



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL CASE NO. 2 OF 2020

STATE.....PROSECUTION

VERSUS

FELIX ODHIAMBO NGESA ALIAS ODHIS.....ACCUSED

JUDGMENT ON PLEA BARGAINING

1. The accused person **FELIX Odhiambo NGESA ALIAS ODHIS MWANGI** was charged vide information dated 2nd January 2020 with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the Information are that on the 24th Day of December, 2019 at around 8pm at Nyangande Rachar Village, Omia Sub Location within Rarieda Sub County in Siaya County the accused person murdered one **Maurice Otieno Nyakoyo alia Marega**.
2. The accused person took plea on 28th January 2020 and pleaded not guilty to the charge and the court set a hearing date for 11th May 2020. In the intervening period, the accused offered to plea bargain with the state and he did sign a plea bargaining agreement dated 28th July 2020 with the state.
3. The charge of murder and all its particulars were read afresh to the accused person in Dholuo language which he understood and he pleaded guilty to the charge. Facts of the case were then read to the court by Mr. Okachi the Senior Principal Prosecution Counsel who also produced a post mortem report dated 31/12/2029 signed by Dr. Collins Otieno Oginga as P EXHIBIT 1, showing the injuries that were found on the body of the deceased and the cause of death after postmortem was found to be sudden cardio respiratory collapse following severe lung injury with heavy bleeding into the chest from penetrating chest injury from a heavy sharp object. The accused person admitted the facts as being correct hence he was convicted on his own plea of guilty.
4. The prosecution stated that they had no previous records hence the accused person should be treated as a first offender. The accused person then mitigated personally and through his counsel Mr. Mirembe and stated that he was a young person aged 25 years old, very remorseful and asked for forgiveness from the court and the family of the deceased he prayed for a term sentence to enable him get back into the society and be useful and promised never to commit an offence again.
5. The victim's widow, **SALOME AUMA OTIENO** too signed the victims' impact statement and appeared in court during plea bargaining and told the court that since the accused had admitted the offence, she forgives him but the deceased was their breadwinner and that they are suffering following his untimely death. The court also allowed the victim's uncle **Kennedy Ochieng** who was also a witness in the case and he stated that as a family they were pained by the death of the deceased he stated that they had forgiven the accused because he had admitted the offence but that they were still mourning their son/nephew hence the accused should stay in prison for some time before being released as the situation at home was still tense, to allow the community to heal from the pain of losing the deceased under such circumstances. **Jackton Omondi Nyakoyo** the brother of the deceased too addressed the court and stated that he was saddened by the demise of his brother but he accepts the apology given by the accused person.
6. I have heard the mitigation by the accused and his counsel. He is remorseful and prays for leniency. He is a first offender and a young man aged 25 years old with a future ahead of him. He already accepts committing the offence leading to the demise of the deceased who was about 42 years old and sole breadwinner for his family of a wife and 5 children. I have heard from the widow of the deceased and his uncle and brother. They are forgiving of the accused.
7. A precious life was lost in circumstances that are unwarranted. Article 26 of the Constitution of Kenya guarantees every person the right to life and such life begins at conception such that it can only be taken away naturally or by law provided. Upon conviction for murder, the law under section 204 of the Penal Code provides a mandatory death sentence.
8. The accused has pleaded guilty to the offence and saved the court and the State time and resources of bringing and hearing witnesses, he is remorseful and prays for the term sentence.

9. The community where the victim comes from is forgiving too but a precious useful and productive life was lost and the accused must suffer punishment for his irresponsible actions, however lenient the sentence may be.

10. For the above reasons, I sentence the accused to serve ten (10) years imprisonment to be calculated from the date of his arrest on 25/12/2019 taking into account the period spend in custody.

11. Right of Appeal explained.

12. File closed

13. Orders accordingly.

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

R.E. ABURILI

JUDGE