



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

**AT KISUMU**

**(CORAM: CHUNGA, C.J., GICHERU & LAKHA, JJ.A.)**

**CRIMINAL APPEAL NO. 87 OF 1994**

**BETWEEN**

**BICHURU NGORI ONDIEKI .....APPELLANT  
AND  
REPUBLIC .....RESPONDENT**

**(Appeal from the Judgment of the High Court of Kenya at Kisii (Mbaluto, J.) dated 15th July, 1994  
in  
H.C.CR.C. NO. 35 OF 1994)**

**JUDGMENT OF THE COURT**

**BICHURU NGORI ONDIEKI**, the appellant herein, was charged that on 31 January 1991 at Nyangusu Sub-location, Bassi Bogetaerie, Borabu Location in Kisii District of the Nyanza Province, murdered **JAPHETH OSIEMO ANUNDA**. He was tried before the superior court (Mbaluto, J.) and by a judgment given on 15 July 1994 he was convicted as charged and sentenced to death.

He now appeals to this Court against his conviction. The main thrust of the appeal lay in the contention that the learned trial judge erred in law in failing to find that the appellant was insane at the time the offence was committed. Reliance was placed in support of that contention on the evidence of witnesses who testified that the appellant was sick and used to talk to himself.

On 31 January 1991 the deceased and his two colleagues had spent the day splitting timber. As they were going home in the evening they followed a footpath which goes through the house of the appellant and consistent with prior warning the appellant stabbed the deceased with a knife on the head. The deceased fell down with the knife stuck at his head. He died the sTahmee naipgphetl.lant's defence was by way of an unsworn statement. He said he did not know what he was doing. But Dr. Badia who is an experienced Psychiatrist and has been practising as such for a long time testified and his view on the appellant was emphatic. According to him the appellant was mentally normal. He suffered no mental sickness. On 4 February 1991 he examined the appellant and he did not detect any mental abnormality. On 17 May 1994 he re-examined the appellant. His examination revealed that the appellant was mentally normal. In his opinion, there are many conditions where people talk to themselves without being necessarily mentaTlhlye lielalr.ned trial judge summed up to the assessors on 15 June 1994 and delivered his reserved judgment a month later, i.e. on 15 July 1994. He concluded as follows:-

***"Having carefully considered the two versions of the evidence I would think the evidence of Dr. Badia is to be preferred for the reasons I have given above. I find the accused was not and has not at any time been mentally sick. He is fully responsible and must be taken to have intended all the actions he did..... In my view the accused was mentally normal and I find him guilty of the murder of the deceased Japheth Osiemo Anunda as charged."***

We respectfully agree. Upon an exhaustive scrutiny of the evidence and a re-evaluation thereof on our part, we are satisfied that on the evidence we, like the learned trial judge, would have come to the same conclusion. The conviction is, in our view, safe and proper.

For the reasons stated the appeal is dismissed.

**Dated and delivered at Kisumu this 25th day of November,1999.**

**B. CHUNGA**

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**CHIEF JUSTICE**

**J.E. GICHERU**

.....

**JUDGE OF APPEAL**

**A.A. LAKHA**

.....

**JUDGE OF APPEAL**

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