

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE (MURDER) NO. E026 OF 2023

REPUBLICPROSECUTION

VERSUS

SAMUEL ODWEYO.....ACCUSED

JUDGMENT

1. The accused herein **Samuel Odweyo** has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 25th day of July 2023 at around 1930 hours in Ulanda Village of Kaugagi sub location, South West Alego Location in Siaya Sub County within Siaya County unlawfully killed Fredrick Onyango Wanyande.
2. The prosecution called a total of ten (10) witnesses in support of its case.
3. **Levis Oduor minor (PW1)** testified that he recalls that on 25/7/2023 at around 7.30 pm he was at home and went to their fence when the accused person herein and who is a

neighbour came towards their home while was armed with a club and wanted to beat him up as he pointed it at him. That he rushed home and later saw the deceased herein carrying maize stalks and who was confronted by the accused who hit him with a huge club on the left ribs. The deceased fell down but managed to flee but again fell down while the accused went back to his house. The witness identified the accused person in court as well as the murder weapon.

On cross examination he stated inter alia; that he knew the accused and that he saw the accused clearly. That he was trying to fetch some items from their farm when the accused chased him. That the witness was at a distance of 300 metres when he saw the deceased carry the maize stalks and that accused is known to be a harsh person.

- 4. Elvis Otieno Wanyande minor (PW2)** testified that he recalls that on 25/7/2023 at about 7.30 pm he was fetching water and on his way his brother Fredrick went to collect maize stalks from the accused's farm who was their neighbour to use for feeding the cattle. That on his way from the river, he saw his brother carrying the maize stalks only for the accused to hit him with a huge club on the ribs. That the maize stalks fell from his head and he ran away but fell down some little distance. That a neighbour later alerted his mother about what had happened who went to the scene and raised alarm. That he saw Fredrick on the ground and that he was about to inform his mother on what he had witnessed when a

neighbour arrived and alerted his mother. That the accused person was in court.

On cross examination, the witness stated that he knew the accused. That he had gone to river to fetch water while the deceased had gone to collect maize cobs from accused's compound. That he saw the accused hiding behind a certain kitchen as he went to the river. That he was with the deceased when he was from the river and that he saw the accused who had the huge club on his right hand. That there was moonlight at 7.30 pm.

5. **Monica Achieng Opondo (PW3)** testified that she recalls on 25/7/2023 at 9.00 pm heard noise outside someone calling her name and informing her to get out of the house and witness what the accused had done to her son. That she rushed there and found the deceased lying dead on the ground. That the Assistant Chief was alerted who came to the scene, called the police who came and picked up the body. She further testified that a post mortem was conducted which revealed that spleen had been ruptured. That the accused who was in court was the person who killed the deceased.

On cross examination, she stated that she had known the accused and that they had no differences prior. That she did not witness the incident.

6. **Monica Akoth Obayo (PW4)** testified that on 25/7/2023 at 9.00 Pm her son Victor Ochieng went while running and alerted her that he had seen something like a human body

inside a bush. That he took a torch and went back and followed from behind and who found the body of the deceased. That he screamed for help and then rushed to the deceased's mother and alerted her of the incident. That deceased's mother rushed to the scene. Further, she stated that she did not witness the incident.

On cross examination, she stated that she had known the accused for about fifty years and that she had no differences with him. That she did not know the assailants when she rushed to alert the mother of the deceased as her son had not stated that he had witnessed the incident.

7. **Dr. Erick Okong'o (PW5)** testified that he is based at Siaya County Referral Hospital and that he performed an autopsy on the body of the deceased. That there was no cut wound on the head, respiratory system was intact as there was no major trauma. That the stomach was full of blood measuring about 700 m/s. That there were tears on the vessels. That there was no bleeding from the nose, mouth or ears as there was no trauma. That he formed the opinion that the cause of death was excessive hemorrhage secondary to spleen injury. He produced the report as Exhibit No.2.

On cross examination he stated that the ribs were intact and that the spleen had two tears. That the stomach was moderately distended due to illness or active invasion of the abdomen.

8. **No. 66783 CPC Simon Likonyi (PW6)** testified that he is stationed at Siaya Scenes of Crime. That on 25/7/2023 at 11.00 pm while on standby duties, he was requested by the DCI to accompany Pc Langat and other officers to Ulanda village and attend to an alleged scene of murder. That on arrival, they found a large crowd and police officers from Mwer police post had secured the scene. That he found the body lying on ground and upon examination, there was no injury on the head, lower part of the body and upper part. That there was injury below the right ribs. That there was a pair of jamboots near him. that a certain house had been vandalized and that there was a suspect who had been rescued. That there was a pool of blood inside the suspects house. That the following day they revisited the scene and established that the deceased had gone to collect maize stalks from the accused's land when the incident took place. That the accused had leased the land to someone else. That he took photographs which he produced as Exhibits.

On cross examination, he stated that the deceased suffered mild injuries on right ribs.

9. **No. 47835 SGT Otoro Sala (PW7) testified** that on 25/7/2023 at around 10.00 pm he was at Mwer Police post when he received a report from the Assistant Chief Raymond Oduma who alerted him that someone in his area had been murdered. That he boked the report and together with Pc Nickson Rono rushed to the scene. That he alerted Siaya DCI. That on arrival, they found the body of the deceased lying on

the road. That he made enquiries from members of public who directed them to accused house. That upon entering the house, they found the accused bleeding profusely and who could not talk. That later, the officers from Siaya arrived at the scene and processed it. That the accused together with the deceased's body was escorted to Siaya.

10. **Raymond Opiyo Nyadimo (PW8)** testified that on 25/7/2023 at 9.00 pm he received a report that the accused had assaulted the deceased. That he alerted the officer of Mwer police post who came and confirmed the incident and who upon alerted the DCI Siaya.

11. **Victor Ochieng Obayo (PW9)** testified that on 25/7/2023 at 9.00 pm he had left watching a football match and headed home. That before he could branch the foot path, he saw something like a jacket or log of wood behind his uncle's house. That his uncle was Shem. That he proceeded with some fear. That he alerted his mother Monica Obayo of what he had spotted. That at that time, his mother informed his brother that the accused had fought the deceased. That his mother had a torch which he used to find out about the object he had seen. That on arrival, he found the deceased lying on the ground. That he raised alarm attracting the villagers. That two young men Elvis Otieno (PW2) and Levis Odongo (PW1) arrived. That the body lay facing upwards. That the body appeared not to have injuries. That the villagers stormed the accused's house.

On cross examination, he stated that it was PW1 and PW2 who had claimed witnessing the incident. That he could not establish whether the object was a jacket or a log. That he had to confirm what he had seen. That he did not see accused assaulting the deceased. That he could not tell if accused and deceased had any differences.

12. **PC Langat Dominic (PW10)** testified that he is based at DCI office in Siaya. That on 25/7/2023 and at around 2200 hours, he was instructed by the Sub County DCI CIP Ole Kilua to visit a scene of murder that had been documented by officers from Mwer police post. That they reached Kaugagi Udenda sub location and found the deceased lying outside an isolated house. That upon checking the body, it had mild injury on the left side of the ribs. That they found two young boys Elvis Otieno Wanyande and Levis Odongo and who informed them that the deceased had been hit by the accused with a club which was produced as MFI- 1. That the deceased had gone to the farm of the accused to collect dry maize stalks and that the accused had pursued him and hit him with a huge club. That on 4/8/2023, he accompanied the deceased's family members to the mortuary where an autopsy was conducted. That Dr. Okong'o Eric formed the opinion that the cause of death was spleen injury.

On cross examination, he stated that he only recovered a huge club besides the house of one Monica Obayo and that the accused's house was 50 metres from that of the deceased. That the body was found outside an abandoned house. That there was no road near the scene. That he did

not establish any grudge between the accused and deceased.

13. This court later ruled that the accused had a case to answer and who was thus placed on his defence. He opted to tender a sworn testimony.

14. **Samuel Odweyo Otieno (DW1)** testified that he knows the deceased who was one of his family members since the deceased's father was his brother. That they have had no family differences. That he recalls on 26/7/2023 he was in his house and later headed to his farm to prepare vegetables to be taken to the market. Later, at around 8.30 pm he heard a knock on his door and on trying to open the door, a person smashed the glass door while another one hit the window and that is when he realized that the strangers were trying to break into his house. That the assailants later reached him and severely assaulted him and that he found himself in hospital. That police later came and informed him that he had killed somebody. That as far as he is concerned, he had not seen the deceased on that day. That the home of the deceased is about 300 metres away from his. That it is not true that PW1 saw him on that day assaulting the deceased.

15. After the close of the defence case, parties were directed to file and exchange submissions. Both parties complied.

16. I have given due consideration to the evidence tendered by both prosecution and defence as well as the submissions filed.

I find the issue for determination is whether the prosecution proved its case against accused herein beyond any reasonable doubt.

17. This being a charge of murder, the burden of proof lay upon the prosecution to discharge and that the standard of proof is one of beyond any reasonable doubt. See **Woolmington Vs Dpp [1935] AC 462**. The offence of murder is provided for under Section 203 of the Penal Code which is to the effect that **“any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”** Hence, in order for the prosecution to secure a conviction for the offence of murder, it must establish certain ingredients inter alia; the death and the cause of that death; that the accused committed the unlawful act which caused the death of the deceased; that the accused had malice aforethought. Throughout the trial, an accused who has denied the charge remains innocent until proved guilty and that he/she is under no obligation to prove his/her innocence.
18. As regards the aspect of the death of the deceased, an autopsy was later conducted by Dr. Eric Okongo (**PW5**) who formed the opinion that the cause of death was excessive hemorrhage secondary to spleen injury. He produced the report as Exhibit No.2. That the stomach was full of blood measuring about 700 m/s. That there were tears on the vessels. As there is no dispute regarding the issue of death of

the deceased, I find that this ingredient was proved by the prosecution beyond reasonable doubt.

19. As regards the aspect of the unlawfulness of the death, it is noted that the deceased was a young man then aged about 28 years and in good health and whose life was suddenly ended. It is also noted that the deceased did not have any medical problems in that his sudden death baffled his family. Looking at the injuries which comprised of a ruptured spleen in the sensitive part of the deceased body, it is obvious that the assailant intended that those injuries would cause grievous harm or even death. As the death was not in accordance with the law, the killing of the deceased was therefore unlawful. I find this ingredient was also proved beyond reasonable doubt.
20. As regards the aspect of malice aforethought, Section 206 of the Penal Code provides that the same shall be deemed to have been established by evidence proving any one or more of circumstances inter alia; an intention to cause death or to do grievous harm to any person, whether that person is the person actually killed or not; knowledge that the act or omission causing death will probably cause death or grievous harm to some person, whether that person is the one killed or not, accompanied by indifference whether death or grievous injury occurs or not by a wish that it may not be caused; an intention to commit a felony; an intention by the act or omission to facilitate the flight or escape from lawful custody of any person who has committed or attempted to commit a felony. It is trite law that in offences of murder this ingredient

is quite crucial and must be proved by the prosecution beyond any reasonable doubt. In the case **of R Vs Tubere S/o Ochen [1945] 1 EACA 63** the court held that an inference of malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused during and after the attack. In the present circumstances, it is noted that the deceased was hit with a huge club. The evidence of the witnesses (PW1 and PW2) is that the accused surreptitiously approached the deceased who was then carrying some maize stalks on his head and unaware of the danger and hit him with a single blow by use of a huge club which landed on his left side of the chest and that the deceased fell down and tried to stand but did not succeed and died at the scene. The single blow did not give the deceased a chance to survive. It is clear that the assailant intended that the said injuries would cause grievous harm or death to the deceased. It transpired from the evidence that the accused always walked around with a huge club and ready to deal with anyone who dared cross his path and that he was feared in the area. It is also clear that the accused was unhappy with the family of the deceased in fetching maize stalks from his farm even though the witnesses denied existence of any grudge between them. It seems to me that the accused was incensed by the conduct of the deceased in fetching maize stalks from his farm without permission and thus decided to punish him. Indeed, the deceased's family members confirmed that the maize stalks had been collected from the farm belonging to the accused.

In the circumstances, I find that there was no element of malice aforethought as the same was not planned or premeditated. In fact, it was spontaneous. In that regard, I find that this ingredient was not proved beyond any reasonable doubt. At best, the evidence points to a charge of manslaughter rather than murder.

21. As regards the participation of the accused person in the crime, the evidence of PW1 and PW2 is that they saw the accused accosting the deceased and hitting him with a huge club. The accused is a relative of the deceased's family as confirmed by him in his defence testimony. The accused is the deceased's family neighbour and was thus well known by the two eyewitnesses. It transpired from the evidence that there was no grudge or differences between the family of deceased and the accused herein and hence the issue of a frame up does not arise. The accused was well known to the two eyewitnesses who did not have any difficulty in recognizing him at the scene of crime. The accused's defence claim that he was innocent and was then relaxing at his house when he was rudely interrupted is not convincing. I am satisfied that the accused was identified as the perpetrator of the crime. I find this ingredient was proved by the prosecution beyond reasonable doubt.

22. An analysis of all the evidence of the ten prosecution witnesses left no doubt that the accused was squarely placed at the scene of crime. His defence evidence did not shake the said evidence which is overwhelming against him. The

accused was clearly placed at the scene of crime was involved in the killing of the deceased. However, as noted above, the evidence supports a charge of manslaughter instead of murder.

23. In view of the foregoing observations, it is my finding that the prosecution has not proved the charge of murder against the accused herein Samuel Odweyo beyond any reasonable doubt. However, I find that the prosecution has proved a charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code against the accused herein beyond any reasonable doubt. I find the accused herein Samuel Odweyo guilty of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and is convicted accordingly.

Dated and delivered at Siaya this 25th day November 2025.

**D.KEMEI
JUDGE**

In the presence of:

Samuel Odweyo.....Accused

Mirembe for M/s Akinyi.....for Accused

Soita.....for Prosecution

Maureen/Kimaiyo.....Court Assistant

SIAYA HCCRC NO. E026 OF 2023 - JUDGMENT