

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. E007 OF 2021

[MURDER TO MANSLAUGHTER]

STATE.....PROSECUTION

VERSUS

CLEOPHAS ASINDI ODENYO.....ACCUSED

JUDGMENT

1. The accused person herein **CLEOPHAS ASINDI ODENYO** was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the Information dated 8th April 2021 are that the accused person, on the 24th day of March, 2021 at around 2200hours at Luala Village, Sirembe Sublocation, North West Gem Location within Gem Sub County in Siaya County, he murdered **FELIX OTIENO OMONDI**. From the said Information, the accused person was arrested on 25th March 2021 and an order obtained from Court to detain the accused upon which he was escorted to Jaramogi Oginga Odinga Teaching and Referral Hospital for mental Assessment on 2/3/2021 and arraigned for plea on 12/4/2021. The accused pleaded not guilty to the charge of murder and a date was set for the hearing of the charge of murder against him.

2. On 27/7/2021 when the case came up for hearing, the accused who was represented by Mr. Okanda advocate intimated to court that he was willing to plea bargain with the State. Nonetheless, as a witness was in court, he testified and the court encouraged the defence counsel to formally write to the prosecution requesting for plea bargaining. The Three witnesses who were present in court testified. PW1 Nickson Adede testified that he knew both the accused and the deceased as they were his neighbours and that on 24th March 2021 at about 7.30 pm as he was from ploughing and was in the company of Arthur Olwande and on entering into a junction near his home, they found four people including the deceased and the accused fighting. They tried to separate them but were unable so they threatened to call the police that is when the deceased and accused stopped fighting then PW1 and Olwande went their way as those who were fighting also left. Upon PW1 reaching his home and after dinner, he heard screams from the home of the deceased and on his going to the scene, he found many people gathered with the deceased Felix lying on the ground and bleeding profusely. He learnt the Felix had died.

3. On 24/11/2021, the accused and the prosecution reached a plea bargaining agreement and the prosecution applied and this court allowed the substitution of the Information of Murder with that of Manslaughter contrary to section 202 as read with section 205 of the Penal Code. The accused pleaded guilty to the new Information of Manslaughter and the court entered plea of guilty against the accused person.

4. The factual basis for the plea bargain as stated by Mr. Kakoi Senior Principal prosecution Counsel for the Sate are that there were mitigating factors, that there was some element of provocation but the accused used excessive force to react to the provocation. The prosecutor also intimated to court that he had explained to the family of the deceased and the Investigating officer and they were agreeable to his opinion that Plea Bargaining was the best option. The facts of the Information of Manslaughter as read out by the prosecution and admitted as correct b the accused are that the accused and the deceased are neighbours. That the accused had the deceased's radio. On 24/3/2021 the deceased looked for the accused to return the radio to him. They met at 8 pm at the accused's home. The deceased asked for his radio but the accused ordered the deceased to leave. The deceased resisted and the quarrel degenerated into a fight. The accused stabbed the deceased in the abdomen and the deceased died instantly. The body of the deceased was removed to Yala sub-county Hospital mortuary where Dr. Paul Oloo did an autopsy on 29/3/2021. He concluded that the cause of death was penetrating abdominal injury. He produced the Postmortem Report dated 29/3/2021 as Pexhibit Investigations were carried out, witnesses recoded statements and the accused was mentally examined on 30th March 2021 and found to be mentally sound and fit to plead to the charge. The accused was then arraigned for Murder which was reduced to Manslaughter through a Plea Bargain Agreement.

5. Upon the above facts being interpreted to the accused person by Mr. Mboya Court Assistant and in the Dholuo language which the accused person stated he understood better, he responded saying "the facts as read and interpreted to me are correct. They reflect what happened on that day." This court then convicted the accused person on his own plea of guilty of the information/charge of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The prosecution then stated that they had no previous record and therefore the accused should be treated as a first offender.

6. In mitigation, the accused person through his advocate Mr. Mirembe stated that the accused is between 54 and 55 years. He is a family man and sole breadwinner of a family of 5 people. He is remorseful for the action and has Plea bargained and not wasted the court's time. That the deceased approached the accused. The accused was provoked and feared to be harmed. Counsel pleaded for leniency on behalf of his client.

7 The accused person was also given the opportunity to mitigate in his own words and he stated that he has a family and school going children. And he is their sole bread winner. That his people deserted home after the incident. The children are not in school. He asked for assistance saying he never intended to kill the deceased. That the deceased engaged him in a fight over his radio, in the accused's hose,

which radio the accused did not have and that the deceased was armed with a rungu so when the accused saw the deceased wrestle him, the accused picked a knife and stabbed the deceased.

8. I have considered the circumstances giving rise to this incident leading to the death of the deceased, I have also considered the mitigations by the accused and his counsel. The accused is a first offender and has saved the court's time by pleading to a lesser charge of Manslaughter. He has a family that depended on him and he is remorseful.

9. The accused did not have to use a knife to vent off the deceased whom he says was only armed with a rungu. Life is sacrosanct and the accused has not demonstrated that he could not have escaped from the deceased's attack since the accused was in his own house hence he could have found a way of subduing the deceased with the help of any other person from his family set up. The accused took away a life of a very young person in the deceased, aged only 23 years old. The force used on the deceased was excessive in the circumstances. The accused has a family but the deceased too had a family and that family has been left with a gap that can never be filled. Punishment for Manslaughter is life imprisonment. However, as the accused has Plea bargained for 8 years while the prosecution has asked for not less than 15 years imprisonment, and considering the excessive force used on the deceased young man of 23 years old, and taking into account the Judiciary Sentencing guidelines and objects of Sentencing as well as the sentencing principles as set out in the **Francis Muruatetu & another v Republic [2017]e KLR**, I hereby sentence the accused **Cleophas Asindi Odenyo** to serve fifteen (15) years imprisonment to be calculated from the date of his arrest. I so order. This file is closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 24TH DAY OF NOVEMBER, 2021

R.E. ABURILI

JUDGE