



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Criminal Case 1 of 2008

REPUBLIC PROSECUTOR

VERSUS

GEOFFREY MANOTI OBAIGWA 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 the 15th day of December, 2007 at Omonono sub location in Nyamira District, within Nyanza Province, the accused murdered **Charles Ocharo**, hereinafter referred to as the “**the deceased**”.

The prosecution called five witnesses. **Joseph Okioma Mose, PW2**, is a cousin of the deceased. He testified that on 15th December 2007, at about 6.30 p.m., he was at his home when he saw the accused quarreling with one James Osogo. PW2 went to the road where the two were and separated them. However, after a short while they began to fight. PW2 separated them again. Thereafter the two protagonists went to their respective homes. After a short while PW2 saw the accused running from his home holding a knife. He also saw James Osogo running from his home holding a panga. The two were drunk with alcohol. When they met, the accused attempted to stab James Osogo but the latter evaded. James cut the accused with a panga at the back near the shoulders. The accused ran to his home and James also ran away. After about five minutes, the accused went to the home of James Osogo, a brother of the deceased. He was searching for James Osogo. He did not get him and he moved to a kiosk that was outside the house. The kiosk belonged to the deceased. He entered the kiosk and started damaging the items therein. When the deceased moved towards his kiosk, the accused hit him at the back of the head with a jembe handle. PW2 intervened and grabbed the said handle from the accused. The accused ran away. The deceased was taken to a nearby clinic but he died on the same day.

Richard Momanyi Samoita, PW3, is an uncle to the deceased. On the material day at about 6.00 p.m., PW3 went to the home of the deceased. He was carrying a handle of a jembe. While there, the accused arrived and grabbed the said handle from PW3. After a short while PW3 heard screams. He realized that the deceased had been hit by the accused. The deceased sustained an injury to his head. The deceased was taken to a nearby clinic for treatment but later succumbed to the said injury.

Stephen Nyaberi, PW4, is a brother to the deceased. He was not at the deceased’s home when he was assaulted but on the material day, shortly after the incident, he found the deceased’s children crying outside their house. Upon inquiry, PW4 was told that the deceased had been assaulted by the accused. On the following day PW4 and others started searching for the accused. They went to his home but did not get him. The accused’s father took them to a certain clinic at Kebirigo shopping centre where the

accused had been taken for treatment. The accused was apprehended and taken to Nyamira police station. PW4 was one of the people who identified the deceased's body to **Dr. Michael Dulo, PW1** for post mortem. PW1 concluded that the cause of death was severe head injury due to extreme blunt force.

Police Constable Micah Kipkoech, PW5, was one of the investigating officers. He went to the scene of crime and recovered a jembe handle which was used by the accused to hit the deceased. The same was produced as an exhibit before this court. It had blood stains.

In his unsworn defence, the accused stated that on the material day he met James Osogo and his brother, Charles Ocharo, the deceased, going to buy tea leaves. He greeted them but they did not respond. After a short while the accused was allegedly stabbed by someone. The accused further alleged that the deceased held him. James had a jembe handle and a knife. He raised it to hit the accused but the latter dived and the handle hit the deceased. The accused got a chance to run away to their home. He was taken to a medical clinic for treatment. While there he was apprehended and taken to a chief's camp where he was detained before being escorted to Nyamira police station.

From the evidence of PW2, it is clear that on the material day there was a quarrel between the accused and James Osogo. PW2 separated them after they had engaged each other in a fight. The witness saw all the events that unfolded until the accused went to the deceased's kiosk in search of James Osogo. The accused damaged items in the said kiosk. The deceased was hit on the head by the accused when he was going to his kiosk. The deceased had not provoked the accused at all.

The evidence of PW2 was corroborated by PW3. The deceased was taken to a hospital for treatment but he died on the same day. Medical evidence confirmed that he died as a result of the head injury that was inflicted upon him by the accused using the jembe handle that was grabbed from PW3.

The defence that was advanced by the accused was that it was James Osogo who accidentally hit the deceased after the accused dived to avoid being hit. That defence, weighed against the evidence of PW2 and PW3, is a sham.

I am satisfied that the deceased was assaulted by the accused. In so doing, the accused intended to inflict grievous harm upon the deceased. Consequently, I find the accused guilty of murder and convict him accordingly.

DATED, SIGNED AND DELIVERED AT KISII THIS 15th DAY OF MAY, 2009.

D. MUSINGA

JUDGE.

Accused: I have nothing to say.

D. MUSINGA

JUDGE.

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

D. MUSINGA

JUDGE.