



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL CASE NO. 5 OF 2020 [MURDER]**

**CORAM: HON. R.E. ABURILL J**

STATE.....PROSECUTION

VERSUS

FREDRICK OMONDI ONYANGO.....1<sup>ST</sup> ACCUSED

JUSTINE OTIENO ADALA.....2<sup>ND</sup> ACCUSED

**RULING ON SENTENCE**

1. On 20<sup>th</sup> September 2021, this court found the two accused persons herein Fredrick Omondi Onyango and Justine Otieno Adala guilty of the offence of Murder contrary to Section 203 of the Penal Code.
2. After mitigation and with the prosecution indicating that the accused may be treated as first offenders, but calling on this court to mete out deterrent sentences since the accused had aimed at violently robbing PW2 of his valuables on the material night when they missed him and the sword which they intend to use to stab PW2 landed on one of their own gang, the deceased Peter Owino Andari thereby inflicting on him fatal injuries. This Court ordered for a Presentence report on both the accused persons.
3. The report was not availed on 18/10/2021 when the matter had been scheduled for sentencing as the Probation Officer only noted the file on 15/10/2021.
4. The accused persons and their counsel Mr. Oduol urged the Court to wait for the Presentence Report which was filed on 27/10/2021.
5. I have considered the two Presentence reports on each of the two accused persons herein. Fredrick Omondi Onyango is said to be aged 25 years old while the 2<sup>nd</sup> accused person Justine Otieno Adala is aged 29 years. Both accused persons are unmarried.
6. According to Mr. John Oyare Oyieko, the probation officer, from his findings after a social inquiry, the two accused persons(convicts herein) are said to have been in the company of the deceased and after they were bought chang'aa by PW2 who had sold his land for Kshs. 700,000/= and was generous enough to flash it around as he bought drinks for everyone at the chang'aa den, the three youths including the 2 accused persons and the deceased followed PW2 on his way out, with a view to robbing him. It turned out that the intended victim, PW2 was armed with a sword so, as the 2 convicts herein waylaid PW2, with the deceased holding PW2 while the 2 convicts started searching for the money in PW2's pockets, PW2 drew a knife from his pocket and stabbed the deceased who died from excessive bleeding. However, that version of the Probation Officer was not the evidence before this Court. The evidence which was tested in cross examination, according to PW2, is that the people who attacked him and whom he had bought chang'aa for at a den, held his neck and that it was Justine Adala the 2<sup>nd</sup> accused who held PW2's neck and threatened to stab PW2 while the 1<sup>st</sup> accused Fredrick Onyango Omondi and another hit the motorcycle rider who was with PW2, using a rungu. That PW2 held onto the 2<sup>nd</sup> accused and that is wherein the 1<sup>st</sup> accused removed a knife and as he tried to stab PW2, the knife stabbed their colleague the deceased herein. The deceased fell down and the attackers ran away.
7. From the above evidence which this court believed as it was not shaken even during cross examination, it is clear that the accused persons and the deceased had hatched a plan to rob PW2 of his valuable proceeds of sale of his land when the plan was foiled by the stabbing of the deceased. The accused are described as law abiding and hardworking which contradicts the statement that they hatched a plan to rob PW2 when their plan flopped with the killing of one of them.
8. The convicts herein are no doubt persons of questionable character and if the deceased had not been stabbed, PW2 would have been the victim of the heinous crime. There is absolutely no justification for young people to waylay people and seek to rob them.

9. The accused persons deserve harsh punishment for involving themselves in the heinous crime of robbing others using lethal weapons. They nonetheless killed one of their own gang but that is no excuse as their malice was simply transferred to the unintended unlikely victim. They knew and ought to have known the consequences of their heinous actions.

10. Having considered all the circumstances under which the offence of Murder was committed and the mitigations by the convicts, which do not reveal any remorse, with the 1<sup>st</sup> accused claiming that he was framed but this Court not finding any substance in that allegation, and with the said accused claiming that he was drunk and knew nothing to do with the commission of the offence of Murder; with the 2<sup>nd</sup> accused asking for short sentence because he is a panel beater and saying he was sorry for what happened, and taking into account the presentence report and having heard from PW3 the deceased's father who said that he had called the Assistant Chief and family of the deceased for reconciliation; taking into consideration the Judiciary Sentencing Guidelines as restated in the case of *Francis Muruatetu & Another Vs Republic*[2017]eKLR, and more recently in the Muruatetu guidelines. I observe that the punishment for Murder, upon conviction is death. However, taking into account all the above circumstances and age of the accused persons and sentiments by the deceased's father, I hereby sentence Fredrick Omondi Onyango to serve twenty five years (25) imprisonment. I further sentence Justine Otieno Adala to serve Twenty Five years (25) imprisonment. The sentences as imposed shall run from the date of their arrest as they have been in remand custody.

11. Right of appeal is guaranteed, 14 days of this date.

12. Orders accordingly.

13. File closed

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 16TH DAY OF NOVEMBER 2021**

**R.E. ABURILI**

**JUDGE**