



**Republic v Otieno (Criminal Case E018 of 2022)
[2022] KEHC 16676 (KLR) (20 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE E018 OF 2022
KW KIARIE, J
DECEMBER 20, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

FAITH AUMA OTIENO ACCUSED

JUDGMENT

1. Faith Auma Otieno 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 diverse dates between June 1, 2022 and the June 9, 2022 at Kombo village, Rangwe sub county of Homa Bay county, murdered Vincent Owino Onyango, a child aged 1¹/₂ years.
3. Baby Vincent Owino Onyango died a cruel death. The pathologist was of the opinion that he may have died of hypothermia due to exposure to elements. This was a sickly child and after his parents separated, he was tossed from one parent to the other. The prosecution case was that it was the accused who abandoned the child in the bush where his body was later found.
4. The accused in her defence contended that she left the child with her father.
5. The issues for determination are:
 - a. Whether the accused abandoned the child in a bush; and
 - b. Whether the offence of murder was proved against her.
6. It would appear that the prosecution evidence was not unanimous as to where the accused is said to have abandoned the deceased. According to the evidence of Benter Achieng Otieno (PW3), the accused told her that she took the child to her husband's home and left him with her co-wife's children she



found in the home. However the evidence of David Onyango (PW5) the child's father, the child was abandoned in some sugar plantation.

7. According to PW5, Cynthia Achieng, his mother is the one who informed him that the accused abandoned the child in a sugar cane plantation. Cynthia Achieng was not called as a witness. The evidence attributed to her is therefore hearsay.

8. The Court of Appeal in the case *Kinyatti v Republic*[1984] eKLR stated:

The rule against hearsay is that a statement other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact stated: Archbold Criminal Pleading Evidence & Practice 40th edition p 809 para 1282.

9. Faith Auma Otieno the accused contended that when she took the child to Gem, she handed him to her husband and his second wife. Since the evidence of David Onyango (PW5) was basically hearsay, it did not reveal when he learnt of the child being abandoned and how his mother learnt of the abandonment. I find her defence probable.

10. The offence of murder was therefore not proved against any of the accused. I accordingly acquit her of the offence of murder and set her at liberty unless if otherwise lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 20TH DAY OF DECEMBER, 2022

KIARIE WAWERU KIARIE

JUDGE

