

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Criminal Case 3 of 2005

REPUBLIC..... PROSECUTOR

VERSUS

PETER NYANYEMI OMWENGA ACCUSED

JUDGMENT.

The accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on 21st day of November 2004, at Nyamatara area in Kisii Central District, Nyanza Province, the accused murdered Peter Mose Orangi, hereinafter referred to as “the deceased”.

James Gekonge Ondora, PW1, testified that on 8th November 2004 at about 5.00 p.m. he was going home together with the deceased. Near his home the accused appeared from a maize plantation and told the deceased that he had been looking for him and he had now traced him. The accused was holding a knife and a metal bar. The deceased asked the accused why he wanted to attack him but the accused did not respond. The accused drew his knife and stabbed the deceased on the stomach. The deceased walked for about 10 meters and fell down. He screamed for help and **James Barongo Omwando, PW3**, was the first person who went to the scene. **PW1** and **PW3** and others took the deceased to Kisii District Hospital where he died while undergoing treatment. PW1 reported the incident to Kisii police station on the following day. The accused was arrested two days thereafter.

PW3 corroborated the evidence of PW1 in all material aspects.

Police Constable Thomas Kioko, PW5, testified that on 9th November 2004 while stationed at Kisii police station, the accused reported to him that he had been assaulted. The accused had carried with him an Alternator, a knife and an iron bar. He alleged that he had been assaulted by a person who was trying to steal the Alternator from his vehicle. He further alleged that he took the knife and the iron bar from the alleged thief. PW5 took the aforesaid items as exhibits and issued the accused with a P3 form.

Later on the same day two people went to the police station and reported that the deceased had been stabbed with a knife by the accused and that the deceased was lying at Kisii District Hospital. PW5 proceeded to the said hospital and noticed that the deceased had a wound on the stomach and a cut on the face. The witness looked for the accused and arrested him. He charged him with assault causing actual bodily harm but when the deceased died as a result of the stab wound to his stomach, he decided to charge the accused with murder.

Dr. Odingo Stephen, PW4, produced a post mortem report that was prepared by Dr. Ogando on 29th November 2004. The deceased’s body had been identified by **Vincent Gwaro Orangi, PW6**, the deceased’s brother. The post mortem report indicated that the deceased’s body had a long surgical scar which had been stitched on the stomach. There was also another surgical scar on the right side of the body. The cause of death was said to have been cardiopulmonary arrest following a stab wound to the deceased’s abdomen.

The accused defended himself by saying that on 8th November 2004 at about 12.30 p.m., police officers arrested him from his home and took him to Kisii police station. Upon interrogation, he told them that he had fought with one Ratemo. He was later charged with the murder of the deceased. He

denied having committed the offence.

From the evidence on record, it is clear that on the material day PW1 was with the deceased when the accused appeared from a maize plantation and without any provocation proceeded to attack the deceased, having told the deceased that he had been looking for him. The accused was at the time armed with a knife and a mental bar. This was therefore a pre-meditated attack. The evidence of PW1 was well corroborated by that of PW3. The accused's report to PW5 that he had been assaulted by the person who was trying to steal his Alternator was intended to be a cover up. The deceased died as a result of the stab wound that was inflicted upon him by the accused. The defence by the accused is completely unfounded and I reject the same. I find and hold that it is the accused who murdered the deceased with malice aforethought. The fact that the deceased died several days after he was stabbed by the accused cannot absorb the accused of the fact that he had malice aforethought. He must have known that the act of stabbing the deceased on his abdomen was likely to cause him grievous harm that could easily lead to his death. I therefore find the accused guilty of murder as charged and convict him accordingly.

DATED, SIGNED AND DELIVERED AT KISII THIS 26TH DAY OF MAY, 2009.

D. MUSINGA

JUDGE.

ACCUSED: I did not commit the offence.

D. MUSINGA

JUDGE.

COURT: The accused is sentenced to death as by law prescribed. Right of appeal within 14 days.

D. MUSINGA

JUDGE.