



**Republic v Inyangala (Criminal Case 42 of 2015)
[2023] KEHC 1458 (KLR) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1458 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 42 OF 2015
PJO OTIENO, J
FEBRUARY 27, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALEX INYANGALA ACCUSED

RULING

1. On the January 18, 2015, the deceased locked himself in the house belonging to his late parents, put on radio on high volume and was not responding to calls by one Isaac Ombeba who then went and reported to Pw 2. Pw 2 and her informant went to house and found the door locked from inside. Both forced the door open, found the radio on a high volume and noticed that the deceased was hanging on a wire on the sitting room. PW 2 screamed and villagers came.
2. PW 2 then called PW 1, who in turn called the Assistant Chief who then called the police who visited the scene and unhang the deceased from the wire. That evidence was reiterated by PW 1. PW 3 was a brother to the deceased and PW 1, was in Nairobi on the material day and was called about the death and visited home the next day. He was narrated to what happened and shown photographs but he was not convinced that the deceased had committed suicide. He looked for deceased phone and wallet but both were missing only to be found later in the house of the accused by the friends to the accused. He identified a telephone handset, make Samsung, in court, as the handset the deceased would use even though it had no special marks to distinguish it.
3. After the phone was recovered, the witness went to Safaricom and was told that the deceased's phone had been used by the father to the accused who used it to buy airtime of Kshs. 20/= or 40/=. He was not aware why the accused father was not prosecuted. It was after that discovery when a complaint was lodged with the DCI and the accused was arrested. He denied any grudge with the accused's family and identified the accused as his cousin.



4. On being cross examined, he admitted having not witnessed how the deceased died save for what he was told by Pw 1. He confirmed that the deceased was sickly due to drunkenness and that when arrested the accused was not found with any of the items belonging to the deceased. The witnesses later attended a post-mortem examination during which the doctor formed the opinion that the deceased had died asphyxia and that the telephone set was found in possession of a third party not the accused.
5. The autopsy report was produced by a clinician on behalf of the doctor who conducted the examination because that doctor had since left Kenya. The opinion on cause of death was that death was due to asphyxia secondary to hanging.
6. None of the first four witnesses connected the accused in any remote way to the death. The evidence of all pointed to the death resulting from suicide. It is only the evidence of Pw 5, the Investigating Officer, that only connects the accused to the death when the witness said that after the matter was reported to the police on June 16, 2015, with three suspects being named, that he arrested the accused and the accused confessed to him to having killed the deceased, hanged him and later used his phone pin number, which he had been given by the deceased, before death, to withdraw money from the deceased accounts.
7. The evidence of PW 5 would take the character of a confession in so far as it alleged that the accused admitted having not only killed the deceased but also withdrawn money from the deceased's account and that he sold the deceased's handset to a student who paid him a deposit of Kshs. 1000/= . That evidence is inadmissible as a confession as it was never taken in accordance with the law under section 25A, *Evidence Act* and the Rules made thereunder. I find the evidence to be inadmissible and thus cannot be the only basis to place the accused to his defence.
8. In any event, the same witness further alleged that the father to the accused, PW 6, did tell him that the documents of the deceased was handed over to the PW 6 by the accused, but when Pw 6 gave evidence he denied that allegation stating that he had picked the documents from the ground. Other than being inadmissible, the evidence of PW6 was equally marred with contradictions which I resolve in favour of the accused.
9. Without the inadmissible evidence of Pw 5 there is no lota or scintilla of evidence that connects the accused to the death of the deceased. In those circumstances, to ask the accused to defend himself would be a hope that he fills the gaps left by the prosecutions case
10. It is therefore the finding of the court that no prima facie case has been established against the accused to warrant him being put on his defence. The court therefore records a finding of Not Guilty under section 306 and acquits the accused of the charge. Let him be released forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED IN KAKAMEGA THIS 27TH DAY OF FEBRUARY 2023.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Ms. Chala for the Prosecution/State

Mr. Fwaya for the Accused

Court Assistant: Polycap

