



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Gono (Criminal Case 25 of 2020)
[2023] KEHC 21511 (KLR) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE 25 OF 2020**

**KW KIARIE, J
JULY 31, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

MICHAEL OTIENO GONO ACCUSED

JUDGMENT

1. Michael Otieno Gono is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars are that on 19th June 2020 at Nduga village, Kachien North Sub location in Rachuonyo South Sub County of Homa Bay County, they murdered Noel Adhiambo Midenyo.
3. As it is expected among children, there were some minor disagreement between the accused and the siblings of the deceased. The prosecution contended that following the disagreement, the accused chased the deceased into some maize plantation while armed with a stone. She was found after several days dead. It was alleged that the accused murdered her.
4. Michael Otieno Gono, the accused, contended that when Judith continued to mimic him, he hit her with a maize stalk. Judith and the other girl in her company ran away and he proceeded where he was going. He denied any involvement in the death of the deceased.
5. The issues for determination are:
 - a. Which of the two versions is believable;
 - b. Whether the accused inflicted the fatal injuries to the deceased; and
 - c. Whether the offence of murder was proved.



6. According to the evidence of JAM (PW1) the incident was triggered by Jim the brother of the accused. Jim insulted the deceased by telling her that she had a big head. It was at this time that Jim went and called the accused who armed himself with a stone. He (accused) hit her with a stick and chased the deceased into a maize plantation while armed with a stone. She did not see her sister alive from then. This is the only evidence the prosecution called that tended to implicate the accused.
7. The other version was by the accused. His evidence was that at about 3 p.m. while taking their cows for water, he found JAM (PW1) and her sister herding cattle. When he talked to Kibaki who was cutting maize stalks, PW1 started to mimic him. When she continued undeterred, he hit her on the shoulder with a maize stalk. The girls ran away and he proceeded home. He denied pursuing the deceased into the maize plantation.
8. These two versions are competing and they both cannot be true. The evidence of JAM (PW1) appears hesitant and disjointed. At the beginning of her evidence she indicated that she saw the accused and the deceased enter into some maize plantation. Later on, is when she actually said that the deceased entered into the maize plantation to escape from the accused who pursued her. My assessment of this witness aged 13 years is that she was not candid and her evidence cannot be relied upon. Her version does not explain why the accused was attacking them.
9. On the other hand, the explanation by the accused appears logical and coherent.
10. The other remaining evidence against the accused is that of suspicion. The Court of Appeal in the case of *Sawe vs. Republic*[2003] KLR 354, the Court of Appeal held as follows:

Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.
11. I therefore find that the prosecution has failed to prove the offence of murder against the accused. I acquit him of the charge of murder and set him free unless if otherwise lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 31ST DAY OF JULY, 2023

KIARIE WAWERU KIARIE

JUDGE

