



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**(CORAM: CHERERE-J)**

**CRIMINAL CASE (MURDER) NO. 12 OF 2017**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**WILSON GOMBE OMONDI.....ACCUSED**

**RULING**

1. Accused is charged with the Offence of Murder Contrary to **Section 203** as read with **Section 204** of the Penal Code.

**The particulars of the charge are that on 19th January, 2017 at Nyahera in Kisumu West Sub-County within Kisumu County murdered Jacktone Ouma Ouko.**

2. In support of its case, the state called a total of seven (7) witnesses whose evidence I have summarized as follows:

3. **PW 1 William Ouma** the deceased's father found the deceased injured on the night of **19th January, 2017**, escorted him to hospital where he died on 23rd January, 2017. It was his evidence that he did not know the person/s that assaulted his son but that deceased's wife told him that accused had issued threats to the deceased and it was for that reason that accused was arrested and charged.

4. **PW2 Eunice Akinyi** deceased's wife stated that she did not know the person/s that caused her husband fatal injuries. **PW3 Caroline Achieng Abonyo** recalled that on 18th January, 2017, she found deceased lying outside her house with serious injuries. That she and her husband escorted him home. She similarly told court that she did not know the person/s that assaulted the deceased. **PW4 Godfrey Ouma Kisira** a village elder and **PW5 David Ochieng Ouma**, deceased's son also stated that they did not know how the deceased met his death.

5. **PW6 CPL Evalyne Savula** on 21st January, 2017 received a report from PW1 that his son had been assaulted and seriously injured. It was her evidence that on 19.1.17, accused and his father had reported that they had been attacked by the deceased. The witness told court that after the death of the deceased, accused's report was treated as a cover up and he was arrested and charged. **PW7 Truphosa Atieno Oyula** on 20.1.17 identified the body of the deceased, who was her brother, to the doctor that conducted a postmortem at Jaramogi Oginga Odinga Teaching and Referral Hospital.

6. injuries. **PW3 Caroline Achieng Abonyo** recalled that on 18th January, 2017, she found deceased lying outside her house with serious injuries. That she and her husband escorted him home. She similarly told court that she did not know the person/s that assaulted the deceased. **PW4 Godfrey Ouma Kisira** a village elder and **PW5 David Ochieng Ouma**, deceased's son also stated that they did not know how the deceased met his death.

7. **PW6 CPL Evalyne Savula** on 21st January, 2017 received a report from PW1 that his son had been assaulted and seriously injured. It was her evidence that on 19.1.17, accused and his father had reported that they had been attacked by the deceased. The witness told court that after the death of the deceased, accused's report was treated as a cover up and he was arrested and charged. **PW7 Truphosa Atieno Oyula** on 20.1.17 identified the body of the deceased, who was her brother, to the doctor that conducted a postmortem at Jaramogi Oginga Odinga Teaching and Referral Hospital.

8. At the close of the prosecution case, the postmortem form was not produced but evidence by **PW7 Truphosa Atieno Oyula** that identified the body to the doctor that conducted a postmortem confirms that indeed **Jacktone Ouma Ouko** died.

9. PW2 who was alleged by PW1 to have stated that accused had threatened to harm the deceased did not give such evidence. PW5 alleged that accused had threatened to cut deceased into pieces but there is no evidence to prove that it was the accused that injured the deceased. None of the prosecution witnesses tendered direct or circumstantial evidence linking accused to the death of the deceased. There was no evidence of any altercation between the deceased and accused as stated by PW6 since no police report was tendered in court in support thereof.

**Disposition**

10. As a result, I am not persuaded that there is sufficient evidence to warrant this Court to put the Accused person on his defence because to do so would be an academic exercise in futility. The evidence on record is such that it cannot sustain a conviction in the event that accused is placed on his defence and he opts to remain silent.

11. Consequently, under the Provisions of Section 306 of the Criminal Procedure Code, Accused is hereby found **NOT GUILTY** and it is ordered that he be set at liberty unless otherwise lawfully held. It is so ordered.

**DELIVERED AND SIGNED IN KISUMU THIS....28<sup>TH</sup>.....DAY OF....March....2019**

**T. W. CHERERE**

**JUDGE**

Read in open court in the presence of-

**Court Assistant - Felix**

**Accused - Present**

**For Accused - Mr Adiso**

**For the State - Ms Githo**