



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL AT KISUMU**

**(Coram: Porter & Kneller, JJ.A & Chesoni, Ag. J.A)**

**CRIMINAL APPEAL NO 39 OF 1983**

**BETWEEN**

**RAPHAEL OMOLO.....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Appeal from a sentence of the High Court of Kenya at Kisumu (Schoffield J) dated in Criminal Appeal No 8 of 1983)**

**JUDGMENT OF THE COURT**

Raphael Omolo Arura, the appellant, aged 31, or so, and formerly a contract sugar-cane cutter at Chemelil, is aggrieved by the sentence of 31/2 years imprisonment passed upon him by the High Court (Schofield, J) in Kisumu on March 23, 1983 when he was convicted on his own plea of guilty to manslaughter.

He unlawfully killed Johannes Suba Ondiek (Ondiek), aged about 35, on June 18, 1982 near Mariwa Village in Kochogo sub-location, South East Kano Location in the Kisumu District. Ondiek herded his cattle off to some pasture some time that day and at dusk the cattle trailed back alone. A search party did not find him that night. A neighbour discovered his corpse at 8.00 the next morning in a pool of blood in a field.

His left ear had been cut off and the left side of his skull and brain were crushed which led to internal bleeding in the brain, and heart failure. The police began their investigations and certain information led them to look for the appellant because he had been drinking changaa with Ondiek shortly before he was killed

and the appellant admits this is so. The appellant could not be found in the area but a week later he turned up of his own accord to Ahero Police Station and confessed he had killed Ondiek so he was arrested and put in the cells. Twenty-four hours later I.P Moses Mulwa told him he had reason to believe the appellant was connected with this homicide and cautioned him in appropriate words to which the appellant chose to reply. He admitted he struck Ondiek with a club until he died at about 9 pm on June 18. This was for the return of his 30- aced farm and Kshs 100 in cash to help him escape after the event which someone called James Maina paid him and who was the man who had evicted him ten years before from his plot. This James Maina, the appellant told I.P Mulwa, was the brother of Ondiek.

The advocate for the appellant submitted the appellant's reply to this inquiry and caution was bogus and it

seems so to this court; the injuries of the deceased are not consistent with his having been attacked with only a club.

He went on, however, to ask the judge to inflict a lenient sentence because the appellant was married and had children and they all depended on him, he had pleaded guilty, he had no previous conviction, he had been in remand 9 months and had been sorely provoked over the years by the contrast between his poverty and the riches of Ondiek and, more immediately by Ondiek's verbal abuse when they were together on June 18. All this was considered by the learned Judge before he selected the sentence he imposed.

The memoranda of appeal have not added anything to all this save that he now claims he acted in self-defence, which is an after-thought and untrue and that he has played an important part in fostering the sugar industry which, if true, is irrelevant.

The sentence was legal, appropriate and not manifestly excessive, so that appeal must be dismissed, which is what we now order.

**Delivered at Kisumu this 20th day of June, 1983.**

**K.D. PORTER**

**Judge of Appeal**

**A.A. KNELLER**

**Judge of Appeal**

**Z.R. CHESONI**

**Ag. Judge of Appeal**

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

**Deputy Registrar**