

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO.E005 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL CELESTINE OKWABA.....ACCUSED

J U D G M E N T

[1] The accused Daniel Celestine Okwara, faces a charge of murder, contrary to **s.203** read with **s.204 of the Penal Code**, in that on the 5th March 2021 at Akatoti village, Teso North within Busia County, murdered Joseck Emusugut.

The prosecution case was that on the material date at about 11.00p.m, **Bramwel Okumu Emusugut (PW 1)**, was asleep at his home when he was suddenly awakened by noises and on enquiring found that his two sons i.e the accused and deceased herein were involved in a fight. He attempted to restrain the accused but all in vain. The accused was at that juncture on top of the deceased who was lying down on the ground.

[2] On the following morning, Bramwel (**PW 1**) found the accused outside the house at about 6.00a.m in a state of agitation and anger. The deceased was still around but staggering and seriously injured to the extent that he could not talk. His sister, **Catherine Amoit Emusugut, (PW 2)**, appeared at the scene and took him to hospital on a motor cycle taxi (**boda boda**). Unfortunately, he passed away on arrival in hospital.

[3] The matter was reported to the police and investigated by **Cpl. Patrick Okuno (PW 3)** and his team. In the process, a post mortem was conducted on the body of the deceased and the necessary report compiled by a doctor based at Kocholia District hospital – Amagoro.

The report (**P.Ex 1**) indicated that the deceased died from severe head injury due to sharp penetrating trauma.

[4] On completion of the investigations, the accused was charged with the present offence. In his defence, the accused reiterated that he did not commit the offence and implied that the deceased died after being injured with a knife in a fight involving the deceased and his parents.

[5] From all the foregoing evidence, there was no dispute that the deceased died as a result of a criminal act of assault being committed against him by an individual and/or group of individuals. That act led to a more serious criminal act of murder with or without the intention to kill for which the accused was arrested and charged, but denied the charge.

[6] The issue arising for determination was therefore, whether the accused was the person who assaulted the deceased thereby occasioning him fatal injuries. The key witness (**PW 1**) was the father of both the deceased and the accused. He indicated and confirmed that the deceased was fatally assaulted by the accused after the two engaged in a fight while at their father's homestead. This element of a fight overruled the existence of malice aforethought in the death of the deceased but showed that excessive force was used against the deceased with the usage of a sharp object leading to severe head injury and intracranial bleeding.

[7] Although the accused denied responsibility in the death of the deceased and implied that his parents should instead be held responsible, the evidence adduced against him by their father (**PW 1**) who was at the material scene and time was sufficient and credible enough to prove that he (accused) was the person who actually assaulted the deceased with a sharp object i.e a panga (**machete**) and fatally injured him.

[8] The said panga was recovered by the investigation officer (**PW 3**) but the blood stains said to have been thereon were already washed out. This did not however, water down the evidence of Bramwel (**PW 1**) which clearly and credibly show that the deceased was assaulted and fatally injured by the accused. The defence by the accused was therefore disproved and shown to lack credibility inasmuch as the accused attempted to shift his criminal responsibility for the death of his brother to his parents, particularly the father.

[9] In essence, the prosecution succeeded in proving the offence of manslaughter beyond reasonable doubt against the accused rather than the offence of murder.

Consequently, the accused is hereby found guilty of manslaughter, contrary to **s.202** of the **Penal Code** and is accordingly convicted.

J.R. KARANJAH

J U D G E

[DELIVERED & SIGNED THIS 18TH DAY OF NOVEMBER 2021]