



**Republic v Owii & 2 others (Criminal Case 21 of 2016)
[2022] KEHC 14291 (KLR) (26 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE 21 OF 2016
KW KIARIE, J
OCTOBER 26, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

EMMANUEL OUMA OWII ALIAS CHEGE 1ST ACCUSED

DAUDI ONYANGO OSORE ALIAS BISHOP 2ND ACCUSED

GEOFFREY OMOLO OWII ALIAS SUNDAY 3RD ACCUSED

JUDGMENT

1. Emmanuel Ouma Owii alias Chege, Daudi Onyango Osore alias Bishop and Geoffrey Omolo Owii alias Sunday 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 November 13, 2016 at Ojode Pala village, Ndhiwa Sub County of Homa Bay County, jointly murdered Georin Ochieng Ngei.
3. The prosecution case is that after the death of Cucu, members of public were holding a vigil where there was both dancing and prayers. The deceased who was a brother of Cucu caused some commotion and the members of public present beat him up. He succumbed to the injuries sustained. The accused was identified as some of the people who participated in beating up the deceased.
4. Each of the accused denied any involvement in the offence.
5. The issues for determination are:
 - a. Whether any of the accused participated in beating the deceased or not; and
 - b. Whether the offence of murder was established.



6. There are two witnesses who testified to have witnessed the three accused participate in the beating of the deceased.
7. David Otieno Lang'o (PW1) testified that after they had escorted Ochieng's aunt, he advised the deceased to spend the night at his home for the situation back at his (Ochieng's) home appeared insecure. It would appear from his evidence that the family of the deceased was divided over the death of Cucu. This was between those who had proposed that Cucu be taken to hospital for treatment and those who were for her to be taken for prayers. Cucu was taken for prayers where she eventually died.
8. The deceased herein slept briefly at the home of David Otieno Lang'o (PW1) before he left. PW1 followed him. He had a spotlight and it was after he flashed it that he saw Steve whipping the deceased. He went and rescued Ochieng. The attackers pursued them. He ran towards a river while Ochieng ran to Mama Janet's home. He heard the deceased asking Mama Janet to open for him for Steve was killing him. Those beating the deceased ordered Mama Janet to put off the light.
9. Other than Steve whom this witness said he was able to identify before he fled, the prevailing circumstances were not conducive for any positive identification. He also did not say how far he was from Steve to be able to positively identify him.
10. The other witness who purported to have identified the accused persons was Philip Otieno Pacho (PW4). This witness was declared hostile. In *Batala v Uganda [1974] EA 402* the court at page 405 said:

The giving of leave to treat a witness as hostile is equivalent to a finding that the witness is unreliable. It enables the party calling the witness to cross-examine him and destroy his evidence. If a witness is unreliable, none of his evidence can be relied on, whether given before or after he was treated as hostile, and it can be given little, if any, weight.
11. The evidence of this witness could have been corroborated by that of David Otieno Lang'o (PW1). However their evidence is at variance on the issue of how the scene was and who used what weapon against the deceased. According to PW1, the incident was in a dark place and that was why he was using a spotlight and that it was Steve who used a whip to beat the deceased. However, according to PW4, the incident was in a well-lit place with three bulbs and that it was Sunday (accused 3) who used a whip to beat the deceased.
12. I therefore find that the prosecution has not proved the offence of murder against any of the accused persons. I accordingly acquit each of the offence of murder and set him at liberty unless if otherwise lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 26TH DAY OF OCTOBER, 2022

KIARIE WAWERU KIARIE

JUDGE

