



**Republic v Egesa (Criminal Case E020 of 2021)
[2022] KEHC 10371 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E020 OF 2021**

**JR KARANJA, J
MAY 31, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

LEONARD WANDERA OJIAMBO EGESA ACCUSED

JUDGMENT

1. The information filed herein by the Director of Public Prosecution (DPP) informed the Court that the accused, Leonard Wandera Ojiambo Egesa, was charged with murder, contrary to S.203 as read with S.204 of the *Penal Code*.
2. It was alleged that on the 21st October, 2021 at Muyafwa-Matayos Busia County, the accused unlawfully murdered Shadrack Abwacha Ojiambo. The case for the prosecution arises from the facts that the deceased was a son of the accused and on the material date the accused while purporting to discipline the deceased for an alleged wrong of theft administered severe beating upon the deceased thereby occasioning him fatal injuries.
3. Thereafter, the accused locked the injured deceased in their house and proceeded to a neighbour's homestead where he was found and informed of the deceased's condition, but displayed an uncaring attitude before vanishing from the place. Relatives of the deceased with the help of area villagers broke into the accused's house and found the dead body of the deceased. They saw blood stains in the house and noticed the injuries on the deceased's body.
4. The villagers went in search of the accused and having found him handed him to the police who arrested and took him to the local police station thereby rescuing him from a mob of villagers baying for his blood. He was eventually charged with the present offence after completion of police investigations.
- (5) In his defence, the accused denied the offence but raised no dispute with regard to the fact that he was responsible for beating the deceased on the material date. He said that he disagreed with the deceased



over his habit of stealing from neighbours. He also said that the deceased was a petty thief and that he administered beatings on him on the material date for purposes of disciplining him, but villagers arrived at the scene and alleged that he had killed the deceased.

- (6) The accused contended that his action was intended to discipline rather than kill the deceased. In effect, the accused did not deny that the death of the deceased was a direct result of the injuries inflicted by him. Indeed, his son Bramwel Ouma (PW 3) and his nephew, Moses Wandera (PW 4), saw him beating the deceased using a thick stick or “rungu” and in a manner which was so ferocious thereby implying that although his intention was to “discipline” the deceased he ended up using excessive force. Such action was unlawful and did bring the accused in direct conflict with the Law.
- (7) The prosecution evidence clearly indicated that even after executing his unlawful action, the accused displayed an attitude that was devoid of sympathy and regret. He insisted that the deceased had to learn to be discipline. He thereafter took off from the neighbour’s homestead but was traced and apprehended by area villagers. He was actually saved from a “lynching mob” by a villager, Rodgers Makokha (PW 5) and others after which he was handed over to the police.
- (8) Francis Otieno Nyadero (PW 6), investigated the case and preferred the present charge against the accused.

The evidence of Dr. Duncan Nabuya (PW 2), clearly established that the cause of death was severe head injury secondary to assault. This was a confirmation that the deceased died from the severe injuries inflicted upon him by the accused.

- (9) Basically, the accused defence was an admission that he was responsible for the death of the deceased but not intentionally. He thus implied that his intention to “discipline” his son went awry after he inflicted fatal injuries on him. In essence, the prosecution case against the accused as founded on strong and credible evidence which proved beyond reasonable doubt that the accused caused the death of the deceased without the intention to do so.
10. Consequently, the accused is hereby found guilty of manslaughter contrary to S.202 (1) of the Penal Code, rather than murder under S.203 of the Penal Code and is convicted accordingly.

J.R. KARANJAH

J U D G E

[DATED & DELIVERED THIS 31ST DAY OF MAY, 2022]

