



**Republic v Aluodo (Criminal Case 29 of 2018)
[2022] KEHC 17027 (KLR) (22 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 17027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 29 OF 2018
A. ONG'INJO, J
DECEMBER 22, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARTIN OUMA ALUODO ACCUSED

JUDGMENT

1. Martin Ouma Aluodo is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. Particulars are that Martin Ouma Aluodo on the 18th day of November 2017 at Jomvu Sub-county within Mombasa County murdered Joseph Onyango.
3. PW 2 Sarah Mweni Titus saw the accused hit, the deceased with his elbow on the head and as a result the deceased hit his head on the pillar of the shop where the 2 had sat and the deceased fell down unconscious. He was rushed to hospital where he died while undergoing treatment.
4. PW 3 Monica Awuor Opondo also testified that on November 15, 2017 he was seated at the veranda in Mikindani, Kijiweni when he heard 2 people quarrelling. He saw it was Martin the accused and Joseph the deceased herein.
5. That the deceased questioned why the accused was insulting his wife and yet he had insulted the 1st wife until she died. That she saw Martin hit Joseph on the head with his elbow and the force made Joseph hit his head on a pillar and he fell down unconscious. That when Joseph fell down unconscious and PW 3 among other members of public started screaming the accused also lay down and started mimicking and reducing Joseph and claiming he was pretending to be dead. That when Joseph required consciousness and sat down he was unable to utter a word and he was taken to hospital.



6. PW 3 said she knew accused since childhood as they are related and she also knew the deceased and they attend Legio Maria church with the deceased. She said that the accused and the deceased were friends. PW 3 said Joseph and Martin had come from a drinking den and Martin was drunk. She said she didn't know if Joseph was drunk. She said Joseph was in company of his wife when Martin insulted her.
7. That when Martin insulted Joseph's wife, the wife calmed him down and told him to forget about the issue. PW 3 said Joseph's wife remained at the drinking den which was close by. She said Martin slapped Joseph and hit him on the head with his elbow and Joseph fell unconscious. She said that after the incident she didn't see Joseph or Martin again.
8. PW 1 Dr Fatman Kassim produced postmortem report in respect of the body of Joseph Onyango on behalf of Dr Arafat who conducted the postmortem & prepared the Report. The postmortem was conducted on November 27, 2017 at 2.00pm at Coast General Hospital Mortuary. Dr Arafat found the head had epidural haematoma, in traerama phaemorrhage & subdural haematow. He established cause of death as blunt traumatic head injury secondary to assault. Post mortem produced as EXP 1.
9. When accused was placed on defence he gave sworn statement and said that the deceased was his friend since childhood and that they were raised together in Mikindani. He said he could not remember the day that Jose died and he didn't assault him. He said that there was a time he saved the deceased from drowning in the ocean. He said he was with Jose drinking and he didn't know what happened. That it was the 1st time he heard what witnesses said in court.
10. He said he was drunk & could not even remember the other people who were with them. He sold that *changaa* & palm wine was being sold at the drinking den. He said he could not remember how he parted ways with Joseph as he found himself at home in the morning. That when he went to the bus stage in the morning he learnt Jose was in hospital and it was alleged he is the one who pushed him & he fell and got injured. He said he didn't know what killed Jose. He said he did not attend the funeral.
11. He said he was drunk and could not remember if he is the one who hit him or not. He said he knew Monica-PW 3 who has his cousin and Sarah who was selling *changaa* at the drinking den. He said he could not have killed Jose intentionally as they are great friends.
12. At the close of defence case the accused persons advocate, filed submissions dated November 2, 2022 on even date. The defence submissions were to the effect the prosecution had not tendered evidence to depict malice on the part of the accused person. In the contrary that the prosecution evidence was to the effect the accused and the deceased were together drinking on the material day and that the ingredients of the offence of murder have not been proved and the accused should be acquitted.
13. The defence relied on the holding in *Rex vs Retivef* [1940-1943] EA, 71 where it was held:-

“The insanity whether produced by drunkenness or otherwise is a defence to the crime charged. The law takes note of the cause of insanity infact supervenes as the result of alcohol, excesses it finishes as complete an answer to a criminal charge as insanity induced by any other cause. It is immaterial whether the insanity so induced was permanent or temporary and if a man intoxication were such as to induce insanity so that he did not know the nature of his act or that his act was wrongful his act would be excusable on the ground of insanity and the verdict should be as laid down in Section 159 of the Criminal Procedure Code”.
14. The defence also submitted that the deceased could have died as a result of negligence on the part of the medical staff. It was further submitted that the accused was not in any way physically and/or mentally



in a state of being able to maliciously, intently harm physically and/or otherwise the said deceased. The court was urged to acquit the accused.

15. From the evidence on record for the prosecution and the accused persons defence the issue of this courts determination is whether the prosecution has proved beyond all reasonable doubt that the accused committed the murder of the deceased. Section 203 of the Penal Code provides the ingredients for the offence of murder are:-
 - i. Fact of death
 - ii. Cause of death
 - iii. Whether the cause of death was actuated with malice aforethought.
 - iv. Whether the accused person committed the inlawful act and/or omission actuated by malice aforethought.
16. The cause of death was also established by Dr Arafat in EXP 1- Postmortem Report to be blunt traumatic head injury secondary to assault. PW 2 & PW 3 saw the accused slap and elbow the deceased on the head. The force to deceased head made him hit his head on the pillar of the shop where they were seated on the veranda and the deceased fell unconscious, when he was help up he sat down but he could not talk. He succumbed to the head injuries while undergoing treatment.
17. The accused slapped the deceased without any provocation. If anything it is the deceased who ought to have slapped him because he was insulting his wife but he did not. According to PW 3 the deceased person's wife told him to forget about the issue and he went and sat at the veranda where the accused also went and sat next to him and assaulted him.
18. The accused person was the aggressor. He may have been drunk as said by PW 3 but he committed an unlawful act that caused the death of the deceased. This court finds that his state of mind was such that he cannot be said to have had malice aforethought but his actions led to the death of his friend. This court finds him guilty instead to the offence of manslaughter and he is convicted accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND DAY OF DECEMBER, 2022

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:

Barile – Court Asst.

Mr. Ngiri for State

Hon. Lady Justice A. Ong'injo

Judge

22/12/2022

