

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. 8 OF 2020

STATE.....PROSECUTION

VERSUS

ISAIAH GORO MALOA.....ACCUSED

JUDGMENT ON PLEA BARGAIN

1. The accused person herein **Isaiah Goro Maloa** was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the Information dated 30th April 2019 are that on the 15th Day of April 2019 at about 11pm at Mucheche village, Ruwe Sub location, Ugunja Sub County within Siaya County he murdered one, **Damaris Achieng GORO**.
2. Plea was taken on 26/6/2019 and the accused person who was determined to be mentally fit to plead vide mental assessment report dated 7/5/2019 pleaded not guilty to the charge of murder. The court then set the case for hearing and granted the accused person bond pending trial. In the intervening period, the accused person sought to plea bargain with the state and he did sign a plea bargaining agreement dated 12th June 2020. On 28th July 2020, the charge was read afresh to the accused person in Dholuo language which he understood and he pleaded guilty. Facts of the case were also read to him in Dholuo language and the exhibits produced namely the post mortem report by Dr Collins Oginga dated 2/5/2020 a Senior Medical officer Siaya County Referral Hospital and some two sticks one long and another short produced as P Exhibits 2 and 1a ,1b respectively. The accused person admitted the facts as correct and this court convicted him a on his own plea of guilty after satisfying itself that the facts disclosed an offence of murder. The cause of death was established to be sudden and severe respiratory and circulatory failure following severe head and brain injuries resulting from probably heavy blunt force injury of the head.
3. The prosecution stated that the accused may be treated as a first Offender as there were no previous records. The court then allowed Eric Ouma Aruwa the elder brother to the deceased who had signed the plea bargaining victim statement to address the court and he stated that he forgave the accused because the death was accidental and that the accused's daughter with the deceased was 12 years old staying with her maternal grandmother. He stated that the accused had two wives.
4. The accused person then mitigated personally and through his advocate Mr. Mirembe.
5. I have considered the mitigation by the accused and his counsel on his behalf. I have noted that the accused is a first offender and the deceased was his wife. They had 1 (one) child with the deceased but she was caring for his other 4 children from another run away wife.
6. I have considered his remorse and the fact that he was allegedly disciplining his wife for continued drunkenness when she died. I have heard the victim's brother Eric who forgives the accused.
7. Life is sacrosanct and no person has a right to take away another person's life except by law provided (See Article 26 of the Constitution).
8. The accused overreacted to his wife's habit of drinking alcohol. He should have send her away. His anger caused a precious life. He used two sticks to hit her and injured her fatally. He is remorseful and regrets the offence. The deceased is said to have been taking proceeds of charcoal sales and disappearing into drinking sprees and arriving home late and that is what befell her on the material night. She however did not deserve to be killed unlawfully.
9. Considering all the circumstances of this case, the mitigation and the Victim Impact Statement and the fact that the accused has saved the court's time and resources by pleading guilty to the charge of Murder, I exercise discretion and sentence the accused person to serve three (3) years imprisonment taking into account the period already spend in prison custody.
10. Orders accordingly.

Dated, signed and Delivered at Siaya this 28th Day of July, 2020

R.E. ABURILI

JUDGE