



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT KISUMU**

**(Coram: Kneller & Hancox JJA & Chesoni Ag JA)**

**CRIMINAL APPEAL NO 38 OF 1983**

**BETWEEN**

**ELIAS APUDHO ODHOWO**

**SIMON NYAMAI**

**LUCAS ODHIAMBO**

**AUGUSTINO OMONDI ..... APPELLANTS**

**AND**

**REPUBLIC ..... RESPONDENT**

**(Appeal from a sentence of the High Court of Kenya**

**at Kisumu (Schofield J) dated 16th March, 1983**

**in Criminal Case No 31 of 1982)**

**JUDGMENT OF THE COURT**

Elias Apudho Odhowo aged 55, Simon Nyamai, 65, Lucas Odhiambo, 32 and Augustino Omondi 22 were sentenced on March 16, 1983 by the High Court (Schofield J) to six years imprisonment for Lucas Apudho Odhowo and four years' imprisonment for each of the rest because they pleaded guilty to jointly and unlawfully killing Lucas Opondo Onyango aged 13 at about 5 pm on June 5, 1981 at Kalkanda Uradi, West Alego Location in Siaya District.

This youth and another called Patrick Juma, of about the same age, were suspected of (and probably admitted) breaking into the room of a schoolmate, George Owegi on June 4, that year and stealing his blanket(s), two sheets, a satchel and a calendar so George's father, Nicholas, told Simon Nyamai, the nearest village elder who told the assistant chief, Elias Apudho, who collected his 'youth wingers' Lucas Odhiambo and Augustino Omondi. The two young culprits were rounded up and brought to the Owegi home by Simon Nyamai. There they were tied with ropes. Lucas' father, Dalmas, his mother and even Leunida Auma, his grandmother, were sent for and when they were all gathered they were all marched to a field where some villagers and school children joined them. Elias Apudho, Odhowo the assistant chief, then handed out sticks he had cut and whittled from the bush and he and the other two younger appellants

beat the two youths and so did some of the others while some of the rest rained rocks on them. Lucas died but his mother, Dalmas, and Patrick survived.

The corpse of Lucas was examined about six days late and the cause of death was due to three ribs of each side of his chest having been fractured which led to heavy bleeding in it. Eye witnesses said Alias Apudho Odhowo, the assistant chief, lifted up one of Lucas's legs and struck his testicles with a stick and when the lad fell down he struck him on the back of his head but the cope was putrefied when the doctor examined it so these injuries were not confirmed.

Patrick swore Simon Nyamai did not take any weapon and nor did he beat him or Lucas but "he only incited them to beat us, calling us thieves who spoil the village." The advocate for the appellants said each admitted all the facts outlined by the provincial State Counsel which amounted to manslaughter.

The learned judge took into account the pleas of the appellant, their sorrow at the enormity of their deeds, their ages and their two years in remand before trial. He described the killing of Lucas as brutal. He separated Alias Apudho Odhowo, the assistant chief, from the others because of his position and the two savage blows he inflicted on Lucas which preceded his death. Simon Nyamai attended the hearing of the appeal and the other appellants did not do so (at their own request).

In their written grounds of appeal they ask this court to quash their convictions and set aside their sentences because they pleaded guilty to avoid languishing in remand any more, they were innocent, they and or members of their family were unwell and they were too elderly or young to endure the sentences passed upon them. Simon Nyamai added nothing in his submissions during the hearing of the appeal. We must be unmoved by these references to age or health or family obligations by such people. The appellants will now be convicted of this manslaughter, as a matter of good order, for the learned judge did not do this. The sentences were legal, appropriate and not manifestly excessive or based on any wrong principle. These appeals are dismissed.

**Delivered at Kisumunthis 23rd day of June 1983.**

**A A KNELLER**

**JUDGE OF APPEAL**

**A R W HANCOX**

**JUDGE OF APPEAL**

**Z R CHESONI**

**AG JUSGE OF APPEAL**

**I certify tat this is a true copy of the original.**

**DEPUTY REGISTRAR**