



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 75 OF 2012.

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH MAYAKA OBIER1ST ACCUSED

DOMINIC ONTIERI MAYAKA.....2ND ACCUSED

ALEX OMBWORI MAYAKA.....3RD ACCUSED

SENTENCE

1. The accused person herein, **JOSEPH MAYAKA OBIERO, DOMINIC ONTIERI MAYAKA, and ALEX OMBWORI MAYAKA** were initially jointly charged with 2 counts of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. By a plea bargain agreement made on 16th November 2016, between the state and the 3 accused person, the said charges of murder were reduced to lesser charges of manslaughter. The particulars of the offence were that on 6th May 2012 at Nyakamba village in Marani District within Kisii County unlawfully caused the death of Douglas Gichana Ogoti and Alice Boera Ogoti.
2. All the accused pleaded guilty to the lesser charges of manslaughter and were consequently convicted on their own plea of guilty.
3. The 1st accused is the father of the 2nd and 3rd accused and the neighbor of the deceased Douglas Gichana Ogoti. The said Douglas Ogoti (Deceased) was the son of Alice Boera Ogoti (deceased).
4. The facts of the case as narrated by Miss Mbelete, state counsel, were that the two families of the 1st accused and the deceased were embroiled in a long standing land dispute and that on the material day at about 7.30 p.m. the accused persons armed themselves with a panga, slasher and iron rod before storming into the house of the deceased.
5. The accused persons attacked the family members of the deceased Douglas Ogoti his mother Alice Ogoti, his brothers Charles and Bernard Ogoti. Benard Ogoti managed to escape through the window but his brother, Douglas, and mother Alice, were not so lucky as Douglas died on the spot while Alice later succumbed to her injuries while undergoing treatment in hospital. The accused persons surrendered themselves to the police after the attack.
6. In mitigation, Mr. Soire for the accused submitted that the deceased Douglas and the 1st accused were brothers and that a land dispute precipitated their bitter differences that culminated in the attack. Mr.

Soire stated that the entire home of the accused was burnt down following the incident and all the family members displaced. Mr. Soire pleaded for leniency for the accused persons while stating that they had been in custody for a long time while awaiting their trial and that the 1st accused had been diagnosed with cancer for which he has been undergoing treatment at Kenyatta National Hospital.

7. The Probation Officers report in respect to each of the accused filed on 30th November 2016 recommended a non-custodial sentence for the 2nd and 3rd accused on the basis of their relative tender age compared to the 1st accused who is their father. The Probation Officer was very skeptical about a non-custodial sentence for the 1st accused based on the hostility that is still palpable in the accuseds' community back at home as there is real fear that the accused persons could be lynched if they got released under probation.

8. I have considered the circumstances surrounding this case, the fact that the family of the deceased and that of the accused were close neighbours including the fact that they may have had differences over land. The accused persons chose to arm themselves and storm into the home of the deceased where they went into a murderous rampage by attacking everyone they encountered thereby leading to the death of the two deceased persons who were mother and son.

9. To my mind, this is a crime that was not committed at the heat of the moment or spontaneously without the intention to kill. It is clear to me, from the facts of this case, that the accused persons planned to exterminate the family of the deceased Douglas and Alice going by the manner in which they stormed their home while armed with dangerous weapons. Douglas Ogoti is reported to have died on the spot and this is a pointer to the brutal manner in which he was attacked.

10. The post mortem examination report produced in court as Pexibits 1 (a) and (b) revealed that in both instances, the cause of death was severe trauma with excessive hemorrhage, another indicator to the brutality of the attack.

11. I note that the senseless actions of the accused led to the death of the deceased persons. The accused had the option of seeking a peaceful resolution of any dispute that they may have had with the family of the deceased but they chose to take the law into their own hands by killing their opponents.

12. The actions of the accused persons is a clear testimony of the total breakdown of social values that once held communities together.

13. The accused's mitigation and the probation officer's report notwithstanding I am still convinced that this is a case that calls for a stern custodial sentence. I have taken note of the fact that the accused have been in custody since May 2012 while awaiting their trial. The victim impact-assessment report filed in court on 30th November 2016 shows that the family members of the deceased were devastated by the killings whose effects they still feel to-date.

14. Manslaughter is a serious felony which attracts a maximum sentence of life imprisonment. It was reckless for the accused to kill two members of the same family in one swoop and the death of the deceased will remain in the conscience of the accused forever.

15. Consequently, I sentence each of the accused person to a term of 10 years imprisonment on each count of manslaughter. Sentences to run concurrently.

Delivered, dated and signed in at Kisii on **30th of November, 2016.**

W.A. OKWANY

JUDGE

In the presence of:

- Miss. Mbelete for the State
- Mr. Okenye for Sagwe and Soire for the Accused
- Omwoyo court clerk