

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

Criminal Case 17 of 2005

REPUBLIC ::::::::::::::::::::::::::::::::::::::: PROSECUTOR

V E R S U S

WILFRED OKWALO ::::::::::::::::::::::::::::::::::::::: ACCUSED

S E N T E N C E

The accused 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 on the 26th of March, 2005 at Butaliko village, Indangalasia sub-location, Keyonzo location in Butere/Mumias District within Western Province, the accused unlawfully killed Jackson Echesa.

On 26th March, 2005 at Butaliko village at about 9.00 a.m. the deceased's father brought a tractor at his farm and began ploughing. He instructed the tractor driver to also plough the land belonging to the accused's family. The two families are related and had had a long standing dispute.

The accused's mother, Feslister Anyango tried to inquire why her land was being ploughed but she was pushed down and stabbed by deceased's father on her right breast. Accused came out in response to his mother's screams. The deceased's father engaged the accused in a fight. The deceased's father called for help and the deceased came to the scene armed with a piece of firewood. The accused snatched it and hit the deceased on the head. The accused also sustained injuries on the head. The deceased was rushed to hospital and died on 9th April, 2005. The postmortem report by Dr. Waringe opined that the cause of death was cardiopulmonary arrest due to internal hemorrhage.

Mr. Nandwa for the accused submitted in mitigation that the accused is 28 years old. He has a wife and 2 children and has been in custody for over 4 years. He presented himself to the police and was also injured in the incident.

The circumstances of the case show that there was no intention on the part of the accused to kill the deceased. The accused responded to his mother's screams. I do take note of the period the accused has been in custody. A custodial sentence is not ideal given the circumstances. 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