



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL CASE NO. 3 OF 2016

REPUBLICPROSECUTOR

-versus-

CHARLES ODHIAMBO.....ACCUSED

RULING NO. 1

1. The accused person herein, **CHARLES ODHIAMBO**, was formally charged with the murder of **DICKSON OKOMBO** (hereinafter referred to as '*the deceased*') on 27/01/2016. The particulars of the information were that the accused person murdered the deceased on 27/12/2015 at Wiga Sub-Location, Suna Raha Location within Migori County.
2. The accused person who was represented by Learned Counsel Mr. Marvin Odero pleaded to the information in Dholuo language being the language which he had informed this Court that he understood well and wished to undertake the proceedings in. The accused admitted the charge and a plea of guilty was entered. The matter was then set for the presentation of the facts on 02/02/2016.
3. The facts were eventually presented on 12/04/2016 but not before the plea was retaken and the accused admitted the offence for the second time. The facts were that the deceased was on 27/12/2015 called by the accused into the house of the accused and without any provocation the accused started hitting him with a blunt object. The deceased ran out of the house towards his father's house and on reaching there he collapsed. The father to the accused with the help of one ISIAAH OTIENO rushed the deceased to hospital where he died as he underwent treatment. The body was then transferred to Migori County Referral Hospital mortuary for preservation and an autopsy examination. Investigations were launched and the accused was later arrested by Administration Police Officers from Giribe AP Camp and was charged after he was certified fit to stand trial. A mental assessment report and the Post Mortem Form were produced as exhibits.
4. The accused person was then asked if he had understood the facts as laid and he responded in the affirmative and confirmed that indeed the facts were correct.
5. Miss Minyiri then appearing for the accused contended that the facts did not support the charge of murder as the best they could reveal was a lesser offence of manslaughter. The State however contended that the offence of murder had been proved.
6. That being the background, I will now have a look at how Courts have generally dealt with the issue of taking of a plea of guilty. The procedure and steps to be taken in such instances were laid down in the case of **Adan -vs- R (1973) EA 445** and in the Court of Appeal case of **Kariuki -vs- Republic (1954)**

KLR 809 as follows:-

(i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.

(ii) the accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.

(iii) the prosecution should then immediately take the facts and the accused should be given an opportunity to change or explain the facts or to add to any relevant facts.

(iv) If the accused does not agree to the fact or raises any question of his guilt in his reply must be recorded and change of plea entered.

(v) If there is no change of plea, a conviction should be recorded as well as a statement of facts relevant to sentence and the accused's reply.

7. In the case of **Karuiki -vs- Republic (supra)** the Court of Appeal went on and stated that:-

"The narration and interpretation of the facts of the alleged offence before the entry of a conviction and asking the appellant if he agreed with the facts is evidence of the precaution which the trial magistrate adopted to ensure that the appellant fully understood the charge before pleading."

8. In the case of **Atito -vs- R (1975) EA 278** the Court held that the narration of facts supplemented the explanation by the trial magistrate of the ingredients of the offence. This Court has previously had an opportunity to deal with the issue of taking of pleas in several cases including the one of **Dishon Malesia -vs- Republic, Criminal Appeal No. 46 of 2014 at Kakamega High Court (2015) eKLR** where it stated that:

"Another equally important aspect relates to the taking of the facts of the case. The purpose of the facts is to establish the ingredients of the offence before Court. It is the duty of the Court to scrutinize and be sufficiently satisfied that indeed the facts, as presented, do establish the ingredients of the offence. It is not enough for a Court to proceed and enter a conviction simply because the accused has admitted the facts, the facts must establish the commission of the offence. The Court should therefore endeavour to be fully satisfied that the facts truly connect the accused to the commission of the offence....."

9. I still hold that position. Having said so, I have carefully filtered through the facts of this case against the three ingredients of the charge of murder. The said ingredients are as follows:-

(a) Proof of the fact and the cause of death of the deceased;

(b) Proof that the death of the deceased was the direct consequence of an unlawful act or omission on the part of the Accused which constitutes the 'actus reus' of the offence;

(c) Proof that the said unlawful act or omission was committed with malice afterthought which constitutes the 'mens rea' of the offence.

10. From the facts as presented before Court, the first ingredient was sufficiently proved for it remains a fact that the deceased died. Equally the cause of the deceased's death was proved. On the second ingredient, there is sufficient evidence that indeed it was the accused who inflicted the injury on the deceased which injury led to his death. On the issue as to whether there was malice aforethought on the part of the accused person, this Court is of the considered view that the aspect needs to be interrogated further so as to be clear that indeed there were no intervening issues which would negate that aspect.

11. The above interrogation can only be done in a trial and it is on that basis that this Court finds that the facts as presented do not sufficiently prove the information of murder to warrant a conviction at this point in time.

12. Consequently this Court makes the following orders:-

(a) A conviction is declined and instead a plea of not guilty is hereby entered;

(b) A hearing date to be fixed forthwith;

(c) The exhibits produced to be returned to the prosecution.

DELIVERED, DATED and SIGNED at MIGORI this 12Th day of May 2016

A.C. MRIMA

JUDGE