



**Republic v Onyulo & 2 others (Criminal Case 5 of 2020)  
[2022] KEHC 13040 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13040 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL CASE 5 OF 2020  
KW KIARIE, J  
SEPTEMBER 21, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**KENNETH OWUOR ONYULO ..... 1<sup>ST</sup> ACCUSED**

**LEAKEY RICHARD ONYULO ..... 2<sup>ND</sup> ACCUSED**

**DENNIS OKOTH ONYULO ..... 3<sup>RD</sup> ACCUSED**

**JUDGMENT**

1. Kenneth Owuor Onyulo, Leakey Richard Onyulo and Dennis Okoth Onyulo are 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 December 28, 2019 at Luanda B village, Upper Kabonyo sub Location, East Kanyamwa location in Ndhiwa Sub County of Homa Bay County, murdered Typhany Achieng Juma.
3. The deceased was found along a path dead. The three accused were implicated in the offence. The prosecution contended that they were seen near where the deceased's body was recovered.
4. In their defence, the accused pleaded an alibi.
5. The issues for determination are:
  - a) Whether there is sufficient evidence to place the accused at the scene where the body of the deceased was recovered;
  - b) Whether such evidence if any, may lead to the inference that they were involved in her death;
  - c) Whether the defence of alibi has been displaced; and



- d) Whether the prosecution proved its case to the required standards against any or all the accused.
6. Mercyline Atieno Onyango (PW3) is the only witness whose evidence linked the accused persons to the death of the deceased. It is trite law that a fact may be proved by the evidence of a single witness. In the case of *Kiilu & Another vs. Republic* [2005] 1 KLR 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."

In the instant case I will endeavour to find whether this evidence is sufficient for me to draw the irresistible inference of guilt.

7. From the onset we must appreciate that this witness-Mercyline Atieno Onyango- did not testify to have witnessed the incident. Her evidence in court was that at about 4.30p.m., while she was going to Ndhiwa market, she met with Kenneth Onyulo. He was standing near a bush which was next to the path. When she greeted him, he did not respond and she just proceeded. On her return journey, at the same place she saw Leakey Onyulo and Denny Onyulo carrying a human body from some maize plantation. She went on to say that when she saw them carrying Typhany Achieng, she got shocked and retreated.
8. It however emerged during cross examination that in her first statement to the police, she did not mention Kenneth. She also did not mention that she saw the body of a girl being carried. She admitted that she did not mention Kenneth in her statement to the police.
9. On further cross examination, she said she told the police that she tried to greet the person she identified as Kenneth in court so as to see if she could know him. She said he did not turn. She further testified that she was hiding in a bush when she identified the boys carrying the body of the girl. Where she was in a bush was about 30 meters from the people she purported to identify. The bush was taller than her and thick. She claimed to have peeped through the bush to see the two boys. She claimed that when she recorded her first statement she was afraid, though she did not state what she was afraid of.
10. 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."

This witness did not impress me as a trustworthy witness. No reasonable tribunal would found a conviction on her evidence.

11. The DNA report did not connect any of the accused to the offence. Their alibi defence was not displaced by any evidence on record.



12. I therefore find that the prosecution has failed to prove its case against any of the accused persons. I accordingly acquit each one of them and set them free unless if otherwise lawfully held.

**DELIVERED AND SIGNED AT HOMA BAY THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2022**

**KIARIE WAWERU KIARIE**

**JUDGE**

