



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL CASE NO. 2 OF 2016**

**REPUBLIC .....DIRECTOR OF PUBLIC PROSECUTIONS**

**VERSUS**

**ISAAC OTIENO AMUKHUMA.....ACCUSED**

**RULING**

1. Isaac Otieno Amukhuma is charged with murder contrary to section 203 of the Penal Code, Cap 63, Laws of Kenya, as read with section 204 of the Penal Code. The particulars of the offence allege that on 30<sup>th</sup> day of December 2015, at Nyamboka Village, Dudi Sub-Location of Khwisero Sub-County, within Kakamega County, he murdered Maurine Aoko Otieno, hereinafter referred to as the deceased. He pleaded not guilty to the charge on 18<sup>th</sup> February 2016. The initial hearing was slated for 18<sup>th</sup> May 2016, but the case for the prosecution commenced on 24<sup>th</sup> October 2016, when two witnesses testified. In total three witnesses testified.

2. The first witness, PW1, was Joseph Odera Muhore, national identity card number 7892838. He testified that he was approached by David Odhiambo Odera and George Oketch Ahola, on 30<sup>th</sup> December 2016, and informed that the accused had killed his daughter. He then went with the two young men to the Dudi Police Base and made a report of the incident. He thereafter went to the scene with two police officers, where he found the body of the deceased lying. The accused was at the scene, and he confessed to killing the deceased over family problems, and he was arrested and taken to the police station. He stated that he did not see him assault the deceased, neither did he see any murder weapon. He said that he went to the scene after the deceased had died, and he found the body on at the scene.

3. PW2 was Shadrack Nyawanga Oyugi, a village elder. He was informed the same day by David Odhiambo Odera and George Oketch Ahola, who had come to his home, that the accused had badly assaulted the deceased. He went with the two to the home of the accused. He found the deceased lying on a seat, while still alive. He then left to arrange for her transportation to hospital, and to report to the higher authorities. While at it, he was informed that she had died.

4. The next witness, PW3, Charles Wambani Ogol, testified on 10<sup>th</sup> July 2019. He was a brother of the accused person. He got information that the accused had badly assaulted his daughter, the deceased, and he went to his home. He did not find the accused, but the accused was brought home by some people. He found the daughter dead, and the body was in the house. He then called the police, who came, arrested the accused and removed the body from the scene. He stated that the accused was drunk.

5. No other witnesses testified thereafter. The matter came up for hearing several times, and was adjourned at the behest of the prosecution for various reasons. A last adjournment was given on 22<sup>nd</sup> October 2019, before the State eventually indicated that it was closing its case on 25<sup>th</sup> October 2021.

6. At this stage I am required in law to decide whether to put the accused person on his defence or not. That is to say, to determine whether a *prima facie* case has been made out to warrant putting the accused on his defence. What amounts to a *prima facie* case was stated in *Ramanlal Trambaklal Bhatt vs. R* (1957) EA 332 (Sir Newnham Worley P, Sir Ronald Sinclair VP and Bacon JA), as one in which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation was offered by the defence.

7. The elements of the offence of murder are defined in section 203 of the Penal Code. They are the fact of death, the cause of the death, the role of the accused person in the cause of the death and the fact that the death is caused by the accused with malice aforethought.

8. From the material before me there is *prima facie* proof that the deceased in fact died. Her lifeless remains were seen by PW1, PW2 and PW3. PW1, PW2 and PW3 were the only witnesses who testified. They were not present when the events that led up to the death of the deceased happened. Out of the three, only PW1 said that the accused person told him and the police that he beat the deceased over some family issues. Other than that, no eyewitness account was given of what transpired, and no evidence was adduced as to the role the accused might have played in the causation of the death of the deceased. What the accused might have told the police, in the hearing of PW1, might

be considered as a confession, but there are rules governing confessions, and evidence of such confessions could only come from the police after due process had been followed. There is, therefore, no material before me that would suggest that the accused was linked to death of the deceased in any way. None of the witnesses presented were present when the assault happened. None of them saw the accused assault the deceased. None of them talked of the two, the accused and the deceased, being together at home disputing or fighting, or something related. There is just no evidence at all on what transpired. There is neither direct nor circumstantial evidence.

9. The standard of proof in criminal cases is beyond reasonable doubt. The prosecution was required to establish, beyond any shadow of a doubt, in this case, that the death of the deceased herein arose directly from an act or omission on the part of the accused. It would only be after that is established that the accused can be called upon to give an account. As the prosecution has not established any connection between the accused and the death of the deceased, I do not have before me material upon which I can convict the accused were he not to offer any explanation. It is not for the accused person to seal gaps in the prosecution case, but for the prosecution to prove their case beyond reasonable doubt. I am not satisfied that a *prima facie* has been made out herein, to warrant the accused being put on his defence. It is not to say that the accused person was not responsible for the death, but that sufficient evidence has not been adduced to establish his culpability.

10. That being the case, I shall accordingly find the accused, Isaac Otieno Amukhuma, not guilty of the murder of Maurine Aoko Otieno, contrary to section 203 of the Penal Code, and I hereby acquit him under section 306(1) of the Criminal Procedure Code, Cap 175, Laws of Kenya. He shall be set free unless he is otherwise lawfully held.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 25<sup>th</sup> DAY OF February 2022**

**W MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Mr. Okelo, Advocate, for the accused person.**

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