



**Republic v Oluchula (Criminal Case 15 of 2016)
[2025] KEHC 1733 (KLR) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 15 OF 2016
SC CHIRCHIR, J
FEBRUARY 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH AMAKOBE OLUCHULA ACCUSED

JUDGMENT

1. The Accused herein was charged with the murder of his father. The particulars of the charge are that on 11/3/2016 at Shilonga Village, Butere District within Kakamega County murdered James Oluchula Isaya (Deceased).

Prosecution's case

2. The first witness was Doctor Mucoke, a medical officer at St. Mary's Hospital. He conducted an autopsy on the deceased body and established that the deceased sustained multiple skull laceration, multiple bites on both cheeks, fractures on both the upper and lower limbs. The upper limbs fractures included the ulna, radius and the 4th & 5th metacarpals. The lower right fractures involved the tibia & fibula. There were several skull fractures. There was also bleeding into the brain. The doctor formed the opinion that the cause of death was left temporal skull fracture and epidural hematoma caused by a blunt object. He produced the post mortem report and was marked as Prosecution Exhibit 1.
3. On cross-examination he stated that the injuries were inflicted by both blunt and sharp objects.
4. PW2, was one Caleb Olouch and the only eye-witness to the incident. He told the court that on the material day, he heard someone calling for help. He found a young man standing on the fence to the deceased/accused home. The person told him that someone should speak to the accused as he was beating his father. He went to the home and found the accused beating the deceased. The accused was also bleeding. He addressed him: "Saulo, stop beating your father". The Accused was holding a small



- axe and a stick. The witness was standing at a distance. In response the accused walked towards PW2 and the witness ran away.
5. He ran to the police and came back with 2 police officers. At the gate they found the accused. He had changed clothes but he was still bleeding. The police first took the accused to hospital then came back with a vehicle and took the deceased. They were both attended to, but the deceased later died in the evening, at about 6. Pm.
 6. He knew the accused before the date of the incident . He used to be referred to as “Saulo” but his real name was Joseph Amokobe, he stated.
 7. When a search was conducted in the home, the weapons that the accused was using were found inside a toilet. It was an axe and a jembe. They also found the accused’s clothes.
 8. On cross- examination he stated that he found the deceased on the ground ,with the accused hitting him with an axe. The deceased had been hurt on the head, chest and his hands were broken. He further told the court that the first voice he heard was that of the Accused. He was crying and saying that his father was hurting him.
 9. PW3 was the investigation officer. He was called to go to the scene and found that his colleagues from Mangala had gone ahead and taken the deceased and accused to hospital. He went to the hospital and found them. He further told the court that his colleagues received an axe and a panga. They were recovered from the Pit- latrine. Blood stained clothes and a piece of wood were found in the deceased’s house.The axe and stick were produced as Exb 2, a brown jacket belonging to the deceased was produced as P.Exh. 3 and Exhibit 4 was the panga.
 10. On cross- examination ,he stated that axe and panga had been contaminated and could not be submitted for DNA analysis. On further cross- examination by the court, he stated that the clothes were muddy, and hence were contaminated, and could not be subjected to analysis.

Defence Case

11. The accused was put on his defence and he opted for a sworn statement. He told the court that he arrived home at about 1.30 p.m. on the material day and found his father cutting some trees. He confronted his father about the cutting of trees. He said the father was using a panga. He further stated that his father headed towards him while holding the axe and the panga. They quarreled and the deceased cut him on the head, hand and wrist. He tried to run but he fell. The deceased threw an axe at him. He fainted and came around at the hospital. He produced a statement by PW1 to the police and investigation’s diary as Defence Exhibits 1 and 2 respectively.
12. On cross- examination, he stated that he was residing with the deceased on the same land. The trees in question were planted around the compound. The trees were blue gum trees. He admitted that the trees are normally destructive to land. He further admitted that he is the one who went towards his father. He further testified that when he found his father he was fine without any injuries and were the only adults in the home then. He stated that he was also cut on the neck. He did not have treatment chits, to show he was treated for the said injuries. He denied that he attacked his father and he did not know how his father sustained the injuries.
13. On cross- examination he stated that it was his father who attacked him and that his father was the one with the weapons.
14. The accused did not call any witness.



Analysis and Determination

15. To procure a conviction on a murder charge the prosecution must prove:
 - a. That the deceased died and the cause of death.
 - b. That the accused caused the death, either by acts of omission or commission.
 - c. That the killing was accompanied by malice aforethought.

Death of the Deceased

16. PW1 produced a post-mortem report containing the results of the examination of the deceased body done on 14/3/2016 at St. Mary's Hospital Mumias. On page 1 of the report, the persons who identified the body were Fredrick Ashiemi & Ezekiel Obati. PW4 also told the court that he attended the autopsy examination and noted the injuries on the deceased body. Thus, based on the testimony of PW1, the post mortem report and that of PW4, and satisfied that the fact of death was proved. On the cause of death, PW4 stated that he formed an opinion that the cause of death was left temporal skull fracture with epidural hematoma. PW1 was an expert witness. There was no other evidence which contradicted the above findings. Consequently, the cause of death was also established.

Whether the Accused Herein Caused the Death of the Deceased

17. PW2 told the court that he found the accused attacking the deceased. The accused was armed with an axe and a stick. He told him to stop the beating, and in response the accused turned on him, and the witness ran away. When he came back with the police, the accused was sitting near the gate. He was bleeding. Outside the house was the deceased, he too was injured. The witness further stated that what initially attracted him to the scene was the accused, calling for help.
18. It is evident, based on the calls for help by the accused, and the injuries sustained by both the accused and the deceased that there was a fight, between the two. When the PW2 arrived what he saw was the accused beating his father.
19. PW2 impressed me as truthful witness. The facts as he presented were hardly shaken in cross-examination. Further his evidence that the blood-stained clothes were found in the deceased's house while the axe and the panga were found in the pit-latrine was consistent with the testimony of the investigations. He also readily stated that the accused too was hurt and the first person he heard calling for help was the accused, not the deceased. Were he not a truthful witness he could not have volunteered this piece of evidence which is clearly favourable to the accused.
20. I have considered the accused's defence; he denied attacking his father but told the court that his father attacked him until he lost consciousness. I am not convinced that the accused was being truthful about what transpired. He admitted in cross-examination that he is the one who moved towards his father only to change position in cross-examination. He further admitted that he and the deceased were the only adults in the compound and that when he first met his father; he had no injuries. Indeed, he further stated that he exchanged some words with his father. Thus being the only 2 adults, and his father being alive and whole, when the accused allegedly lost consciousness, the only inevitable conclusion is that he is the one who testified by PW2.
21. Further his testimony that up to date he does not know who killed his father portray him as being dishonest. The victim was his father. If he was innocent he would have been desirous to know the perpetrator notwithstanding that he stood accused.



22. I have compared the testimonies of the accused and PW2 and I find the testimony of PW2 more plausible for reasons that I had earlier stated.
23. Based on the totality of the evidence , am satisfied that the prosecution has proved that the deceased who attacked the deceased causing him fatal injuries.

Malice Aforethought

24. It was PW 2's evidence the initial voice he heard calling for help was that of the Accused. He further told the court the he arrived while the accused was hitting the deceased but the accused himself was also bleeding. It was also PW2's testimony that the police first took the accused to the hospital, then came back for the deceased. The investigation officer also testified that he found the accused and the deceased being attended to in the hospital. The accused himself stated that he had an altercation with the deceased, when he found him cutting some trees in the compound.
25. In view of the foregoing, it is evident that there was a fight between the deceased and the accused. It is this fight, caused by a dispute over the cutting of trees in the family compound, that caused the accused to inflict a fatal injury on his father. It appears to me this was a fight that got out of control. I do not find any evidence of premeditated killing.
26. Granted, the weapon used and the part of the body targeted may infer malice on the part of the attacker. In *Rex Vs Thibere S/O Ocher (1945) 12 EACA 63*, the court had this to say about he determination of malice aforethought: "to determine whether malice aforethought has been established to consider the weapon used the manner in which it is used, the part of the back targeted the nature of injuries inflicted. The conduct of the accused before during and after the incident. (Emphasis added)
27. The accused told the court that there was an argument about the cutting of trees. Therefore there was a quarrel preceding the fight. The basis of the attack is evident and which basis, however wrong, negated malice. As for the conduct of the accused, after the incident, he was found holding his head and bleeding.
28. Further, in the circumstances of this case, where two people were actually fighting, it may not have been practical of the accused to be intentional of which part of the deceased's body to avoid to target.
29. For the aforesaid reasons ,it is my finding that malice on the part of the accused has not been proved, and consequently the charge of murder is dismissed.
30. On the other hand, I find that the evidence presented, proved the offence of manslaughter. In this regard I find support in the finding of the court of Appeal in *Roba Galma Wario Vs Republic (2015) eKLR*, where it held "For the conviction of murder to be sustained it is imperative to prove that the death of the deceased was caused by the Appellant; and that he had the required malice aforethought. Without malice aforethought the appellant would be guilty of man slaughter, as it would mean the death of the deceased during the brawl was not intentional"
31. I am satisfied that the circumstances as the killing, proved the offence of man slaughter.
32. Accordingly, pursuant to the provisions of Section 179(2) of the *Criminal Procedure Code*, the accused herein is hereby convicted of the lesser offence of of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.

DATED, SIGNED AND DELIVERED AT ISIOLO ,VIA MICROSOFT TEAMS THIS 20TH DAY OF FEBRUARY, 2025.

S. CHIRCHIR



JUDGE

In The Presence of:

Godwin Luyundi- Court Assistant

The Accused- in person

Ms. Kagai for D.P.P

