



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. E004 OF 2021 [MANSLAUGHTER]

CORAM: HON. R.E. ABURILL J

STATE.....PROSECUTION

VERSUS

MAXTON OMONDI OTIENO.....ACCUSED

JUDGMENT

1. The accused person herein **Maxton Omondi Otieno** is charged with the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Particulars of the offence as per Information dated 31/3/2021 following Plea Bargaining Agreement that reduced the Murder charge to Manslaughter are that on the 8th day of February 2021 at 6.30 pm at Got Bondo Village, North Ramba sub-location in Central Asembo Location in Rarieda sub county in Siaya County, he unlawfully killed **Jael Akuru Orundu**. When he was arraigned on 8/3/2021 for Plea for the initial charge of murder, he stated:

“It is true I killed the deceased but I did not plan to kill the deceased.”

2. The court entered a Plea of Not Guilty as the plea of guilty was not unequivocal. He took plea for Murder after he had been mentally examined and the mental assessment report dated 2/3/2021 from Jaramogi Oginga Odinga Teaching and Referral Hospital as filed into court shows that he was fit to plead to the charge.

3. This made the accused [person’s counsel Ms Akinyi to engage the prosecution for plea bargaining agreement for a lesser charge.

4. Today, the accused person signed a Plea Bargaining Agreement guided by his advocate Mr. Ooro and Ms. Florence Akinyi and following reduction of the Murder charge to that of Manslaughter by the prosecution, the accused person pleaded guilty to the charge and unequivocally admitted the facts as read out to the court by Mr. Kakoi, Principal Prosecution counsel and interpreted to him in the Dholuo language which he understands very well and by his own choice of language.

5. According to the Prosecution, which facts were admitted by the accused as true, the deceased was a grandmother to the accused and on the material day, the accused who lived with his now deceased grandmother returned home and asked her for food but she had none so the accused pursued her for flour for porridge and on her telling him that his father had not been providing her with food stuff, he pulled her from her bed, she fell to the ground and struggle ensued while she tried to defend himself using her walking stick to hit the accused but she was overpowered by the accused. She fell to the ground, became unconscious and the accused ran away to his cousin’s house where he slept.

6. The following morning, the deceased was found lying in a pool of blood dead. The accused was also seen washing himself. He was arrested and taken to Aram Police Station. The police were notified, they went to the scene, took away the deceased to the mortuary and an autopsy carried out on 16/2/2021 revealed the cause of death to be severe haemorrhage secondary to frontal head and left orbit cut wound.

7. The deceased’s body had zigzag wound on the frontal behind the forehead about 14 cm, among other head injuries and a swollen knee of the Right lower limb. She was aged 82 years old. Her body was identified by Maurice Ojulo Orundo and Simon Ogola Odhiambo.

8. Upon being arrested, the accused confessed to the killing of the deceased and his confession recorded on 8/2/2021 at 4 pm by Chief Inspector Saramba of Aram Police Station as per his Certificate of recording and confession statement produced as PEx 2.

9. The accused admitted to all the above facts and was convicted on his own Plea of guilty.

10. According to the prosecution, the accused may be treated as a first offender. In mitigation through Mr Ooro Advocate, the accused pleads for leniency and regrets the offence. He is a first offender, aged 22 years and did not intend to kill his grandmother.

11. I have considered all the above facts and mitigation by the accused person. The Probation Officer, Euphemia Kidwoli filed a Prebail assessment report dated 25/3/2021. The accused is said to be aged 21 years, an orphan whose mother died in 2003 just 3 years after he was born and he was raised by his maternal grandparents. When he went to live with his paternal relatives, only last year in December 2020, he was placed under the care of his aged grandmother, now deceased. Two months later, he was involved in the present incident.

12. The accused sat for his KCPE exams and obtained 115 marks so he was enrolled in Nyangoma Technical Institute in Bondo for a mechanical course. He was on industrial attachment when this incident happened. He has no health issues. His family do not know him well because he has never lived with them all those years since he all along lived with his maternal grandparents and he only joined his paternal family in December 2020. According to the probation officer, the accused person's father was always absent in his life emotionally, socially and physically and that explains his introvert personality. His paternal parents are bitter with him and are ready to revenge by eliminating him from their midst should he be seen there. What that means is that the accused is only safe away from the community. He is not fit for non-custodial sentence which will be counterproductive.

13. Considering guidelines on Sentencing and objectives of Sentencing as the accused has pleaded guilty to the offence and is a young person who overreacted to his aged grandmother, and being a first offender, albeit this court has the power to sentence him up to life imprisonment, I exercise discretion and sentence the accused person to a prison term of ten (10) years imprisonment to be calculated from the date of his arrest. The accused should learn life's skills and be rehabilitated to adapt to live with other people in the society before he can find his bearing back in the society.

14. File closed

15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 31ST DAY OF MARCH, 2021

R.E. ABURILI

JUDGE

In the Presence of:

Accused person and his Counsel Mr. Ooro for Ms. Akinyi Florence for Advocate

Mr. Kakoi, Principal Prosecution Counsel

Court Assistants: Modestar and Mr. Mboya