



REPUBLIC OF KENYA

High Court at Kisumu

Murder Case 28 of 2009

REPUBLICPROSECUTOR

VERSUS

DOMINIC OMORO OBARA.....ACCUSED

J U D G E M E N T

The accused herein **DOMINIC OMORO OBARE** was on the 31st of July, 2009 arraigned in court and charged with the Offence of Murder which he denied.

The particulars of the offence were that on the night of the 16th of July, 2009 at Nyadorera “B” Sub-Location in Siaya District within Nyanza Province, he murdered **AUMA ODUOR**.

The state called a total of 9 witnesses. The accused was the sole defence witness.

The brief facts of the case are that: On the night of the 16th of July, 2009 the accused beat the deceased who was mentally unsound occasioning her fatal injuries to the extent that she died in the night a few hours after the incident.

PW1 DANIEL OKOTH OCHIENG a cousin to the accused recalled visiting the accused house to pick his phone on the said night where he noticed that the accused was angry and as a result he did not pick the phone. Later after an hour he heard screams coming from the direction of the accused house. He rushed to the scene and found the accused beating the deceased with his hands. He tried to separate the two by holding his left hand as **PW2** held the other enabling the deceased escape. Later he found the deceased lying in a plantation crying and together with **PW2** they escorted her to the village elder who advised them to take her back home until the following day when she may be taken to hospital. By 2 a.m. He learnt that the lady had died. It was his testimony that the woman was bright and he spoke to the accused whom he recognised.

In cross-examination he stated that both the accused and the deceased were his relatives and he knew them well.

PW2 MICHAEL ODHIAMBO. He recalled that on the night of 16th July, 2009 he escorted **PW1** to pick his phone from the accused house. **PW1** did not pick his phone as they found the accused angry. Later at about 10 p.m. he heard screams. **PW1** and him went back and found the accused beating the deceased. They helped by holding the accused which enabled the deceased escape. The following day he learnt that the lady had died.

PW3 HENDRICA OBARE. He recalled that while asleep in his house on the 16th of July, 2009

he heard noises outside. He came out and saw an old lady who informed him that the scuffle was between her son the accused and an in-law. Later the village elder visited his house at 11 p.m. to make inquiries. They both went to the deceased's house, spoke to her and then left. Later at about 3.30 a.m. In the company of the deceased's mother-in-law, who is her co-wife they visited the deceased and found she had died. She confirmed that the deceased occasionally had a mental problem and at such times she abused others.

PW4 GEORGE OMONDI. He recalled that on the night of 16th July, 2009 at about 9 p.m. As he was listening to a radio, he heard noise of one crying and seeking for help. He took a torch as it was very dark he asked his brother Peter to take him to see what it was. He found it was the deceased lying in a neighbour's land. He inquired from the deceased who is his mother's sister what had happened and she informed him that the accused had beaten her. They took the deceased first to the village elder then to her house. He was in the company of 4 others. They were to take the lady to hospital the following day, but by morning she had died. He confirmed that the deceased was not of good mental state.

PW5 FELIX DAN ODONGO. The assistant chief of Nyadorera "B" Sub-Location, he recalled that on the 16th July, 2009 he received news that the deceased had been beaten by her in law, he advised them to take her to hospital and thereafter report the matter to the police. In the morning he received news of her death at about 9 a.m. He went to the home of the deceased. He confirmed she had died. He observed injuries on the thigh, head and chest. He then spoke to the officer in-charge of Nyadorera Base and Siaya Police who came and took the body away On 18th July, 2010 he got information that the accused had relocated to Usenge. He was way laid and arrested. It was his evidence that after the beating the accused disappeared.

PW6 RICHARD OBARA recalled that on the 24th of July, 2009 he attended the postmortem being done on the deceased. The deceased was his wife. The doctor explained to him the cause of death as having been injuries to the neck, chest and a ruptured bladder. He denied that the deceased was mentally ill. He however said that he had been away in Tana River for 2 years.

PW7 JOANES ODUOR ORIARO. He also witnessed the post-mortem at the Siaya Mortuary on 24th July, 2012 in the company of **PW6** and two police officers.

PW8 POLICE SERGEANT JAMES MUCHIRI of Nyadorera Police Patrol Base. He recalled that on the 12th of July, 2009 at about 8 a.m. He received a call from **PW5** of a death in his area. He proceeded to the scene and found **PW5** and other people. The deceased body was also there. He received information from family members that the deceased and the accused had had a quarrel. The body of the deceased was moved to Siaya mortuary and the accused was nowhere to be found. On the 18th of July, 2009 he received news from **PW5** that the accused had been apprehended by members of the public. He later arrested the accused and later took him to Siaya Police Station and charged with the offence.

PW9 DR. RAPENDA KENNEDY of Siaya District Hospital, he produced a post postmortem report prepared by **Dr. Esiaba** whose handwriting he was familiar with. The report had the following:

External findings

- **bruises and cuts on the left knee;**
- **left hand swollen;**
- **no fracture;**
- **chest with bruises;**

Internal

- **blood clots within the abdomen;**

- **raptured bladder and urinary bladder**
- **cause of death was internal haemorrhage from raptured spleen.**

The court found at the close of the prosecution case that the accused had a case to answer and the accused was put on his defence. He gave a sworn statement as follows:

DW1 DOMINIC OMORO OBARA. He was known to the deceased who was his step-brother's wife. He recalled that on the 16th of July, 2009 after returning home he learnt from his mother that the deceased had quarrelled and bit his wife. The deceased was sick. Later the deceased came to his home, caught him by the shirt and wanted to fight him. This provoked him and he slapped her on the cheek. Later on the 17th in the morning he learnt of her death. He saw her dead boy and she appeared to have been beaten. He denied having hit the deceased on several parts of her body.

Having considered the evidence by both sides the issue for consideration is whether the prosecution has placed sufficient evidence against the accused to support the charge of murder facing him.

From the evidence on record from both sides it is evident that the deceased received severe injuries as a result of an assault which occasioned her death.

The question now is whether there is sufficient evidence linking the accused to the beating?

PW1, PW2 & PW3 testified to the deceased's cries. Indeed **PW1 & PW2** separated the accused from the deceased. They saw the deceased lie in a plantation after the assault and escorted her to the assistant chief to report. **PW3** was the mother of the accused and in the company of the deceased's mother-in-law visited her at 3.30 p.m. when they found she had died. **PW5 & PW8** confirm seeing the dead body and witnessed injuries. The accused confirms that he was angered and slapped the deceased as a result, he however denied fatally injuring the deceased.

There is overwhelming evidence including the postmortem report and the statements of **PW1 & PW2** that the accused bit the deceased. The postmortem report showed injuries causing death as internal bleeding and a raptured spleen. The relatives of the accused who happened to be relatives of the deceased as well pointed an accusing finger against the accused. The accused admits beating the deceased but does not admit the severity of the beating. The evidence against the accused in my view is overwhelming. He beat the deceased, she had to be rescued that he cannot escape. I find that he indeed beat up and gave the last blow to the deceased.

The accused testified that the deceased had angered him, that may be so; however he ought not to have taken the Law into his hands, especially against the knowledge that the deceased was mentally ill. He may have been provoked, he may have had no intentions of killing but nevertheless he killed the deceased and must face the wrath of the Law. I take into account the provocation alluded to by the accused and I accordingly find the accused guilty of the lesser charge of manslaughter. I convict him accordingly.

DATED AND DELIVERED AT KISUMU THIS 6th DAY OF November 2012.

**ALI-ARONI
JUDGE**

In the presence of:

.....**State Counsel**

.....**Counsel for appellant**