



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL (MURDER) NO. 7 OF 2015**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**JEREMIAH MIRUKA OURE .....ACCUSED**

**JUDGMENT**

1. The charge against the accused, **Jeremiah Miruka Oure**, is that of murder, contrary to S. 203 read with S. 204 of the Penal Code, in that on the 27<sup>th</sup> January 2015 at Moita Village Transmara West Narok County murdered Charles Mokaya Ongeru.

2. The case for the prosecution was that the deceased and the accused were neighbours and on the material date the deceased left home with his wife **Agnes Nyanchama (PW 1)**, and proceeded to a building site while in the company of the deceased's brother, **Harrison Nyamari Ongeru (PW 2)**.

3. At the scene, the deceased and his brother started to dig trenches when suddenly the accused emerged armed with a bow and arrow. The time was about 9.00 a.m. Using the bow, the accused "fired" an arrow shot aimed at the deceased's chest. He then took off but was pursued by the injured deceased and his brother.

4. Due to his injuries, the deceased fell down and passed away a few minutes thereafter. The matter was reported to the police by the area chief **John Ndiobo Sagalla (PW 3)**, who arrived at the scene after being notified of the incident. He found the dead body of the deceased at the scene.

5. **PC Shaban Chiringa (PW 5)**, of Trans-Mara Criminal Investigation Department (C.I.D) commenced investigations of the incident after he arrived at the scene where he found the dead body of the deceased with an injury on the chest.

The arrow head (P.Ex 1 ) said to have been used to kill the deceased was handed over to him by the area chief.

6. PC Chiringa, removed the dead body of the deceased to the mortuary and arranged for a post mortem which was carried out by **Dr. Dennis Nyabera Omari (PW 4)**, who formed the opinion that the deceased died from cardiorespiratory arrest secondary to massive right haemothorax due to an arrow injury to the chest.

7. The accused was arrested later and charged with the present offence. His defence was that he was at home on the material date when he peeped through a window at about 6.00 am and noticed that three of his houses in his compound were on fire. He was alone at the time. He heard sounds suggesting that people were in his compound. He indeed noticed a group of about ten armed people in his compound.

8. It was then that he picked a bow and arrow and then “fired” the arrow through the window. Thereafter, he escaped from the scene by jumping through a back window and on feeling that his life was in danger. He ran to a nearby maize plantation where he was later found by his brothers who informed him that his compound was razed to the ground and his goats stolen. He was also informed that he had killed the deceased with whom he had a land dispute.

9. The accused suspected that the deceased was responsible for mobilizing a group of people to evict him from land and that is when he (deceased) was killed. He (accused) contended that he did not intend to kill the deceased and was only protecting himself when he “fired” the arrow.

10. From all the foregoing evidence the basic issue arising for determination is whether the deceased was fatally injured by the accused and if so, whether the accused acted with malice aforethought at the time.

A person who of malice aforethought causes the death of another by an unlawful act is guilty of murder (see, **S.203 Penal Code**).

11. Herein, it was not disputed that the deceased suffered fatal injury after being shot on the chest with an arrow “fired” by the accused.

Although the accused implied that he was only acting in self defence after a group of armed people including the deceased invaded his compound with a view to evicting him from there, the evidence by the deceased’s wife (PW 1) and brother (PW 2) indicated otherwise.

12. These two people (PW 1 and PW 2) were the only witnesses at the scene at the material time which was about 9.00 am rather than 6.00 am as indicated by the accused. They adduced credible and corroborative evidence which clearly discredited the accused’s defence and showed that he suddenly emerged at the scene and without any apparent provocation shot the deceased on the chest with the arrow.

13. Contrary to what the accused stated, there was nothing to show that his life was in danger thereby prompting him to “fire” the arrow towards the deceased as an act of self defence.

From what was stated by the witnesses it is obvious that the accused emerged at the scene with a clear intention of shooting the deceased with an arrow.

14. The aiming of the arrow at the deceased’s chest was a clear manifestation of the accused’s intention to cause the deceased grievous harm if not to terminate his life.

According to the deceased’s brother (PW 2), the accused’s intention was nothing less than killing the deceased because he (accused) uttered the words “I will kill somebody” before aiming the arrow at the deceased and “firing” it.

15. An intention to cause the death of or to do grievous harm to any person would amount to malice aforethought (see, **S.206 Penal Code**).

For all the foregoing reasons this court is satisfied that the prosecution has proved its case against the accused beyond any reasonable doubt.

16. The accused is therefore found guilty as charged and is convicted accordingly.

**[Delivered and signed this 9<sup>th</sup> day of February 2017]**

**J.R. KARANJAH**

**JUDGE**

**In the presence of**

Njoroge/Dorothy CC

Mr. Otieno State Counsel

Mr. Bigogo for accused

Accused Present

**J.R. Karanjah , J**

**State Counsel:** Accused may be treated as a first offender.

**Mitigation by Mr. Bigogo:** Accused is remorseful of what happened on that day. He admitted shooting the deceased. He surrendered to the police thereafter. He is aged 49 years old with a family. He has a wife and six children. The eldest child is 18 years old and in secondary school. The youngest child is aged 4 years and in nursery school. His family and parents depend on him. He is a farmer.

J.R. Karanjah, J

**COURT:** Accused is a first offender, mitigation noted. Offence must be treated with seriousness deserved.

J.R. Karanjah , J

**Sentence:** Accused to suffer death in the manner provided by law. Right of Appeal.

**J.R. Karanjah , J**

9/2/17