



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT HOMA BAY**

**CRIMINAL CASE NO. E003 OF 2021**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**GEORGE OTIENO ADEKA.....ACCUSED**

**JUDGMENT**

1. George Otieno Adeka 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 9<sup>th</sup> day of December, 2020, in Lake Victoria at Nyandiwa sub location, Gwassii West in Suba South Sub County of Homa Bay County, jointly with others not before court, murdered Moses Odoyo Adamo.
3. Crew members of the boat of the accused alleged that the deceased and his fellow crew of another boat had stolen their battery and a bulb. The deceased was beaten and he later succumbed to the injuries.
4. The accused who was the coxswain of their boat denied the offence. He contended that the deceased and his fellow crew members had stolen from them.
5. The issues for determination are:
  - a) Whether the accused was involved in beating the deceased; and
  - b) Whether the offence of murder was established.
6. Tom Matunga Kiboi (PW1) is the only witness who testified to have seen the accused beat the deceased. In **Kiilu & Another V. Republic [2005] 1KLR 174** the Court of Appeal held:

**Subject to certain well known exceptions, it is trite law that a fact may be proved by testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a Judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the probability of error.**

7. This witness testified that when he went to the beach at about 2 a.m., he found the accused beating a person he had tied to a boat. There were other three people whom he did not know for it was dark. He said he recognized the accused for there was a bright light from a bulb between him (witness) and the accused. The other three people he did not recognize were about 5 paces from the boat.
8. During cross examination, he testified that two people were inside the boat while six were outside the boat. They were no longer three now. Of the six, three were seated on the ground while three others were standing behind them.
9. He conceded during cross examination that in his statement to the police he recorded that there were other three people who were tied and who were seated in the boat. He also recorded that the accused forced the deceased to take petrol. Though corporal Christopher Oroko (PW4) testified to the same effect, since he was not at the scene he must have relied on what this witness recorded. Interestingly, the doctor who performed the post mortem did not make such a finding. The Court of Appeal in the case of **Ndungu Kimanyi vs. Republic [1979] KLR 283** (Madan, Miller and Potter JJA) held:

**The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.**

10. From the foregoing, I find that there is no sufficient evidence against the accused. The offence of murder has not been proved against him. I acquit him of the charge and set him free unless if otherwise lawfully held.

**DELIVERED AND SIGNED AT HOMA BAY THIS 31ST DAY OF MARCH, 2022**

**KIARIE WAWERU KIARIE**

**JUDGE**