



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
HIGH COURT CRIMINAL CASE NO. 14 OF 2015
(MANSLAUGHTER)
(CORAM: J.A. MAKAU – J.)

REPUBLIC PROSECUTOR

VERSUS

GEORGE OUMA ACCUSED

SENTENCING

1. The Accused **GEORGE OUMA** was initially charged with an **offences of murder contrary to section 203 as read with 204 of the Penal Code**. That before the hearing of the murder case the prosecution reduced the charge from murder to **manslaughter contrary to section 202 as read with section 205 of the Penal Code (Chapter 63) Laws of Kenya**. The particulars of the offence are that on the 5th day of April, 2015, at Karadolo Sub-Location, in Ugenya District, within Siaya County, jointly with another not before Court murdered **JOSEPH ODHIAMBO OLOO**.
2. The Accused pleaded guilty to the charge of manslaughter and upon facts being given, he admitted all facts as correct, consequently, he was convicted on his own plea of guilty.
3. The facts of the Prosecution case are as follows:- that on the 5.4.2015, at around 8.50 a.m. the deceased Joseph Odhiambo Oloo, Edwin Ochieng Owino and Mathews Ochieng Oduor, went to the deceased's shamba for the purposes of planting maize. That after 30 minutes in the shamba the Accused herein George Ouma, a neighbor, approached the deceased at his shamba and warned him that, he was going to kill him, the Accused left the shamba, leaving the deceased and the three others. He returned back after 10 minutes, in company of his brother both armed with pangas, proceeded straight to where Joseph Odhiambo Oloo was and started assaulting the deceased with the pangas. The deceased was cut on his head and hands. Paul Odhiambo started screaming for help, as the deceased fell down. The Accused and his brother started running away, however, the Accused was arrested within the scene by members of public, who had responded to the alarm. The panga which the Accused had thrown away, as he was running from the scene, was recovered and handed over to the Police. The Accused's brother managed to escape and is still at large. The deceased was rushed by members of Public, to Ukwala Sub-County Hospital, for treatment as his son Paul Odhiambo, rushed to Ukwala Police Station, whereby he reported the incident. He returned to the scene with Police Officers, who re-arrested the Accused herein. The deceased was admitted at Ukwala Sub-District Hospital and treated. That on 11th April 2015, he succumbed to the injuries. Postmortem was conducted on 22.4.2015, after his body being identified by his son, Paul Odhiambo Oloo and one of his relatives, George Oduro. Postmortem was conducted by Dr. Ojuang' and cause of death established. Death certificate No. 468910 was issued. The Accused was charged with the offence of murder which has now been reduced to manslaughter. Postmortem Report

produced as exhibit P1, and the panga exhibit P2.

4. The Prosecution stated that they reduced the charge to manslaughter because from the onset the Accused herein never refused he was involved with the death of the deceased and he contributed to the death. The State established the two are relatives and neighbours. The Prosecution considered that there was pre-existing boundary dispute and there was feeling that part of the Accused's land had been wrongfully annexed by the deceased. There had been previous disagreement. The deceased was planting on the disputed land. There was a quarrel and outstanding land dispute. The Accused had no malice aforethought.

5. M/s. Odumba, for the State, stated the Prosecution do not have previous record of the Accused and that the Accused may be treated as a first offender, however, she stated deaths arising out of land disputes are on the rise around Ugenya and asked for deterrent sentence to send a message to the would be offenders not to take law into their own hands.

6. M/s. Opondo, Learned Advocate for the Accused urged that the Accused is remorseful and regrets the death of the deceased because the deceased was his uncle and the death was not planned, that the death arose over boundary dispute between the Accused and the deceased though the land had been resurveyed and dispute arose between the two on 5.4.2015 as the deceased and his family were planting on the disputed land, which act frustrated the Accused. That the Accused is married with 4 children. That as a result of the incident, the Accused's family structures were burned down forcing them to flee and seek refuge at the trading centre. That the Accused's parents are old. The Accused prays for forgiveness and leniency.

7. I have taken into the account of circumstances surrounding the commission of the crime, that the incident arose out of land dispute involving the Accused and his uncle, that the Accused was frustrated when he found his uncle and his family planting on the disputed land, notwithstanding pending dispute resolution, that the Accused regrets causing death unintentionally of his uncle, that the Accused is a first offender, he is remorseful, that he is married with four children who looked upon him for their support and guidance, that his parents are elderly and as a result of that incident their homestead was burned down and now live in a trading Centre, that the Accused and his family has been punished for his unlawful act, however, the Court do not support people having land dispute to use violence to reclaim the land or resolve the dispute, this Court would like to send out a clear message to would be offenders that land disputes should not be used as an excuse to assault or kill their opponents, but should learn to solve disputes through the laid down mechanism by the law of the land, for land dispute will always be there and should always be solved in a civilized manner but not by use of the law of the jungle.

8. The Upshot is that the Accused deserves custodial sentence to enable him to be rehabilitated. I have considered that the Accused has been in custody since April 2015, todate a period of 2 years and 2 months. I have also considered the mitigation in his favour. I sentence the Accused to serve 10 years imprisonment.

DATED AT SIAYA THIS 29TH DAY OF JUNE, 2017.

J. A. MAKAU

JUDGE

DELIVERED IN THE OPEN COURT THIS 29TH DAY OF JUNE, 2017.

IN THE PRESENCE OF:

M/S. OPONDO FOR THE ACCUSED

MR. ODUMBA FOR STATE

COURT ASSISTANTS:

1. L. ODHIAMBO

2. L. ATIKA

J. A. MAKAU

JUDGE