



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. 12 OF 2019 [MURDER TO MANSLAUGHTER]

CORAM: R.E. ABURILI, J.

STATE.....PROSECUTION

VERSUS

JACK OOKO SAMO.....ACCUSED

JUDGMENT ON PLEA BARGAIN

1. The accused person herein is **Jack Ooko Samo**, a male adult of sound mind. He was initially charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code, as per information dated 25th July 2019 signed by Mr. David M. Okachi, Senior Principal Prosecution Counsel. Particulars of the offence are that on the 29th day of October, 2018 at around 1900 hours at Kanyadet sub-location in Gem Sub-County within Siaya County, he murdered one Morris Onyango Alwase.
2. The accused pleaded not guilty to the charge of Murder on 29/7/2019 and the case was set down for hearing, which commenced on 6/10/2020 following the onset of covid-19 pandemic in March 2020 that delayed the scheduled hearing from 31/3/2020.
3. On 6/10/2020 PW1 Paulina Adera Onyango, PW2 the deceased's widow, PW2 Francis Oudi Okoth, a paternal cousin to the deceased and PW3 John Ogutu Okoth a brother to the deceased all testified for the Prosecution and the case was fixed for further hearing on 10/11/2020 which date found when the trial Judge was bereaved.
4. Thereafter counsel for the accused Mr. Ochanyo was discharged from the proceedings and Mr. Philip Owade was appointed in his place.
5. Upon the appointment of Mr. Philip Owade Advocate to represent the accused person on probono basis, the accused and his counsel sought to Plea bargain for a lesser charge of Manslaughter and they were granted time to Plea bargain on 14/4/2021.
6. On 27/4/2021 the prosecution dropped the murder charge against the accused and substituted it with a fresh information of Manslaughter which information is dated 27/4/2021 signed by Mr. Edward M. Kakoi Principal Prosecution Counsel. The charge of Manslaughter reads that the accused now faces the charge of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. Particulars of the offence are that on the 29th day of October, 2018 at around 1900 hours at Kanyadet sub-location in Gem Sub County within Siaya County, the accused person Jack Ooko Samo unlawfully killed one Morris Onyango Alwase. The fresh charge and particulars were read out to the accused person in Kiswahili language and on being asked whether he admits the charge he stated "**ndio nilimua**"-it is true I killed him". A Plea of guilty was accordingly entered against the accused person.
7. The following facts were narrated to court by the prosecution counsel and interpreted into Kiswahili by the Court Assistant Mr. Mboya to the accused to which the accused admitted to be true saying: "**maelezo ni ukweli**"-facts are true.
8. That on the 29th day of October 2018 at about 7 pm, the accused person was at Akala Market Stage when he boarded a boda boda rider Bernard Ochieng Onyango and requested to be taken to a place called "Baghdad". On their way, and on reaching 'Kamono' area, the accused jumped off the motorcycle, got a knife from a small bag and chased after the deceased, Morris Onyango Alwase, caught up with him and asked the deceased on where the deceased had taken the accused person's wife. In the process, the accused stabbed the deceased several times. The boda boda rider screamed for help and members of the public came and tried to assist the deceased who was now motionless. The accused escaped from the scene. The police were notified. They visited the scene and processed it. Photographs of the scene of crime were produced as PExhibits 1(a), 2(b), (c) while the Certificate of Photographic evidence was produced as PEX 1(d). The body of the deceased was removed to the mortuary and a postmortem carried out at Bondo District Hospital Mortuary on 20/11/2018 which showed the cause of death to be due to hypoxia due to pleural epicardial tamponade. The body of the deceased was found to have 8 sharp injuries in the left ribs, left abdomen, left thigh, left head and left upper arm and all the wounds measured about 5 cm.

9. From the photographs taken of the deceased, most of those stab injuries were on the left side of the body. The deceased also had a direct sharp injury to the heart, as per Postmortem Report dated 20/11/2018 produced as PEx2.
10. Investigations commenced, witnesses recorded statements and the accused was arrested and arraigned for Murder which has now been reduced to Manslaughter. The accused was mentally examined on 23/7/2019 and was found to be mentally fit to stand trial. The Mental Assessment Report done by Dr. Edwin Nyaura of Jaramogi Oginga Odinga Teaching and Referral Hospital a consultant psychiatrist was produced as PEx3.
11. The accused person admitted all the above facts on being asked whether the facts were correct and stated in Kiswahili: **Maelezo ni kweli**, upon which the court convicted him on his own Plea of guilty for the offence of Manslaughter as the court was satisfied that the facts disclosed an offence under the law as charged. The Prosecution indicated that they had no previous criminal records on the accused who should be treated as a first offender.
12. In mitigation, Mr. Owade submitted that the accused is a first offender, he has a family, children and he is their sole bread winner. That his family has been scattered following his arrest. The accused has been in custody since he was arrested. The accused person was given an opportunity to mitigate. He stated that he had 8 children and his aged mother to care for. That he also used to take care of children of his 2 brothers who are deceased. He stated quite emotionally that the deceased had taken away his (accused person's wife) and befriended her, after which they took away all his property. That the deceased was charged in court but he went and sought reconciliation with the accused through the latter's mother and the accused forgave the deceased, in 2014.
13. The accused claimed that the deceased had tortured him for the last five years by taking the wife of the accused, with all the household goods and the national identity card of the deceased to Kisumu and leaving the accused with the children. He claimed that the deceased then returned after one year and started telling the area residents that he accused had no Kenyan Identity card so he could not vote for Raila as President in the Elections.
14. That the deceased kept daring the accused for a duel saying that he - the deceased was more powerful and that is why he had taken everything belonging to the accused including the wife to the accused. That when the accused reported the ordeal to the Area Chief, the latter told him that that was a simple matter and that the accused should face the deceased who was his rival and engage him in a fight.
15. On the material date of the incident leading to the death of the deceased, the accused stated that he had gone to Akala to report matters relating to the deceased and the wife of the accused when he met a boda boda rider whom he later learnt was spying for the deceased because the rider who carried the accused, enroute, he received a call, got off the motorcycle, moved far and spoke to the person on the other side on phone and returned, then he rode up to 'Baghdad' where the accused saw the deceased who went to where the accused was on a motorcycle and raised a knife with the intention of stabbing the accused. The accused jumped off the motorcycle and wrestled the deceased on the ground and stabbed him and that is when he realized the rider had been communicating with the deceased with the intention of fixing the accused.
16. After stabbing the deceased, the accused escaped from the people who gathered at the scene and went to Nairobi to do casual jobs and upon returning he found his homestead and all his properties destroyed and his children scattered. He stated that while in remand, he learnt that his erstwhile wife had since died and was buried at his homestead because he had paid her dowry.
17. The accused narrated how he had suffered in the hands of the deceased for close to seven years and stated that he did not intend to kill the deceased, saying he cannot fight again and that the deceased wanted to kill him. He prayed to be assisted to get his customers' shoes which were taken by the police at Akala Police Station.

DETERMINATION

18. I have considered the facts of the case as presented by the Prosecution counsel Mr. Kakoi, and exhibits produced, the fact that the accused person has pleaded guilty unequivocally to those facts which disclose an offence. I have also taken into account the fact that the accused is a first offender and the mitigation presented by his counsel Mr. Philip Owade and the narration by the accused person.
19. I further note that the Probation Officer had on 19/9/2019 filed a Pre-bail Assessment Report on the accused which revealed that the accused was aged 53 years then meaning he is now 55 years old. He was married to one wife with whom they had separated and they have 8 children together. He is said to be a hardworking, supportive and protective person to his family but lived a bitter and vengeful life after his wife left him for the deceased and from his mitigation, the deceased snatched him his wife and household belongings. He does not take any alcohol or drugs meaning he is a completely sober person.
20. The family of the accused was left in squalor after his arrest as his children were scattered among relatives because their houses and that of the accused's mother were destroyed by relatives of the deceased when the deceased's body was being transported to his home for burial. The accused's mother is elderly and sickly. The community and local administrators spoke well of him save for this incident.
21. Having considered all the above mitigation and circumstances under which the offence was committed, I am satisfied that the accused acted in extreme anger against the deceased. This followed the deceased daring the accused to a duel after the deceased had seduced the accused's wife and even gone to live with her in Kisumu. The deceased on the other hand provoked the accused to the extreme claiming to be more powerful than the accused that is why he could snatch the accused's wife.
22. The accused's wife is unfortunately dead, too. She was the source of all this animosity between the deceased and the accused. If the deceased found the accused's wife more suitable for him, he did not have to dare the accused to duels. This was a crime of passion albeit the accused did not find the deceased and his wife in any actual intimate act.

23. The deceased did not deserve to be killed but from the mitigations by the accused, the deceased authored his own misfortune by arrogantly daring the person whose wife he had taken away.

24. The area administration to whom the accused reported his issues with the deceased took it lightly and encouraged him to challenge his wife's suitor to a duel. That was very unfortunate and it just demonstrates how domestic violence issues are taken lightly by the society until someone is killed is when the community wakes up and blames the killer. This is an issue which would have been resolved if the community had intervened to assist the parties decide whether to stay together or to part ways through divorce all together.

25. The accused did not have to kill the deceased as there are many other legal means of resolving domestic issues but the conduct of the deceased was overboard. The accused has been in remand since 2019 following his arrest.

26. Punishment for Manslaughter under Section 205 of the Penal Code is up to life imprisonment. However, considering the fact that the accused has pleaded guilty to the lesser charge of manslaughter, the circumstances under which this offence was committed, the age of the accused and mitigations which include his responsibilities to third parties who are his children; an on the whole, taking into account the objects and guidelines on sentencing:

27. I hereby exercise discretion and sentence the accused person Jack Ooko Samo to serve Five (5) years imprisonment. Of the five years' imprisonment, the accused has spent nearly two years in prison remand which period shall be taken into account as provided for in the proviso to Section 333(2) of the Criminal Procedure Code.

28. In addition, of the five years' imprisonment, the accused shall serve probation for a period of three years (3) from the date he completes two years in prison, which two years shall be calculated from the date of his arrest.

29. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF JUNE, 2021

R.E. ABURILI

JUDGE

In the presence of:

Mr. Kakoi Principal Prosecution Counsel for the State

Mr. Owade Advocate for the Accused/Convict

Convict Jack Ooko Samo present

CA: Mboya and Modestar