



**Republic v Odaa (Criminal Case 18 of 2019)
[2023] KEHC 18314 (KLR) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 18 OF 2019
WM MUSYOKA, J
JUNE 2, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FREDRICK ARUNGA ODA ACCUSED

JUDGMENT

1. 8 witnesses testified in this matter. 1 of them testified to have had witnessed the assault on the deceased. PW1, Emmanuel Inyangala, a son of the deceased, testified that he found the accused and the deceased quarrelling, the deceased left the scene, but the accused obtained a metal bar from within an MPesa shop/kiosk, and hit the deceased with it. He said the deceased was bleeding on the head. PW2, Sarah Ahono Sila, was mother of the deceased and the grandmother of PW1. She testified that PW2 informed her that he had found the accused and the deceased fighting. Then the deceased came home, with blood flowing from his head, and carrying a metal rod, and saying that the accused had hit him. PW3, Erasto Kitoto Makhambi, a neighbour of the deceased, was not at the scene, and was called the following day by PW1, and asked to go to their home, where he found the deceased had died. .
2. PW4, Donald Oluseno Nanjero, a cousin of the deceased, identified the body of the deceased for post-mortem purposes. PW5, No. 114150 Police Constable Nichodemus Maiyo, received the report of the death of the deceased, visited the home of the deceased, and removed the body to the mortuary. PW6, Dr. Dixon Mchana Mwaludindi, conducted post-mortem on the body of the deceased. He noted a laceration on the forehead and a swelling on the right forearm. He opined that cause of death was due to increased pressure in the brain, secondary to blunt force trauma, following assault. PW7, No. 66156 Corporal of Police Pascaline Syombua, was the investigating officer. PW8, No. 23509 Anselmy Inyangala Mwashinga, was a brother of the deceased. He identified his body for post-mortem purposes.
3. I put the accused on his defence. He stated that he and the deceased had a disagreement on the material, at his MPesa shop/kiosk, in the course of which the deceased raised an axe, as if to cut him with it. The



accused got scared, so he pushed the deceased out, and then rushed into the shop/kiosk, and locked himself there. He stated that the deceased kicked the door to the shop/kiosk, and left, and he did not know what happened to him thereafter.

4. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, it was with malice aforethought.
5. On whether the deceased died, I have the evidence of PW1, PW2 and PW3. They all saw the body of the deceased after he died in his house. PW4 and PW8 identified the body for post mortem purposes. PW5 removed the body to the mortuary. PW6 conducted autopsy on the body of the deceased, and produced the post-mortem report. The cause of death was said to be increased pressure in the brain, secondary to blunt force trauma, following assault. The cause of death was linked to the accused, by PW1, who testified to have been present, when the accused took a metal bar, and hit the deceased with it, and he began to bleed from his head. The accused denied killing the deceased. There was eyewitness evidence. PW1 said that he saw it happen, and the cause of death was the head injury, which, according to PW6, was caused by a blunt object, consistent with the testimony of PW1, that the deceased was hit with a metal bar, by the accused, and was bleeding from the head. PW1 testified that after the incident he reported to PW2, his grandmother, who corroborated it.
6. The remaining issue for determination is whether the accused acted with malice aforethought.
7. Malice aforethought is defined in section 206 of the [Penal Code](#). Section 206(b) states:

“Malice aforethought

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- a. an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
 - b. knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
 - c. an intent to commit a felony;
 - d. an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”
8. Under section 206, malice aforethought is to be inferred where there is an intent to cause death or to cause grievous harm, or the knowledge that the act causing death could cause death or grievous harm, or an intent to commit a felony, or an intention to facilitate escape from lawful custody of a person, and, in the process, a death is caused.
 9. The grave injury that the deceased sustained, on his head, which houses such vital and sensitive organs as the brain, said to have been caused by a blunt object, could only have been caused by a person who had an intention to kill him or to cause him grievous harm, both of which are elements of malice aforethought.
 10. In view of everything stated above, I do hereby, find the accused herein, Fredrick Arunga alias Odaa, guilty of the offence of the murder of George Abel Inyangala, contrary to section 203 of the [Penal Code](#),



as read with section 204 thereof, and I convict him accordingly, under section 322 of the *Criminal Procedure Code*, cap. 75, Laws of Kenya. For the purpose of sentencing, I hereby direct the Kakamega County Director of Probation and Aftercare Services to assess the antecedents of the accused person, and to get the views of the family of the deceased, and the community, and to file a report thereon within 30 days. Sentencing shall, thereafter, be conducted by my successors at Kakamega.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA
THIS.....2NDDAY OF.....JUNE..... 2023**

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Ms. Andia, Advocate for the accused person.

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