



**Republic v Omaset (Criminal Case E005 of 2023)
[2023] KEHC 19284 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E005 OF 2023
WM MUSYOKA, J
JUNE 30, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

PETER GEITANO OMASET ACCUSED

RULING

1. The accused herein, Peter Geitano Omaset, is charged with murder, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya. The particulars are that on the 6th March 2023, at Aladoi Village, Obocuun Sub-Location, Amung’ura Location, Teso South Sub-County, within Busia County, he murdered Judith Omaset.
2. 5 witnesses gave evidence in the matter. None of them testified to have witnessed the accused persons assaulting the deceased or doing something to her which could have caused her death. PW1, Silvanus Omuse, was the village headman to whom a report was allegedly made, that the deceased had fled her home, from the accused, to the safety of the home of the reportee. He did not witness the assault. PW2, Goldfrida Atyang, received the deceased at her home, after she fled from the accused, and she reported the matter to PW1. She did not witness the assault. PW3, Nabuya Duncan, was the doctor who conducted post-mortem on the body of the deceased. He opined that cause of death was heart failure. PW4, Vincent Orono, was a son of both the accused and the deceased. He said that he did not witness the assault. PW5, No. 225517 Police Corporal Shem Ngige, was the investigating officer.
3. The parties did not submit.
4. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, he did it with malice aforethought.
5. On whether the deceased died, I have the evidence of PW1 and PW2. They all confirmed that the deceased had died. Post-mortem on the body was conducted by PW3. He said the cause of death was



heart failure. The cause of death was not directly linked to the accused, for none of the witnesses saw the accused harm or assault or do anything that would have caused the death. Although PW2 alluded to the deceased having been assaulted by the accused, she did not disclose the source of that information. She did not mention that the deceased ever told her about her being assaulted by the deceased. She did not talk about PW4 giving her any such information. PW5 talked of PW4 telling him that he witnessed the accused assault the deceased, but when PW4 testified he was emphatic that he did not see the accused assault the deceased. Indeed, he said that he did not even sleep in the house where the alleged assault happened. Other than PW3, the doctor, none of the other witnesses, who saw the deceased before she died, noted any injuries. PW1 said that her body was swollen on the ribs. PW2 testified that she was groaning and complaining of pain in the head and hips. She did not mention any injuries. PW3 noted small bruises on the left leg. His conclusion was that the deceased died of heart failure. He opined that the deceased had an alcohol induced liver disease, a blunt force trauma to the liver and malnutrition. He stated that the cause of death was a combination of the heart failure, the liver disease, the malnutrition and the blunt force trauma. He said that death would have happened without the assault. Of course, by assault he meant the blunt force trauma. He did not give an opinion of what might have caused that blunt force trauma. None of the witnesses who testified saw the accused assault the deceased. None of them led evidence on what might have caused the blunt force trauma on the liver. PW2 stated that both the deceased and the accused were drunk when they came to her home.

6. There is no direct evidence against the accused person, pointing to him as the person who did anything to the deceased that led to her death. The burden lies with the prosecution, to establish beyond reasonable doubt that he caused the death of the deceased. There is no concrete evidence. The only circumstantial evidence is that he followed the deceased to the compound of PW2, and was very harsh, beyond that there is nothing. I am not persuaded that that would be adequate to convict the accused, in the absence of any explanation from him. I equally, in the circumstances, also find and hold that no prima facie case was established against him to warrant his being put on his defence.
7. As no prima facie case has been established against the accused person, I shall acquit him, under section 306(1) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya. He shall be set free from remand custody, if still in remand, unless he is otherwise lawfully held.

JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 30TH DAY OF JUNE 2023

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Mayaba, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Were, Advocate for the accused person.

