



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MURDER NO. 31 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOCS.....ACCUSED

RULING

1. A person 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 **21st November, 2016** in Muhoroni Sub-County within Kisumu County murdered **B O O**.

In support of its case, the state called a total of 6 witnesses whose evidence I have summarized as follows:

2. **PW 1 Dr. Dickson Muchana** testified on 26 th November, 2016 , he performed an autopsy on the body of the deceased who was aged 2 years old and came to a conclusion that he had died of chemical poisoning. He also stated that he had removed the small intestines, kidney and liver for further examination by the Government Chemist. He produced the postmortem form dated 26.11.16 as **PEXH. 1**.

3. **PW 2 I A**, stated that he was married to the Accused and that the deceased was her son and Accused’s step-son. She recalled that on 26.11.16, Accused took the deceased with him to the shamba at about 7.30 a.m. That he later returned with the child who was by then naked and vomiting. That she took the child from Accused and smelt dip from the vomit and suspected that Accused had poisoned the child. That Accused then took the child to Nyangoma hospital where the medical personnel informed her that the child had been poisoned. That efforts to save the child failed and he died about 4.00 a.m. while undergoing treatment.

4. **PW 4 Consolata Awiti Juma**, Accused’s neighbor recalled that on 21 st November, 2016 at about 9.00 a.m., Accused went to her house with the deceased child who appeared to have vomited. That Accused asked for water which he used to wash the child and then went away.

5. **Maureen Akinyi Odiero**, a clinical officer at Nyangoma Sub-County Hospital recalled that the deceased child was taken to hospital by Accused on 21 st November, 2016 at about 11.30 a.m. That the child looked sickly and when a malaria test returned negative results, she suspected that the child had been poisoned and put him on treatment but he died later that night.

6. **PW 6 CPL Susan Chebet**, the Investigating Officer of Muhoroni Police Station recalled that on 23 rd November, 2016 at about 3.00 p.m., PW 2, Accused and others went to the police station where PW 2 reported that she suspected that Accused had poisoned her son on 21 st November, 2016 and that the child had died. That she collected the deceased’s body from Accused’s house and took it to Ahero Hospital Mortuary where a postmortem was conducted and it showed that the child was poisoned. That after investigations, she caused Accused to be charged with the offence of murder. She said she sent stomach content, liver, kidney and small intestines of the deceased to the Government Chemists and later received a report that ruled put poisoning. She produced the report as **PEXH. 2**.

7. At the close of the prosecution case, there is no doubt that the deceased died. The cause of death was however not established since the conclusion in the postmortem **PEXH. 1** that deceased was poisoned is at variance with the Government analysts finding.

8. The prosecution case was grounded on the behalf that Accused had poisoned the deceased. Evidence contained in the Government Analyst’s Report **PEXH. 2** however exonerates the Accused thereby leaving the Court with an unresolved death of an innocent soul.

9. In the premises, 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.

10. Consequently the Accused is hereby acquitted under the Provisions of Section 210 of the Criminal Procedure Code and it is ordered that he be set at liberty unless otherwise lawfully held. It is so ordered.

DATED, DELIVERED AND SIGNED THIS.....19th.....DAY OF.....April.....2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Carolyne and Aura

Accused - Present

For Accused - Mr. Emukule Holding Brief for Kyamazima

For the State - Ms. Wafula