

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI AT MILIMANI

CRIMINAL DIVISION

CRIMINAL CASE NO. 22 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOAB ODHIAMBO OMOLLO.....ACCUSED

RULING

Joab Odhiambo Omollo, the accused herein, is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the night of 31st December 2014 and 1st January 2015 behind Nairobi Pentecostal Church, Buruburu Phase v in Embakasi West District within Nairobi County jointly with others not before the court murdered Alflin Amondi Oyengo. The accused has denied committing this offence. He is represented by Mr. Mwangale, learned counsel.

The case is supported by evidence of eleven (11) witnesses from the prosecution side. It is a straightforward case. Alflin Amondi Oyengo, herein "the deceased" spent the Christmas of 2014 with her mother Patricia Akinyi Oyengo (PW1) at her home in Mwiki Kasarani. The deceased arrived at her mother's home on 24th December 2014. She was aged 34 years and was the only child. At the time she worked as a Laboratory Technician with Basco Paints. She lived in Pipeline Nairobi. She left her mother on 31st December 2014 in company of her cousin Kevin Otieno Oyengo (PW2) to go to Donholm Phase 5 to their uncle's home where the cousins and their friends had organised to celebrate end of year and the New Year. They prepared food, with the deceased cooking *chapatis* for the rest, and bought drinks. Evidence from Kevin and Alloys Obok Oluoch (PW3) another cousin of the deceased, shows that the deceased did not drink alcohol because she was saved. At about 11.00pm after eating the deceased told her cousins that she wanted to attend overnight prayers, popularly referred to as *kesha*, at Pentecostal Church in Buruburu. Her cousins tried to persuade her not to go but she insisted on attending. Kevin, Alloys and Tom Ogallo another cousin escorted the deceased to the main road to board a matatu to go to Church. Evidence shows that matatus were rare but the deceased managed to board a matatu. This was the last time the deceased was seen alive.

The body of the deceased was examined by Dr Oduor Johansen (PW11) on 7th January 2015. The doctor found extensive bruises on the scalp, upper limbs and face. There were stitch wounds on the right side of the head. The skull was fractured on the right side and bleeding in the substance of the brain. The doctor found whitish discharge in the vagina of the deceased. He took vaginal swabs for examination, obviously suspecting that rape may have taken place. He also took nail clippings for examination. After the examination, the doctor formed an opinion that the deceased died as a result of head injury due to blunt force trauma.

These specimen samples were presented to the Government Analyst Mr. Lawrence Kinyua Muthuri (PW5) together with buccal swabs from John William Anyango, Joab Odhiambo Omollo and Isaac Marika Adabwa. After examining the samples he found no bloodstains, semen or spermatozoa in the high vaginal swab. He found the nail clippings contained slight blood stains which he confirmed belonged to the deceased after profiling DNA. This clearly shows that none of the three men was implicated with the suspected rape.

The accused was arrested and charged with this offence after the police investigators, assisted by Safaricom Security Department traced deceased's phone, Alcatel by make bearing IMEI No. 865469020533205, to Jane Fundya (PW6). Jane told the police that John William Anyango, whom she knew as Brown, has given her the phone in lieu of payment of the money she had loaned him. Jane took police to arrest John William Anyango. John told police that Joab Odhiambo Omollo had sold the phone to him. Safaricom call data links the accused to the phone in question.

After considering this evidence carefully, I am satisfied that the accused is implicated in this matter and I find that he has a case to answer. I will proceed to place him on his defence. Orders shall issue accordingly.

SIGNED, DATED AND DELIVERED THIS 16TH DAY OF DECEMBER 2020.

S.N. MUTUKU

JUDGE