acted in self defence. The deceased was drunk and he fell into a ditch. Its possible the fatal injuries could have been as a result of the fall. The accused has been in custody for one year. I do find that a custodial sentence given the circumstances of the case is not ideal. The accused is hereby set free and shall be at liberty unless otherwise lawfully held.

Delivered, Dated and Signed at Kakamega this 4th day of November, 2009

SAID J. CHITEMBWE

JUDGE