



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HCCRC NO. 15 OF 2016

(MURDER)

(CORAM: J.A. MAKAU – J.)

REPUBLIC.....PROSECUTION

VERSUS

MESHACK ODUOL ALARA.....ACCUSED

JUDGEMENT

1. **MESHACK ODUOL ALARA** faces a charge of Murder contrary to **Section 203 as read with Section 204 of the Penal Code (Chapter 63), Laws of Kenya**. The particulars of the offence are that on the 28th day of August 2016 at Nguge Sub-location, Gem Sub-county within Siaya County, murdered one **MESHACK OPICHA WAGUNDA**.

2. That 5/10/2016, the charge was read and explained to the accused in Kiswahili language which he understands and to which charge, he pleaded not guilty.

3. The Prosecution called eight (8) prosecution witnesses in support of the charge and upon the accused being put on his defence, he opted to give sworn statement and called no witness.

4. The Prosecution case is that PW1, John Obiero Odera, was on 28/8/2016 at his home at Nguge Sub-location at around 4:00pm in company of Meshack Opicha Wagunda and three others whose names PW1 did not know; who he had called to assist him get a buyer of his land. PW1 had informed Meshack Opicha Wagunda of his desire to sell the land two weeks prior to 28/8/2016 and the three people who he had brought wanted to buy PW1's land. PW1 took them and showed them the land after which they asked him to show them the title deed, which he showed them, while outside his father's house, some were seated on the chairs while others on the stones. PW1 and Meshack Opicha were seated on stones while the others were seated on the chairs. PW1 was shocked when Meshack Oduol came from the rear of PW1's house and greeted them and PW1 replied him that they were well. The deceased then told the accused if he finds people seated, he should sit and find out what they are discussing but instead of sitting, he told Opicha, the deceased; that he has been selling the land of Alara and that day he was going to kill him. The accused then passed PW1, proceeded to where Opicha was and cut his left hand near bicep and it hanged loose and as Opicha tried to stand, the accused cut him at the back again with a panga; Opicha fell down and the accused cut him again at the back of the head; then the accused ran away. That the guests then ran away on seeing Meshack Opicha being cut with a panga.

5. That as Opicha was being cut, he asked Meshack Oduol why he was killing him but the accused did not reply him. PW1 stated when he saw the accused come first, he had a panga on his right hand and a knife in his waist. He only used the panga to cut Opicha and did not use the knife. That when he ran away, he went with the panga. That when Opicha fell down, he asked PW1 to assist him get up. He raised him and placed him on a chair. PW1 then called the Assistant Chief, Eunice Ayuyi and informed her Meshack Oduol, came to his home and assaulted Meshack Opicha. She advised him to take Opicha to the hospital but before he could do so, Opicha passed on. He informed her and she told him she would call police officers from Akala Police Station. That after a while, the Assistant Chief followed by Chief Michael Abaki and members of public came to PW1's home and police came at 7:00am; took photographs; collected the deceased's body and took it to Siaya Referral Hospital Mortuary. PW1 stated Meshack Opicha was well known to him since birth and that both of them came from the same clan. That he had asked Opicha to get him a person interested to buy his land and the land he wanted to sell is his and it is registered in his name; being GEM/WANGA/1504(0.60 hectares). (Copy of the Title Deed shown to Court issued on 1/12/2015). PW1 wanted to sell the land to complete construction of his house at Akala. PW1 stated he knows Meshack Oduol Alara, as he is his clansmen and stated that he is not his brother and that though their 4th great grandfather are related. PW1 stated he knows the accused by name and appearance and identified him by pointing him out at the dock. He added there is nothing that the accused shares with him in PW1's family; adding he cannot claim anything of PW1's father and; adding he has grudge with the accused as he wants to deprive him the land at the hills but quickly added that is not the land he wanted to sell, as it is a different parcel of land. He clarified the part, that the dispute of land has not influenced him in what he told the Court.

6. PW2, John Midila Oganga, testified that on 27/8/2016 at around 3:00pm while at Wagai Trading Centre, he asked an old man who he knew as Bishop, whether he could secure a land for a friend of his. That on 28/8/2016 at around 12 noon, PW2 called Bishop who told him where to find him at Komok Centre. PW2 and 3 others met him and proceeded to the shamba being sold. He met the seller for the first time on that day, who he identified as PW1, by touching him, and averred, that they were taken around the land, shown the title deed in the name of John Obiero Nyuja while seated at the seller's compound near the door of his mother's house all in all being seven including the seller and his mother. That as they were negotiating the purchase price, they were shocked when someone came armed with a panga and they stood up. That 'Bishop' who is also known as Opicha, PW1 and his mother remained seated. The accused asked Opicha whether he wanted to sell the land there to which Opicha told him to sit down and hear what was happening. PW2 heard that as he was running away and noted the accused was 3 metres from Opicha as he was talking to him. PW2 saw him cut Opicha with a panga as all ran away save PW1 John Obiero. PW2 reported the matter to AP Camp at Wagai, that someone had cut Opicha using a panga and he then left for his home. PW2 had known Opicha for 1 month as a person he used to meet at Wagai Trading Centre. He came to know Opicha died at the home of John Obiero (PW1) on the 28/8/2016. He testified the person he saw with a panga was not known to him before but he saw him very well and identified the person as the accused in the dock by pointing at him.

7. PW3, Eunice Akinyi Aywoi, Assistant Chief of Nguge Sub-location, in West Gem Location, who has been Assistant Chief of the said sub-location for 8 years testified that on 28/8/2016 at 5:00p.m, PW1, John Obiero, called her telling her Oduol Alara had cut one Meshack Opicha. She advised him to find means to take him to the hospital, however, after a few minutes he told her Oduol Alara had murdered Meshack Opicha Wagunda. PW3 in company of the Area Chief proceeded to the scene of the incident at the home of PW1, and found the deceased seated on a chair already dead. That his clothes soaked in blood and the ground. PW3 saw a cut on deceased's back and head, both arms cut with left hand almost severed. The police from Akala Police Station came after the Chief had called them at around 7:30pm, collected the deceased's body and took it to Siaya County Referral Hospital Mortuary. PW3 found PW1 and his mother at the scene of the incident but did not find the murder weapon. PW3 testified she knew Meshack Opicha Wagunda as they come from the same clan and as a neighbour. That she knows Meshack Oduor Alara as her subject and has known him since 2000, stating she knows him by name and appearance and pointed at him to the court in the dock.

8. PW4 Michael Abaki Owiti, the acting Chief West Gem Location recalled that on 28/8/2016 at about 5:00p.m while at home, he received a telephone call from Eunice Aywoi (PW3) that one Meshack Opicha Wagunda (deceased) was killed by one Meshack Oduol Alara at the home of John Obiero (PW1). He rushed to the scene and confirmed that was so. He found the deceased seated on a chair outside the house of PW1 dead. He observed the deceased had a cut on the head on the front side, the arm at elbow and a cut at the back of the head. He noted the deceased's clothes were soaked with blood. He found many people who included PW1 and PW3. He did not see the murder weapon. He called OCS, Akala Police Station who came to the scene and collected the body and took it to Siaya County Referral Hospital after taking photographs of the scene. PW4 stated the deceased was his subject and had known him since his birth. He also knew PW1 as his subject and that the accused is also know to him as one of the residents and pointed him at Court stating he knows the accused by his name and appearance. That when he went to the scene, the accused was not there. He added the accused and PW1 are neighbours but not related nor was the accused related to the deceased.

9. PW5, Kennedy Omondi Opicha, son to the deceased testified that he got information from a Boda boda rider on 28/8/2016 at around 5:00pm while at Dienya Centre of the attack of his father with a panga while at Nguge Hills and died. He stated his father was called Meshack Opicha Wagunda. PW5 in company of his young brother Joseph Owino Opicha and their mother Vamila Adhiambo Opicha proceeded to the scene of murder at the home of PW1, John Obiero and found his father seated on a chair outside PW1's home dead. He noted that the left hand was cut at elbow; cut on the head and the back ad right hand; clothes soaked with blood and also blood on the ground. PW5 stated he found at the scene PW1, PW3, PW4 and mother to PW1 amongst many other people. PW5 was informed by PW1 that the deceased had been cut by Meshack Oduol Alara. That police from Akala Police Station came to the scene, took photographs and collected the deceased's body and took it to Siaya County Referral Hospital Mortuary. PW5 accompanied police to the mortuary in company of Stephen Ouma and Kelvin Ouma. On 1/9/2016, PW5 identified the deceased's body at Siaya County Referral Hospital Mortuary in company of a police officer and Uncle Fredrick Ogwage Wagunda and his mother Vanila Adhiambo Opicha to the doctor for postmortem purposes. PW5 stated he came to know PW1 in July 2016 when he went to ask PW5's father to get him customers to buy his land. PW5 stated he had known the accused for 8 months before the incident and that he was not related to him. He pointed him at the Court stating he knew him by name and appearance.

10. PW6, Fredrick Ogwage Wagunda, brother to the deceased, stated he received a call from his sister in-law on 28/8/2016 at around 5:00 pm informing him, Oduol had killed Opicha at the home of Kanyunja. He proceeded to the scene of murder in company of his brother Patrick Bok. He found the deceased dead seated on a chair outside the house and noted he had a cut, to the back of the head, left hand cut almost severed and right hand near the wrist. Clothes soaked in blood and blood also on the ground. He found PW1, PW3, PW4, PW5 and many other people at the scene. That police officers came to the scene, took photographs and collected the deceased's body and took it to Siaya County Referral Hospital Mortuary. PW6 stated Oduol is a neighbour and he knows him. He stated he did not find him at the scene of the murder. He identified him in court by pointing at him. On 1/9/2016 at around 9:00am in company of others, he identified the deceased's body to the doctor for postmortem examination in company of PW5.

11. PW7, No. 67148 Cpl John Turunya, attached to Akala Police Station, the Investigating Officer jointly with C.I. Jared G. Nyaosi testified that on 28/8/2016 at around 6:00pm, they received a telephone call from Chief Michael Abaki (PW4) of West Gem location to the effect that one Meshack Oduol had murdered the deceased by cutting him. The deceased's name was given as Meshack Opicha Wagunda at the home of John Obiero (PW1). PW7 in company of C.I. Jared Nyaosi together with PC Monya in the station vehicle proceeded to the scene of murder, where at the scene they met crime personnel from Siaya CID; the Assistant Chief PW3 and Chief PW4 where they found the deceased's body seated on a chair outside the house of John Obiero (PW1). He noted the deceased's body had deep cut to the back of the head; the left arm at the elbow point almost severed completely. The right hand had a cut and the clothes soaked in blood and on the ground. They interrogated members of public at the scene and PW1. They took photographs then collected the dead body in the police Landrover to Siaya County Referral Hospital Mortuary. They were accompanied by the deceased's son Kennedy Omondi Opicha (PW5) to the mortuary where they left the deceased's body. On 1/9/2016, he proceeded to Siaya Police Station after OCS told him the accused had presented himself to OCS Siaya Police Station on 29/8/2016 and was arrested. He then took the accused thumbprints and returned him to the cells. He then proceeded to Siaya County Referral Hospital Mortuary where he found the deceased's relatives; (PW6 and PW5), who identified the deceased's body to the doctor who proceeded on with the postmortem. That he was issued with the original postmortem report in reference to the body of Meshack Opicha Wagunda duly signed by Dr. B. Omondi, duly stamped with stamp of Siaya MOH and Death Certificate No. 822114 dated 1/9/2016 (marked MFI-P1). He stated he had picked the clothes of the deceased which he found at the scene as

had been mentioned as follows: yellow blood stained shirt MFI-P2; PW7 identified the person he met at Siaya Police Station as the accused person pointing at him at the dock. He stated the OCS with whom they were jointly investigating this matter charged Meshack Oduol Alara with the offence of murder.

12. PW8, No. 233895, Jared Gichaba, Station Commander Akala Police Station stated that he was jointly investigating this matter with John Turunya (PW7). In his evidence, he reiterated what PW7 stated; however, he added that on 29/8/2016 he got a telephone call from C.I. Kombo enquiring from him whether he was searching for one Meshack Oduol Alara and he confirmed he was searching for him as a suspect in a case he was handling in connection with a murder, that he confirmed he was with him at the station and he requested C.I. Kombo to detain him till he arrived and confirmed he was the person he was looking for. He came to the station, reported to the OCS, suspect called, talked to him and confirmed that he was Meshack Oduol Alara. He interrogated him and asked Chief Inspector David Wanjala to record the statement of the suspect under inquiry. He then opened murder case file, and got witness statements. He then requested DCIO Siaya to seek extension of time to enable him carry out investigation through his office. That after investigation, and obtaining postmortem report, they kept the deceased's shirt as an exhibit (MFI-P2) which he produced as exhibit P2. PW8 revisited the scene after the suspect told him he had thrown the knife into the forest, searched for the murder weapon with the aid of members of public but did not trace it. He identified the accused at the dock by pointing at him. He recorded some of the witnesses statements and recorded his statement.

13. PW9, Dr. Abdifataer Hassan Abdullahi, a Medical Officer at Siaya County Referral Hospital, produced a postmortem report by Dr. Belinda Omondi, with whom he had worked together at Siaya County Referral Hospital for 1 year and whose handwriting and signature he is familiar with. He stated the postmortem report is in her handwriting and the signature is hers. The postmortem report produced as exhibit P1, reference body of Meshack Opicha Wagunda, he stated was carried out after the body was identified to the doctor by Fredrick Ogwage (PW6) and Kennedy Omondi Opicha (PW5) in the presence of No. 67148 Cpl John Turunya. The external appearance of the body was: -

“External injuries: There was a deep cut wound on the right arm fracturing the light humerus and radius on the lower third humerus and upper $\frac{1}{3}$ of the right radius. The deep cut wound was \approx 2cm.

Another deep cut wound on the left hand around the wrist its approximately 10cm and fractured radio-ulna bones.

Head: Deep cut wound on the posterior aspect of the head extending from ear. The cut wound extended through the skull into the occipital area of the cerebrum”

The doctor opinioned the cause of death was: -

“Severe head injury due to a deep cut wound in the posterior part of the head as a result of assault with a sharp object”

14. That when the accused was called upon to defend himself, he opted to give sworn statement but opted to call no witness. The accused denied the charge. He averred that on 28/8/2016 he was at his home alone between 2:30pm and 3:00pm and left home at 3:00pm after one lady came to his home; thus one Dalmas Obiero Nyunja telling him, her son one Johnes Obiero had come with people to whom he was selling their family land and she told him to go and tell him not to sell the remaining portion of land as he was used to selling family land and misuse the money. That he went with her to her home and found people seated near the door of the house of his mother. That the mother to Johnes Obiera Obiero entered her house leaving the accused outside. He told them the mother of the seller of the land came to his home and objected to the sale of the land and after telling them, that, he left leaving all the people there and proceeded to his home; changed his clothes and proceeded to wait for vehicle but before that it started raining and he got a motor vehicle to Ng'ya from where he got a vehicle to Siaya. That he used another vehicle and spent the night at Siaya at Osiepo Lodge. The following day he got up at 6:00am, called the sister in-law Jane Ajieko and told her he spent the night at Siaya, and that is when she told him of the death of Meshack Opicha, and she told him it is alleged he is the one who had killed him. He then stopped his trip to Nairobi and decided to report to Siaya Police Station at around 9:00am. He did not record any statement with the police but was advised to wait at a certain bench pending confirmation of the death of Meshack Opicha. He was later arrested and put in cells. He stated that he did not kill Meshack Opicha; pointing out that he did not have grudge with him. He stated amongst the people he found at Mama's home, he can only recall PW1 and not any other person. He denied committing the offence.

15. At the close of the Defence case, both counsel opted to submit. Mr. Ochieng, Learned Advocate for the accused put in written submissions dated 24th November 2017 analyzing the evidence of the witnesses and urged the Prosecution deliberately ignored to call the mother to PW1, who would have cleared the accused over the offence with which he is facing, and further urged none of the other members of the group, when the accused was attacked, was called to testify and for those reasons urged the accused be acquitted. M/s M. Odumba, Learned State Counsel, submitted that the Prosecution adduced sufficient evidence in support of the charge. That the prosecution proved all the necessary ingredients of the offence of murder and urged the Court to find that the Prosecution has proved the charges beyond any reasonable doubt.

16. The accused is facing a charge of murder. The Prosecution in a murder case has to adduce evidence to prove that the accused caused the death of the deceased with malice aforethought. The Prosecution must show that the accused had formed the necessary malice aforethought to either cause death or do grievous harm to the deceased. Malice aforethought is also proved if it is shown; that the person charged knew that his actions causing death would probably cause death or do grievous harm. **Section 206 of the Penal Code** defines malice aforethought as follows: -

“206. 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.

17. For the Prosecution to prove a charge of murder, it has to prove the following ingredients: -

(a) Death of the deceased and cause of death.

(b) That the accused caused the death through an unlawful act or omission.

(c) That the accused possessed an intention to cause harm, kill or had malice aforethought.

18. Whether the Prosecution has proved the death of the deceased and its cause? PW1, John Obiero Odera testified that on 28/8/2016 at around 4:00pm, he was in company of Meshack Opicha Wagunda and three others to discuss the sale agreement over a piece of his land, when the accused came, greeted them and told the deceased he had been selling the land of Alara and that he was going to kill the deceased. He saw the accused cut the deceased who fell down, he raised him back to the chair and after a short while the deceased died. PW3, the Assistant Chief Eunice Akinyi; PW4, Chief Michael Abaki Owiti; PW5, Kennedy Omondi Opicha; son to the deceased; PW6, Fredrick Ogwage Wagunda, brother to the deceased, went to home of PW1 and found the deceased dead seated on a chair. PW7, No. 67148 Cpl John Turunya and PW8 No. 233895, Inspector Jared Gichaba, joint investigators, in this matter through the guidance of PW4, proceeded to the home of PW1 and found the deceased dead seated on a chair with several panga cuts. They collected the body and in company of PW5, son to the deceased and one Stephen Ouma and Kelvin Ouma took the body to Siaya County Referral Hospital Mortuary. On 1/9/2016, PW5 in company of PW6 and his mother and PW7 identified the deceased body to doctor for postmortem examination. Dr. Abdifataan Hussein Abdullahi produced postmortem report exhibit P1 on behalf of Dr. B. Omondi who had carried out the postmortem examination on the deceased's body on 1/9/2016. The doctor's evidence corroborates the evidence of PW1, PW3, PW4, PW5, PW6, PW7 and PW8 who testified, they saw PW7 and PW8 picking and taking the deceased's body to Siaya County Referral Hospital Mortuary. PW5, PW6 and PW7 witnessed the postmortem by the doctor. PW9 produced the postmortem report as exhibit P1. I find the Prosecution proved the death of the deceased. PW9 upon examination of the deceased opined the cause of death was due to severe head injury due to a deep cut in the posterior part of the head as a result of assault with a sharp object. I therefore find the Prosecution proved the death of the deceased herein and the cause of death.

19. Who caused the death of the deceased? The accused in his defence denied causing the death of the deceased but admitted he went to the home of PW1, John Obiero Odera, after his mother requested the accused to intervene and stop PW1 from selling family land to the people he was with at his home. He then went to PW1's home, found him with the land buyers and he told them the mother of PW1 had objected to the sale of the land and he left. PW1, John Obiero Odera, who was with the deceased and 3 others stated the accused came, greeted them, and all told him they were well, as Opicha, the deceased told him if he finds people seated, he should sit and find out what they are discussing but instead of sitting, he told Opicha, the deceased, he has been selling the land of Alara and that day he was going to kill him, and proceeded to where Opicha was seated, cut his left hand almost severing it; then cut his back as he tried to stand, falling down, as the accused followed him and cut his back and head and he ran away. PW1 noted the accused had a panga and a knife to his waist. PW2 John Midila Oganga, who together with others had been taken to PW1's home to be shown the land he was selling, by Opicha, the deceased, stated at PW1's home, they found him and his mother and all in all including himself and his team were all 7 in number. That while negotiating on the purchase price, they were shocked when they saw someone come armed with a panga, all stood up save PW1, his mother and the deceased. The accused asked Opicha whether he wanted to sell the land. There, to which he asked the person to sit down and hear what was being discussed. PW2 heard that as he was running away as the person was 3 metres from Opicha. PW2 saw the person cut Opicha and heard sound of something being cut. PW2 and his team ran away from PW1's home leaving him with his mother and went to report to AP Camp at Wagai; that someone had cut the deceased and requested them to go and rescue Opicha. He later learned Opicha was cut to death by the person he saw. He testified that he saw the person well and identified him in court as the accused. PW3 Assistant Chief testified that PW1 called her on 28/8/2016 at around 5:00pm telling her Oduol Alara had cut Meshack Opicha and that he died. PW3 called the Area Chief PW4, Michael Abaki Owiti, passing the information to him. That PW3 and PW4 proceeded to the scene and were later joined by the police.

20. I have considered the evidence of PW1 and PW2 and I find that the defence did not challenge the same but urged the mother of PW1 ought to have been called as a witness. The accused did not state why PW1's mother was supposed to be called. He even stated he did not need to call her. For Prosecution to prove its case needs not call a particular number of witnesses to prove a fact. **Section 143 of the Evidence Act** provides: -

"143. No particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact."

The evidence of PW1 and PW2 is sufficient to prove the charge, the accused is facing. PW1 and PW2 placed the accused at the scene. They corroborated each other as regards to what the accused said and did. The offence occurred during daytime and it was not in flash of a second. I find PW1 recognized the accused and even immediately thereafter called PW3, the Area Assistant Chief who called PW4, the Chief of the Area, and PW2 rushed to AP's Camp at Wagai and made a report. I find failure to call the mother of PW1 as a Prosecution witness is not fatal to the Prosecution case, as there is sufficient evidence pointing at the accused as the culprit and no other person.

21. The accused raised the defence, that he is not the one who attacked the deceased as he only talked to them and passed a message that PW1's mother had asked him to give them. The accused during cross-examination, he did raise that defence through cross-examination of

PW1 and PW2 who were at the scene. He did not even attempt to raise it through the Administrative Officers; PW3 and PW4 who gave evidence through cross-examination. His defence was only raised for the first time in his defence. Had it been raised earlier enough, the prosecution would have made a response. I therefore find the accused's defence not sustainable and find that it is a mere denial or an afterthought. I reject the same for this reason and for the fact that I found evidence of PW1 and PW2 credible.

22. I therefore find the Prosecution did not only place the accused at the scene of murder but proved that they saw him commit the heinous acts which led to the death of the deceased. I am satisfied the deceased's injuries which resulted to his death were inflicted by the accused using a panga which he was armed with and which he took off with, on the material day of the attack.

23. **Whether malice aforethought is proved?** According to the evidence of PW1 and PW2, the accused came and found PW1, his mother, Opicha the deceased and with other persons who included PW2. He greeted them, was offered a chair which he declined. He was armed with a panga and a knife to his waist. He told Opicha, the deceased, that he had been selling the land of Alara and he was going to kill him that day. He proceeded to cut Opicha severally. The postmortem report, exhibit P1, reveal the deceased had sustained the following injuries:

“External injuries: There was a deep cut wound on the right arm fracturing the light humerus and radius on the lower third humerus and upper $\frac{1}{3}$ of the right radius. The deep cut wound was ≈ 2 cm.

Another deep cut wound on the left hand around the wrist its approximately 10cm and fractured radio-ulna bones.

Head: Deep cut wound on the posterior aspect of the head extending from ear. The cut wound extended through the skull into the occipital area of the cerebrum”

24. The nature of injuries sustained by the deceased were serious. The accused being armed with a sharp panga and a knife in inflicting serious injuries on the deceased, had the intention to cause the death or grievous harm to the deceased and had knowledge that the act of cutting the deceased, almost severing his hand, and cutting the deceased's head extended through the skull into occipital area of cerebrum would probably cause death or grievous harm to the deceased. I therefore find the accused had the intention to kill the deceased or cause grievous harm to him and that is why he was armed with a panga and a knife and that is why he started by cutting the deceased's hands to disable him followed by deep cuts to the head. The accused had pronounced himself clearly before the attack by telling the deceased, he would kill him that day. The accused was not provoked by anyone nor did he have any business in interfering with the PW1's activities as he is not a relative of PW1 nor the deceased nor does he have any right or interest over the land PW1's was selling. I find his intention of going to PW1's home was to accomplish his pre-planned mission of killing Opicha, the deceased. The killing of the deceased herein by the accused was pre-meditated. The accused had planned to kill the deceased by cutting him on his arms, back and head. I find that malice aforethought has been proved to the required standard of proof.

25. **I therefore find and hold that the Prosecution have proved the case against the accused, beyond any reasonable doubt. I find the accused guilty of murder of Meshack Opicha Wagunda contrary to Section 203 as read with Section 204 of the Penal Code as charged and convict him accordingly.**

DATED AND SIGNED AT SIAYA THIS 2ND DAY OF FEBRUARY 2018.

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT.

IN THE PRESENCE OF:

MR. OCHIENG OCHIENG: For the ACCUSED

M/S ODUMBA: For the STATE

COURT ASSISTANTS:

1. Leonidah Atika

2. Brenda Ochieng

J.A. MAKAU

JUDGE