



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

CRIMINAL CASE NO. 24 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

MAURICE BONYO DEYA.....ACCUSED

JUDGMENT

1. The accused, **Maurice Bonyo Deya**, is charged with murder, contrary to **Section 203** as read with **Section 204** of the Penal code, in that on the 27th June 2018, at Samunyi village – Ruri East/Lambwe East Location within Homa Bay county murdered Maurice Anguka Obunde.

2. The case for the prosecution was that on the material date the deceased was in the company of his friend, **Hellen Adhiambo Auko(PW1)**, while looking for transport for tomatoes collected by them when the accused suddenly appeared seemingly attempting to block them from using a road. He had previously “inherited” Hellen after she lost her husband but they disagreed and she left his home to go and live with the deceased at the place called Samunyi in Mbita town.

3. When they met, the accused was armed with a sword which he used to stab the deceased on the abdomen thereby causing him serious injury. The deceased put up a struggle with the accused despite his injury and in the process, Hellen(PW1) held and retrieved the sword from the accused. She then used a motorcycle taxi to take the deceased to the hospital where he was admitted but passed away while undergoing treatment.

4. **Michael Ochieng Ogunde(PW2)** and **John Okombo(PW3)**, both brothers of the deceased saw and identified the dead body of the deceased. They both noted that the body had a deep piercing wound on the abdomen and some bruises on the head and neck.

Dr. Peter Ogola(PW4), a medical doctor based at the Homa Bay Referral Hospital produced a post mortem report (**PEX2**) compiled and signed by his colleague, Dr. Kando, who carried out an autopsy on the body of the deceased and formed the opinion that the cause of death was cardiac arrest secondary to rib puncture on the right atrium.

5. **Cpl. Michael Nyaboki(PW5)**, carried out the necessary investigations and gathered that the deceased and the accused were involved in a fight and ended up injuring each other with the deceased suffering serious injuries which later proved fatal. This prompted the arrest and arraignment of the accused with the present charge.

6. The defence case was a denial by the accused that he committed the offence. He implied that the deceased was stabbed with a sword in possession of Hellen(**PW1**) who was his wife but was taken away from him by the deceased while he was hospitalized. He said that it was Hellen and the deceased who confronted and demanded money from him before they attacked him. He fell on the ground and in the process, Helen made an attempt to stab him with the sword but he ducked and the deceased was instead stabbed.

7. The accused contended that due to the fact that he had undergone a surgical operation and had surgical wounds on his body, he could not have committed the offence. He further contended that the sword actually belonged to **Hellen(PW1)** and that she intended to stab him with it but missed and stabbed the deceased instead.

8. From all the foregoing evidence its out rightly clear that the deceased met his death as a result of a serious injury to the area around his abdomen inflicted upon him while engaged together with the accused in the unlawful act of affray over a woman who was allegedly taken away from the accused by the deceased. As it were, the woman was involved in a “love triangle” with both the deceased and accused and was the actual cause of their fight which led to the death of deceased.

9. The said woman was none other than **Hellen(PW1)** whose testimony was more skewed against the accused such that she evaded to say that there was actually a fight between the deceased and the accused when they met in her presence and which was triggered by her present or past relationships with either of them. One of them wanted to protect and maintain her heart for himself while the other wanted to win

back her lost heart.

10. Clearly, this was a fight to death and it indeed ended with the death of the deceased while undergoing treatment for the injury inflicted upon him by the accused whose defence indicating the contrary and implicating **Hellen(PW1)** was devoid of credibility. However, it was evident that the death of the deceased was most unfortunate as there was no pre-meditated intention by the accused to cause his death.

11. In their eagerness to resolve their differences with a show of “**Machismo**” the deceased and the accused engaged in vicious fight thereby exposing themselves to the risk of severe fatal injury. In essential the prosecution evidence succeeded in establishing the offence of manslaughter rather than murder against the accused.

Consequently, the accused is hereby found guilty of **manslaughter**, contrary to **Section 202(1)** of the penal code and is accordingly convicted.

Ordered accordingly.

(Delivered and signed this 19th day of November, 2020)

J.R. KARANJAH

JUDGE OF THE HIGH COURT