



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HIGH COURT CRIMINAL CASE NO. 1 OF 2016

(MANSLAUGHTER)

STATE PROSECUTOR

VERSUS

WILSON OGWANG MURUKA ACCUSED

SENTENCING

1. The Accused **WILSON OGWANG MURUKA**, was initially charged with an **offence of murder contrary to section 203 as read with 204 of the Penal Code**. That by plea bargain agreement entered into on 13th June 2013, the charge was reduced to **manslaughter contrary to Section 203 of the Penal Code**. The particulars of the offence are that on the 14th day of December 2015, at Sirembe Sub-Location, in Gem Sub-County, within Siaya County, murdered **JOSEPHINE AOKO MURUKA**.

2. The Accused pleaded guilty to the charge, upon facts being given he admitted the facts as correct and was accordingly, convicted on his own plea of guilty.

3. The facts leading to the commission of the offence are that, on 14.12.2015 at about 9.00 p.m., one Bernard Ogol Muruka, brother to the Accused, was from a local market going home, when he met the Accused who was angry because some tree seedlings had been planted on their family land, and he enquired from Bernard Ogol Muruka with rage, the reason behind planting of tree seedlings on their family land. That before he could respond, the Accused who was then armed with a rungu and a sword cut him twice on the head and he fell down. That the wife of Bernard Ogol Muruka, Lilian Akinyi, went out to enquire what was happening, saw her husband lying on the ground bleeding and started screaming for help running towards her mother-in-law's house. Her mother-in-law, Josephine Aoko Muruka, rushed to the scene and in an attempt to talk to the Accused, he stabbed her on the stomach with the sword forcing her intestine to come out. The neighbours were attracted by the noises, and they came to the scene. Bernard Ogol, was rushed to Sirembe Hospital, whereas Josephine Aoko Muruka, was taken to Yala Hospital, then referred to Kisumu for further treatment, unfortunately she passed on 16.12.2016 at 4.00 a.m. while undergoing treatment. The State agreed to plea bargain as the matter involved the mother of the Accused and as his brother Bernard Ogol and his wife had decided to forgive him. Bernard Ogol was meanwhile treated and discharged the Accused was arrested on the same day and charged with the offence of murder. Postmortem report was completed on 21.12.2015 and produced as exhibit P1.

4. Mr. K'owino Advocate, in mitigation for the Accused, urged that the Accused is very remorseful, that he is a first offender, married with 5 children, who has so far dropped out of the school. He urged the Accused has been in custody since 15th December 2015 and prayed for leniency.

5. I have taken into Account the circumstances surrounding the commission of the crime in question and the fact that the Accused and the deceased was a son and a mother, that the Accused was the aggressor and that he armed himself with a rungu and sword, which he intended to use to harm his brother as he waited for him upto 9.00 p.m. and on seeing him and on enquiring from him, the reason behind planting the seedling on the family land, he attacked him by cutting him with sword even before he responded, not caring whether it was him who had planted the seedling or not. That upon his mother coming to the scene and in her attempt to talk to him, he stabbed her on the stomach. The Accused person was not in any imminent danger from his brother or mother or anyone, yet without any justification or provocation he cut his brother and stabbed his mother at the stomach. I have considered the Accused, is apologetic and remorseful, however, an innocent life has been lost due to his uncontrollable anger, over minor issues which could have been resolved through a dialogue. I have considered that his brother and sister-in-law have forgiven him. I have also taken into account the Accused has been in custody from December 2015, which is a period of 1 year 5 months todate.

6. Having considered all mitigating factors in favour of the Accused and the fact that he unlawfully caused the death of his mother, I find a custodial sentence would be proper. I sentence the Accused to 20 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:

MR. K'OWINO FOR THE ACCUSED

M/S. ODUMBA FOR STATE

COURT ASSISTANTS:

1. L. ODHIAMBO

2. L. ATIKA

J. A. MAKAU

JUDGE