



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. E010 OF 2020

[MURDER TO MANSLAUGHTER]

REPUBLIC.....PROSECUTOR

VERSUS

ERICK OTIENO OJAL ALIAS AGANYO.....ACCUSED

JUDGMENT ON PLEA BARGAIN

1. The accused person Erick Otieno Ojal alias Aganyo was initially charged with the Offence of murder contrary to section 203 as read with section 204 of the Penal Code. This was as per the Information for Murder dated 15th December 2020 signed by Mr Edwin Barasa, prosecution Counsel, Siaya, on behalf of the Director of Public Prosecutions. Particulars of the Offence were that on the 4th day of December, 2020 at around 0200hrs at Wambusa Village in Ndori Sublocation, Gem South Location, Gem Soubcounty within Siaya County, he murdered Antony Odhiambo Buoro.
2. On 18th January 2021, the accused person who was ably represented by Mr. Were Advocate holding brief for Mr. Ochieng Ochieng Advocate on probono basis, took plea after he was mentally re-examined and found fit to plead to the charges and stand trial. He pleaded not Guilty to the charge of murder and a plea of Not Guilty as entered. The Court then set the hearing for 29/3/2021 and directed the prosecution to bond all witnesses and supply the defence counsel with witness statements and documents intended to be relied on at the trial.
3. Regrettably, on 29/3/2021, when the matter came up for hearing, the prosecution had not supplied the defence counsel with the documents as directed by this court. The hearing as scheduled therefore collapsed and the court registered its disappointment at the delay occasioned by the prosecution and the unnecessary inconvenience to the witnesses who were present in court.
4. Again, on 21/7/2021 when the case came up for hearing, still the prosecution had not supplied witness statements and documents to the defence counsel despite the fact that they had four witnesses present and ready to testify. The defence counsel nonetheless intimated to court that he had spoken to his client who was willing to plea bargain. The court granted the parties an opportunity to negotiate for plea bargain.
5. on 20th September 2021, the prosecution substituted the charge of murder with that of Manslaughter with leave of court and both parties filed a signed plea bargaining agreement for the offence of manslaughter. The fresh charge of manslaughter was read out to the accused person in the Dholuo language as interpreted by Mr Mboya Court Assistant. The accused person pleaded Guilty to the fresh charge as per the Information for Manslaughter dated 20th September, 2021 signed by Mr. Edward Kakoi Senior Principal Prosecution Counsel on behalf of the Director of Public Prosecution.
6. After facts were read out to the accused person and interpreted to him in the Dholuo language, the accused person admitted the facts to be correct. The court then proceeded and convicted the accused person on his own plea of guilty.
7. The facts which were admitted by the accused person as narrated by the prosecution Counsel Mr Kakoi are that on the 4th day of December 2021 at 2.00am, the deceased who was accompanied by his friends was returning from a neighbour's funeral when he met the accused person herein who was also in the company of other people. The deceased then greeted the accused but the accused refused to accept those greetings and told the deceased to go away. The deceased insisted to be told the reason why the accused had refused to accept the greetings. The two engaged in an altercation and the accused pulled out a sharp object and stabbed the deceased occasioning him serious injuries, as the deceased bled to death despite being taken to Aluor Mission Hospital. The accused then ran away from the scene. An autopsy was carried out on the deceased's body on 10th December 2020 at Bondo Hospital and the mortician established the cause of death to be severe bleeding following injury to the left jugular vein and external carotid arteries. Post mortem report was produced as Pexhibit 1.
8. The accused surrendered himself to the police at Akala Police Station on 4/12/2020 at noon, was arrested and placed in cells pending

investigations. Witness statements were recorded and the accused escorted for mental assessment. He was charged with the offence of murder which was, through plea bargain, reduced to manslaughter. The mental Assessment report dated 22nd December 2020 was produced as Pexhibit 2. Those are the facts which the accused admitted to be correct before this court convicted him on his own plea of guilty.

9. According to the prosecution, the accused was a first offender. In mitigation, counsel for the accused, Mr. Oduol Achar Advocate holding brief for Mr Ochieng Ochieng Advocate submitted that the accused was a first offender, was remorseful for the offence and pleads for leniency as he is a young man with a family.

10. This court also gave the accused person an opportunity to mitigate in his own words and he submitted tin Dholuo that he had admitted his mistake of committing the offence. He pleaded for a term sentence to enable him return home and do his work. He stated that he was 32 years old and that he fought with the deceased after the deceased confronted him for lighting a torch at the deceased yet the accused was simply lighting his path as it was dark.

11. This court upon hearing the mitigation by the accused person, ordered for a presentence report and a victim impact statement to be filed by the probation officer. The reports were not ready by 18/10/2021 when the matter came up for sentencing so the accused person and his counsel asked for time to have the reports filed for consideration by the court.

12. This morning the 26th Day of October, 2021, the probation Officer Mr. John Oyare Oyieko filed a signed presentence report which is detailed, setting out the background of the accused person and the deceased, the accused person's antecedents and the circumstances giving rise to this case. The elaborate report also reveals that the accused person herein has one previous conviction in the year 2017 by Bondo Senior Resident Magistrate for slashing someone with a panga and on this court asking him, he agreed to having been convicted. The report further reveals that the area administration say that the accused has been involved in various cases of serious violent offences especially slashing of several people using pangas although some of those cases do not reach the courts. His guardians were interviewed and they described him as a violent person who has no respect for anybody or the law. The deceased was his neighbour. He is aged 32 years old and unmarried. He does not abuse any drugs or substances. The victim's family are still bitter following the cold blooded killing of their kin by the accused. The accused was reported by his family to have threatened to kill his own father and that he has no respect for his uncles whom he threatened to kill without any provocation. Even local administrators fear divulging more information on the accused for fear that he might eliminate him. his family members feel at peace in his absence and threaten to eliminate him should he be released, for their own survival. That he has been committing offences and escaping from the village then he resurfaces. The accused is described as a person with no human feelings for anyone and is ready to kill without any slightest provocation. The Court was urged not to be misled by the pretentious humility and appearance of the accused in court.

13. The victim was survived by a young widow and two children who are left with no one to fend for them and have relocated to her home for survival with her poor parents.

14. This court has considered the aggravating circumstances under which the offence was committed, the fact that the deceased aged only 26 years and married with two children suffered two serious and extensive cuts caused by a panga leading to his very painful death, that he was not armed and that the accused is a young person aged 32 years and unmarried, the mitigations and the presentence report as detailed above. I have given equal consideration to the judiciary Sentencing Guidelines and the objectives of sentencing as laid down by the Supreme Court in the **Francis Karioko Muruatetu and another Vs Republic [2017] e KLR**.

15. The Law applicable on sentence for the offence of manslaughter is found in Section 205 of the Penal Code which provides:

'Any person who commits the felony of manslaughter is liable to imprisonment for life'

16. The section provides for the maximum sentence that is life imprisonment. This court having taken into account the aggravating circumstances in that the convict used a deadly weapon namely a panga in committing the offence; but the facts reveal that the killing was not premeditated; the accused being a person of violent temperament and disposition; he has saved this court the time and public resources of hearing witnesses to establish whether he committed the offence of murder as initially charged by readily admitting the offence; the fact that the prosecution asked for a prison term of not less than ten years while the accused in plea bargain asked for a prison term of not more than ten years,; and his remorse before this court as he appears humbled by the stay behind bars, the fact that the deceased left behind a dependent family which is suffering because the uncalled for death, I sentence the accused person ERICK OTIENO OJAL alias Aganyo to serve Twenty years (20) imprisonment to be calculated from the date of his arrest. on 4/12/2020 as he has not been on bond. Upon his release from prison, the accused shall serve on probation for a further three (3) years in order for him to be rehabilitated fully and reintegrated into the society.

17. In conclusion, the accused person herein Erick Otieno Ojal alias Aganyo is convicted on his own plea of guilty for the offence of Manslaughter contrary to section 202 as read with section 205 of the Penal Code and is hereby sentenced to serve twenty years imprisonment to be calculated from the date of his arrest on 4/12/2020. the accused shall also serve probation for a period of three years upon his release from prison, to be fully rehabilitated and reintegrated into the society to appreciate that life is sacrosanct.

18. Orders accordingly.

19. This file is closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 26TH DAY OF OCTOBER, 2021

R.E. ABURILI

JUDGE