



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT SIAYA
CRIMINAL CASE NO. 21 OF 2018 [MURDER]

REPUBLIC.....PROSECUTION

VERSUS

RAPHAEL MATENGO CHIAJI.....ACCUSED

SENTENCE

1. On 17th February 2020, this court delivered judgment in this case convicting the accused person **RAPHAEL MATENGO CHIAJI** for the offence of **Murder contrary to Section 203 of Laws of Kenya**.
2. The court then heard mitigation put forth by the accused person's advocate Mr. Mirembe who prayed for leniency on behalf of his client on account that the accused was remorseful, a first offender, a family man and sole breadwinner for his family through a farmer of meagre means.
3. In response, Ms. Odumba Prosecution Counsel submitted that the accused person was not remorseful. That he killed the deceased viciously and that the deceased too had a family which miss him. That the accused person being older, he should have controlled his anger. Counsel prayed for maximum sentence.
4. Following the above address to the court, I ordered for a Pre-Sentence Report to be filed by the Probation Officer, Siaya County as well as a Victim Impact Statement to be filed before sentencing, and placed the accused person into custody by cancelling his bond.
5. The sentencing was subsequently set for 16/3/2020 when downscaling of court operations was announced following the COVID-19 pandemic in the country.
6. I have considered the mitigation by the accused person through his counsel and the fact that he is a first offender. I have also considered the Probation officer's report filed on 25/2/2020 signed by Ephemia Kidwoli.
7. I have also considered the Victim Impact Statement dated 25/2/2020 obtained from secondary victims-relatives of the offender who include the victim's aged mother Domitila Odindo, 75 years and brother aged 60 years. From the Probation Officer's report and Victim Impact Statement, the deceased and accused are close relatives. The accused is a paternal cousin to the deceased.
8. It is reported that the accused and the deceased had frequent quarrels and fights prior to the incident which the accused does not own up as he maintains his innocence.
9. The deceased and accused lived in the same neighbourhood. It is reported that the mother and brother of the deceased claim that the deceased led a generally reckless life, a drunkard and whenever intoxicated he was fond of insulting his brothers and cousins who were his neighbours and that following his unfortunate demise, the neighbourhood is now calm. The deceased's mother allegedly depends on the accused for support and so she prays for the release.
10. More of the immediate and extended family members have issue with the offender being handed a non-custodial sentence. They also claim that nobody saw the accused kill the deceased. The accused is aged 60 years old, born in 1959. He is a trained mason.

11. According to the Probation Officer, the accused needs trauma management sessions to help him resettle. The inmate was single. He was not in any lawful gainful employment or business but fed from his mother's house.

12. It is alleged that the bond between the deceased's family and the accused and his family did not break. There is no bad blood between the two families.

13. From the above detailed reports, I gather that the deceased was a troublesome person who lived from hand to mouth and depended on his aged mother. He was a troublesome individual who never kept peace. He was always drunk and while drunk, he always insulted people. In this case, it is obvious that it was his insults towards the accused that angered the accused leading to the accused unlawfully killing him.

14. Albeit the accused denies killing the deceased, and albeit the family of the deceased and that of the accused claim that nobody saw the accused kill the deceased, this is a case where the community members are ignorant of the law. The evidence that nabbed the accused and linked him to the demise was purely circumstantial.

15. Circumstantial evidence is as good as direct evident and even better evidence. In the instant case, the strongest circumstantial evidence that linked the accused to the killing of the deceased was forensic evidence. When the accused was arrested from his house upon being suspected of having murdered the deceased, his house was searched thoroughly and in his bedroom, a navy blue stripped trouser was recovered. The said trouser was escorted to the Government Chemist for DNA Analysis with the blood samples taken from the deceased and the accused person.

16. The results as produced in evidence by Mr. Polycarp Lutta were that blood stains found on the navy blue stripped trouser recovered from the accused person matched the DNA of the deceased. There was no contrary evidence that the navy blue trouser belonged to the accused and that it was found in his house after a thorough search by the police.

17. That being the case, this court would expect the accused person to be remorseful for the death of the deceased relative who, however much he insulted him, did not deserve to be killed. The deceased was butchered to death. There are lawful means of resolving disputes with drunkards who insult others. The accused should have reported the matter to the family elders for alternative dispute resolution and where it failed, he had an opportunity to report the deceased to the law enforcement agencies for appropriate legal action and not to butcher him to death and pretend to be innocent simply because his larger family including the deceased's family support him on the ground that nobody saw him kill the deceased. That is mob injustice against the deceased. It is unacceptable punishment for murder is death as stipulated in **Section 204 of the Penal Code**, upon conviction. However, this is only mandatory sentence which is no longer fashionable as sentencing is in the discretion of the trial court.

18. Having considered the circumstances of this case, mitigation and Probation Officer's report and the Victim Impact Statements, I hereby sentence the accused person **Raphael Matengo Chiaji** to serve ten years in prison. Right of appeal is 7 days of today to the Court of Appeal explained.

19. Orders accordingly.

Dated, signed and Delivered at Siaya, this 4th day of May, 2020.

R.E. ABURILI
JUDGE