



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT KAKAMEGA

Criminal Case 19 of 2007

REPUBLIC.....PROSECUTOR

V E R S U S

ELPHAS AMAKOBE OTOTA.....ACCUSED

S E N T E N C E

The accused was convicted on his own plea of guilty of the offence of **manslaughter** contrary to **section 202** as read with **section 205** of the **Penal Code, Cap 63**. The particulars of the charge were that:

*“the Accused on 11<sup>th</sup> May 2007 at Emakale village in Marama West Location within Butere District of the Western Province caused the death of PAUL OTOTA through unlawful means.”*

The facts constituting the offence which the accused admitted were simple. The accused was the deceased’s son. On 11.5.2007, both the deceased and the accused arrived home in a drunken state and made way into the main house. The deceased’s wife was seated there. The deceased picked a quarrel with the accused over a cigarette. The deceased demanded a cigarette from the accused and when the latter said he had none, a quarrel ensued whereupon the deceased turned hostile and chased away Rosemary, his wife. When Rosemary was gone, and the deceased was left with his son alone, he locked the house from the inside and started fighting the accused. During the fight, the deceased sustained serious injuries and the accused got minor injuries. The accused managed to open the door of the house and fled leaving the deceased in a critical condition. The following day the deceased was taken to Kitale Hospital where he died before he got treatment. Postmortem on the deceased’s body was done in Kakamega Provincial General Hospital on 15.7.2007 by Dr. Orete who found that the cause of death was cardio-respiratory arrest due to severe brain injury. The Postmortem report was produced to prove the cause of death. The accused underwent Psychiatric examination and was certified fit to stand trial. A P3 form was produced as an exhibit to prove this fact.

Mr. Aburili, learned counsel for the accused, told the court in mitigation that the accused is aged 19 yrs, has a wife, and two children. He said that he is a casual labourer and had 12 or so siblings. He pointed out in mitigation that the accused was remorseful, had pleaded guilty, and was a first offender. The deceased, said Mr. Aburili, was the aggressor and that the accused did not intend to kill the deceased who was his father. Unfortunately, the deceased, being elderly, succumbed to the injuries. He pleaded for leniency.

I have considered all these mitigating factors. It is patent that it was the deceased who was the aggressor. He was livid. Ostensibly, he wanted to teach the accused a lesson. He locked the accused in the house and attacked him. He overrated his strength. In defence, the accused used more force than was necessary. The accused will have to live with the guilty conscience as the one who brought the life of his father to an end prematurely. I also take into account that the accused has been in custody since 12<sup>th</sup> May 2007 when he was arrested. The accused has not been shown to be a man of violent disposition. He has not been painted as a menace or danger to society. He deserves a chance in life to correct the mistake he has committed. I sentence him to imprisonment for a period of one month.

***Dated at Kakamega this 1<sup>st</sup> day of November, 2007.***

**G. B. M. KARIUKI**

**J U D G E**