



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 106 OF 2005

REPUBLIC.....PROSECUTOR

-VERSUS-

EARNEST ALINYO AMUKOA.....ACCUSED

JUDGMENT

The hearing of this case began on 16th February, 2006 on the basis of a charge of **murder**. However, when the matter came up again on 21st March, 2006 learned counsel for the accused, **Mr. Thiong'o** indicated to the Court that he had held consultations with the State Law Office and had also taken appropriate instructions, and that on that basis the accused had expressed readiness to plead guilty to a lesser charge of **manslaughter**. After several mentions, the matter was listed for the filing of new information for a charge of manslaughter, which charge was read out to the accused, being interpreted in Kiswahili as preferred by the accused himself, on 4th May, 2006. The accused stated clearly that he understood the charge as read out twice and interpreted twice to him, and he pleaded guilty.

Learned State Counsel **Mrs. Ogoma** presented the facts of the case, which, at the end, the accused conceded was a true account; and the same are the basis of the **conviction** and **sentence** carried in this judgement.

A barber's shop run by **John Gathara Wacuka** (PW1) is located just a couple of metres from the scene of the crime which is the subject of the charge herein. At about 8.00 p.m. on **9th January, 2005** the accused, who was in a drunken condition, staggered past the said barber's shop as he loudly complained that his cellular phone had been stolen by an unidentified person. He suspected the thief to be one **Kurova**. Only some ten minutes thereafter, the accused returned, this time dragging along the deceased, who was equally drunk, by the deceased's shirt. The two engaged in a fight, just outside PW1's barber's shop. In the ensuing combat, the deceased fell to the ground, and from that moment his health condition deteriorated until he died several hours later, at the Kikuyu Hospital. Soon after the deceased fell, the mother of the accused arrived and led his son away, leaving the deceased writhing in pain. PW1, who observed the deceased where he lay on the ground, noticed that he was bleeding from the mouth. PW1 took action by sending for the mother of the deceased, who lived in the Kawangware neighbourhood where the incident took place. The deceased's mother soon came, and arranged for the deceased to be taken to a nearby clinic for first aid. The deceased, having been accorded first aid, was released and went home with his mother. But his condition deteriorated in the night, and his family had to take him to the Kenyatta National Hospital for further attention. The deceased, unfortunately, died on the same night, while undergoing treatment.

In a post-mortem examination conducted on the deceased, by **Dr. Moses Njue** on 19th January, 2005 it was established that the cause of death was “head injury due to blunt trauma.” This was consistent with the evidence of PW1, **John Gathara Wacuka** (owner of the barber’s shop located just next to the *locus in quo*) who testified:

“*[The accused] held Thairu [the deceased] and was beating him. He felled Thairu in the middle of the road. He stepped on the head of Thairu on the road. Thairu fainted.*”

On 10th January, 2005 the accused was arrested at his mother’s house. He was later charged with murder, the charge now reduced to manslaughter and to which lesser charge the accused has pleaded guilty.

After the plea of guilty by the accused, on 4th May, 2006 and following his own admission of the facts as rendered by learned State Counsel **Mrs. Ogoma**, learned counsel for the accused, **Mr. Thiong’o** addressed the Court as follows.

The accused is 22 years old and is married, with two children who, unfortunately, have passed away. The accused is engaged as a trainee-carpenter. Both the accused and the deceased were drunk, at the time of the incident; and the circumstances attending the fatal injury to the deceased by the accused, were those of a drunken brawl. Not only was the accused drunk at the time, but he had also just suffered the loss of his mobile phone and he was agitated about it. The deceased had not died immediately. The accused, who had already been in custody continuously from January, 2005 had borne no malice towards the deceased, and he was remorseful. Learned counsel prayed for leniency in the meting out of sanction against the accused.

Learned State Counsel **Mrs. Ogoma** stated that there was no past record on the accused, and so she would leave the matter to the discretion of the Court.

I am satisfied with the truthfulness of the account on the commission of the offence charged. I also believe to be true the evidence given by **John Gathara Wachuka**. It is on record that the charge information was carefully read out twice and interpreted in Kiswahili for the benefit of the accused, and that he unequivocally pleaded guilty. On this basis I now convict the accused of the offence of manslaughter contrary to **S.202** as read with **S.205** of the **Penal Code** (Cap.63, Laws of Kenya).

It is common cause that at the time of the acts of assault and battery causing the death of the deceased, both the accused and the deceased were drunk, and the accused had not been actuated by any ill intentions. I have also taken into account the relatively young age of the accused, at 22; the fact that he has a family; the fact that he has been in custody for a period of about one year and four months; and the fact that the accused has shown remorse in respect of the unfortunate incident.

On that basis I hereby sentence the accused, **Earnest Alinyo Amukoa** to **six (6) years’ imprisonment**, this sentence to run from the date hereof.

When this case began as a murder trial, on 15th February, 2006 I had selected as assessors the following three persons: **Mr. Leonard Irungu Maina**, **Mr. Peter Mathenge**, and **Mr. Justus Sinoyia**. In the light of the judgement herein, the three are now discharged, and I should like to acknowledge their public-spirited contribution.

Orders accordingly.

DATED and DELIVERED at Nairobi this 11th day of May, 2006.

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court clerk: Ndung'u

For the Republic: Mrs. Ogoma

For the Accused: Mr. Thiong'o