



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**CRIMINAL CASE NO. 23 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ARMSTRONG OCHIENO ODIO.....ACCUSED**

**JUDGMENT**

1. **Armstrong Ochiemo Odio** is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on 23<sup>rd</sup> day of May 2015, at **Sikoma** village, of **Busibwabo** Location in **Busia** County, murdered **Jacob Odio Bwaku**.
3. After disagreement with his father over land he (accused) wanted to sell, he hacked the deceased with a machete. The deceased succumbed to the injuries.
4. In his defence the accused denied any involvement in the offence.
5. The issues for determination are:
  - a) Where the accused hacked the deceased with a machete; and
  - b) If so, whether this amounted to murder.
6. This is a very unfortunate incident. The genesis of the death of the deceased was a piece of land the accused wanted to sell. This came from the evidence of the widow (PW5) and a son of the deceased (PW4). According to Helda Agola Odio (PW5), the accused who is her eldest son, had disagreed with the deceased over land and used to threaten to kill him.
7. On the material day, Geoffrey Wandera Odio (PW4) testified that before he left to take some milk to the dairy, he left the accused and the deceased quarrelling over land. The deceased was stopping the accused from selling some land. This land, he said, was registered in the name of the deceased. When he intervened, the accused told him that before the maize for the season was ready, the deceased was going to be buried. When the accused took a machete out of his gumboots and threatened the deceased, he advised the deceased to go and report. He then left for the dairy.
8. Linus Taabu Mukholo (PW1) testified that when he responded to an alarm, he found the accused hacking the deceased. The evidence of Patrick Osore Benson (PW2) is that he found the accused hacking his father, the deceased.
9. There was sufficient evidence therefore, that the accused is the one who hacked the deceased and inflicted on him the fatal injuries. The actus reus was therefore established beyond any reasonable doubt.
10. For an offence of murder to be established against an accused person, the ingredient of mens rea must also be established. Section 206 of the Penal Code gives the instances when malice aforethought is established. It states that:

**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.**

In the instant case, the prosecution adduced evidence of the widow (PW5) of the deceased who testified that the accused used to threaten the deceased with death over the land issue. Geoffrey Wandera Odio (PW4) the brother of the accused testified that the accused on material day vowed that the deceased was going to be buried before the maize crop for that season was ready.

11. The photographs of the deceased were gory and unsightly. The deceased must have died a very painful death with multiple machete cuts. The medical evidence indicated the following injuries:

- a) A penetrating cut on the lower part of the occipital,
- b) A penetrating cut on the right maxilla and mandible which had destroyed tissues in the area,
- c) A penetrating injury that had cut through the left nostril and mouth,
- d) A penetrating injury on the left distal one-third of the forearm which had cut off the forearm,
- e) A penetrating injury on the right posterior elbow,
- f) Severed great vessels of the head; and
- g) Severed brain tissues on the occipital lobe.

These injuries coupled with the evidence of intent, establish beyond any reasonable doubt that the accused had the requisite malice aforethought.

12. The upshot of the foregoing analysis of the evidence is that the prosecution has proved its case against the accused beyond any reasonable doubt. I find him guilty of the offence of murder and accordingly convict him.

**DELIVERED and SIGNED at BUSIA this 6<sup>th</sup> day of May, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**