



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT SIAYA
CRIMINAL CASE NO. E013 OF 2021[MANSLAUGHTER]
CORAM: HON. R.E. ABURILI, J
STATE.....PROSECUTION
VERSUS
KEVIN OMONDI AMOO.....ACCUSED
JUDGMENT ON PLEA BARGAIN

1. The accused herein **KEVIN OMONDI AMOO** was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code vide information dated 28th June 2021. It was alleged that on the 8th day of September, 2018 at Kusa Village, North Ramba Sublocation, Central Asembo Location in Rarieda Sub County within Siaya County, jointly with another not before court, he murdered one **Kevin Oduor Amollo**. The accused pleaded not guilty on 30th June, 2021 and the case was set down for trial.
2. However, the accused person plea bargained with the Prosecution and the Murder charge was dropped and substituted with a lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. He pleaded guilty to the lesser charge of manslaughter upon which this court convicted him on his own Plea of guilty on 21/12/2021.
3. The facts upon which the accused was convicted on his own unequivocal plea of guilty as read out to the court are that On 8th September 2018 at around noon, one Amwato went to the deceased's home and told him that the accused had complained that the deceased had uprooted some trees on the fence between his land and that of the accused. During that conversation, Amwato called the accused who went to the deceased's home armed with a panga. When the deceased tried to stand, Amwato pushed him down and then the accused started cutting the deceased with a panga, concentrating majorly on the head. The deceased's wife Millicent Owino rushed in to assist her husband but she was attacked and cut on the head and on the hands, sustaining serious injuries. She was rushed to hospital and treated. Her degree of injury was assessed as grievous harm. The P3 form dated 23/9/2018 filled by Mr. Okondo at Bondo Sub County Hospital was produced as PEx1 (a). The treatment notes for Millicent Owino were also produced as PEx1(b).
4. The deceased died at the scene and his body was taken to Bondo Sub county Hospital where postmortem was carried out on 20/9/2018. The cause of death was found to be due to haemorrhagic shock due to excessive bleeding. The postmortem report was produced as PEx 2.
5. The accused went at large after committing the offence until 19/6/2021 when he resurfaced and was arrested, taken for mental assessment and found to be mentally fit to plead hence the Murder charge which was substituted with the charge of Manslaughter herein. The accused person on being asked on the correctness or otherwise of the facts as read out to him in Kiswahili language responded in Kiswahili saying **Yote ni Ukweli** - All are correct upon which the court convicted him on his own plea of guilty.
6. The Prosecution then stated that they had no previous criminal records on the accused person. In mitigation, the accused and his counsel stated that he was a cousin to the deceased and that he never intended to kill his cousin. He regrets the offence. He is married with 3 children and prays for lenient sentence. He has a chest problem and that he is 29 years old. He claims that he quarreled with the deceased over land and owns up his mistake.
7. The father of the deceased and the deceased's widow gave victim impact statements on oath saying they are not ready to forgive the accused who has never sought for their forgiveness after committing the offence and running away. They are bitter and this is also reflected in the Presentence Report filed in court on 25/1/2022 by **Mr. John Oyare Oyieko**, Probation Officer.
8. The Social Inquiry reveals that the accused convict is not a person of good character, that he is a violent man and that he is habitual dangerous criminal although the prosecution did not avail his criminal records hence the court gives him a benefit of doubt.

9. The community is said to be unwilling to receive the accused back. It is alleged that they are baying for his blood should he be released soon. That his younger brother with whom he committed the Murder of the deceased is still at large.

10. The victim is survived by a widow and 5 children and his father who gave his victim impact statement in court. The deceased was their sole breadwinner. They lost him and miss him. The court had occasion to see and hear the widow of the deceased who was disfigured on her left hand due to the grievous injuries that she sustained following the accused herein cutting her with a panga and nearly killing her. She has a deformed left hand. She has young children. She cannot work physically to fend for them.

11. The treatment notes and P3 form produced in evidence show that the widow sustained fractures on the left ulna bone and superficial cut wound on the head. The accused targeted to kill the deceased and his wife but the latter survived narrowly from the vicious attack by the accused.

12. Considering the circumstances under which the deceased was brutally killed and his widow sustaining grievous harm for no justifiable reason, the mitigation, age of the accused, Presentence report and Victim Impact Statements, and the fact that he plea bargained for a lesser charge. In the Plea Bargaining Agreement signed on 21/12/2021, I observe that the Prosecution asked for a minimum of 40 years imprisonment whereas the defence proposed a custodial sentence of not more than 10 years.

13. Taking into account the objectives of sentencing and Judiciary Sentencing Policy Guidelines and the justice of this case, I find that a deterrent long term custodial sentence is appropriate for the convict. The community must be protected from the viciousness of people of the character of the accused herein.

14. Accordingly, I hereby exercise judicial discretion and sentence the convict Kevin Omondi Amoo to serve fifty (50) years imprisonment for the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code to be calculated from the date of his arrest on 19/6/2021.

15. Right of appeal as guaranteed is 14 days of today.

16. File closed.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 26TH DAY OF JANUARY, 2022

R.E. ABURILI

JUDGE