



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Omollo (Criminal Case 6 of 2020)
[2023] KEHC 26670 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26670 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE 6 OF 2020
KW KIARIE, J
DECEMBER 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

DENNIS OTIENO OMOLLO ACCUSED

JUDGMENT

1. Dennis Otieno Omollo is charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of the offence are that on the 18th day of January 2020, at Katula “A” village, Kachieng sublocation, in Rachuonyo South Sub County of Homa Bay County murdered Charles Ochieng Omollo.
3. The deceased herein was a brother of the accused. The accused alerted his brother Daniel Ojwang Omollo (PW1) of a foul smell emanating from the house of the deceased. When they entered therein, they found the body of the deceased which had obvious injuries. The accused was linked to the death by a pair of trousers that was blood-stained and was allegedly recovered from under his bed.
4. In his defence the accused denied any involvement in the offence.
5. The issues for determination are:
 - a. Whether the accused was involved in the incident; and
 - b. Whether the offence of murder was established.
6. According to the testimony of Daniel Ojwang Omollo (PW1), it was revealed that the deceased did not own a house and was residing in the house of his elder brother, Onyango, who was away working



in Nyakach. Upon investigation of the scene, the police discovered a pair of long trousers belonging to the accused beneath his bed in his residence.

7. Corporal Mark Litale (PW4) arrested the accused and when he searched his house, he recovered a 'blood-stained pair of trousers under his bed. The pair of trousers and other exhibits were forwarded to the government chemist, Kisumu for analysis. The analysis report stated:

Based on the findings, the DNA profiles generated from the blood stains on the curtain item "A" and long trousers, (item "B") match the DNA profile of Charles Ochieng Omollo (deceased).

8. This evidence by this witness is circumstantial. In the case of *Mohamed & 3 others v Republic* [2005] 1 KLR 722 Osiemo Judge explained what circumstantial evidence is as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

9. The blood-stained pair of trousers of the accused and the blood which turned out to be that of the deceased linked the accused to the offence. There was no explanation why it had the blood of the deceased and why it was found under the bed. The circumstantial evidence in this case, therefore, leaves no shadow of doubt that the accused was involved in the death of the deceased herein.
10. To convict for the offence of murder on the evidence on record, the prosecution must prove the existence of malice aforethought. In *Black's Law Dictionary*, 10th Edition malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless indifference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).

Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

In the instant case, the mode of the attack on the deceased appears vicious. Though no weapon was recovered, I am satisfied that the requirements of section 206 of the *Penal Code* were proved.



11. The prosecution has therefore proved the offence of murder against the accused. I find him guilty and accordingly convict him.

DELIVERED AND SIGNED AT HOMA BAY THIS 20TH DAY OF DECEMBER, 2023.

KIARIE WAWERU KIARIE

JUDGE

