



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KISUMU**

**CRIMINAL CASE NO. 42 OF 2012**

**BETWEEN**

**REPUBLIC.....PROSECUTION**

**AND**

**ANDEREA OWUOR OBUDI.....ACCUSED**

**JUDGMENT**

1. The accused, **ANDEREA OWUOR OBUDI** is charged with the murder of his wife, **ELIZABETH AUMA OWUOR** (“the deceased”) contrary to **section 203** as read with **section 204** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the information are that on 5<sup>th</sup> June 2012 at Magoya Sub-location in Ugunja District within Nyanza Province, he murdered the deceased. After the accused pleaded not guilty, Chemitei J., heard the matter in part and I finally completed the hearing after complying with **section 200** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*.

2. The circumstances leading to the death were narrated by the prosecution witnesses. Alice Atieno (PW 4) recalled that on 5<sup>th</sup> June 2012 at about 6.00pm, she had just put her cows in the boma when she found the accused fighting with the deceased. She intervened and separated them then went back to attend to her cows. When she looked back she saw the accused taking a stick and chasing the deceased who ran to a neighbour’s home and collapsed at the doorstep. In cross-examination, PW 4 stated that she did not know why the accused and deceased were fighting. She further stated that although she saw the accused carrying a stick, she did not see him hit the deceased.

3. At about the same time, Irine Awuor Ouma (PW 3), was at home when she heard noise coming from her neighbour’s place. She went outside and across the fence she could see the accused holding a stick chasing the deceased towards her grandmother’s house where she collapsed at the doorstep. PW 3 confirmed that she did not see the accused hit the deceased. PW 3’s grandmother, Goret Awino Onyach (PW 2), recalled that after returning from attending to her cows she found the deceased had collapsed at her door. Although the deceased did not have any noticeable injuries, she had mud all over her body. Together with PW 2, they went to call the Assistant Chief of Magoya Sub-location, Benard Otieno (PW 1).

4. PW 1 recalled that PW 2 and PW 3 came to see him to report that the accused had chased the deceased upto her homestead. PW 1 proceeded to PW 2’s homestead and found the deceased lying on her back without any noticeable injuries. After calling the accused to come where the deceased’s body was, PW 1 called the police who came to take the deceased’s body and arrest the accused.

5. One of the officers who arrived at the scene was the investigating officer, Corporal Tali (PW 6). He

testified that when they arrived the scene, they found the deceased lying along a footpath. He arrested the accused after he was identified by PW 1. He went with the accused to his house and the accused handed over the piece of wood with which he was allegedly seen with chasing the deceased. He took the deceased body to Siaya Hospital Mortuary where a post-mortem was conducted by Dr Rapenda on 13<sup>th</sup> June 2012.

6. The Post-mortem form prepared by Dr Rapenda was produced by Dr John Awade Ogola (PW 5). According to the report, the deceased's body did not have any signs of external injuries or limb fractures. The internal examination revealed a ruptured spleen which resulted in blood loss as such Dr Rapenda concluded that the deceased died from a hypovolemic shock due to splenic rupture following blunt abdominal trauma.

7. The accused elected to give sworn testimony. He denied killing the deceased and was shocked by his wife's death. He testified that on the material day, he went to work on his shamba. The deceased made him lunch and he returned to work. While relaxing home at about 6.30pm, PW 1 came to see him and ask him what happened to his wife. PW 1 then escorted to PW 2's homestead where he found wife laying at the door. In a while, the police came and arrested him.

8. To prove murder the prosecution must establish three key ingredients beyond reasonable doubt: first, the prosecution must prove the *death* of the deceased and the *cause* of that death; second, that the accused *committed* the unlawful act that led to the death; and third, that the accused committed the unlawful act with *malice aforethought*.

9. As regards the cause of death, the testimony of PW 3 and PW 4 was that the deceased was chased and she finally collapsed at PW 2's homestead. Counsel for the accused, Mr Omollo, submitted that the deceased collapsed and died in PW 1's homestead and that she had no physical injuries to show that she had actually been assaulted. Although the witnesses agreed that the deceased did not have any visible injuries, the post-mortem revealed that she died from blunt trauma inflicted on the abdomen which caused the spleen to rupture.

10. I note that the Post-mortem report was produced by PW 5, it was not produced in accordance with **section 77** of the *Evidence Act (Chapter 80 of the Laws of Kenya)* which provides that a report under the hand of a medical practitioner may be admitted by the court on the presumption that the signature of its maker was genuine and that the maker held the office and the qualifications which he professed to hold at the time he signed the document. PW 5 confirmed that he did not know Dr Rapenda hence the report would be inadmissible. However, the counsel for the accused did not object to it and it was duly admitted and as such no prejudice was occasioned to the accused. I therefore find that the deceased died and she died as a result of trauma on the abdomen leading to a ruptured spleen.

11. Since the cause of death was not natural, the next line of inquiry is whether the accused assaulted the deceased. Counsel for the accused submitted that there was no direct evidence showing that the accused hit the deceased. Moreover, in his defence, the accused stated that on the material day he did not assault his wife. PW 4 was a direct witness as she saw the accused and deceased fighting while PW 3 saw him chase the deceased until she collapsed at the door of PW 2. Although none of the witnesses saw the accused hit the deceased, the inference that he beat the deceased is irresistible from the circumstances as no one else could have inflicted the injury on the deceased within that short period. I reject the accused's defence that he was at work the whole day and went at home to rest only to be informed that his wife had died as the two witnesses; PW 3 and PW 4 saw him.

12. The incident took place in broad daylight, the witnesses knew the accused and the deceased and nothing was suggested to them in cross-examination that they had a grudge with the accused. The totality of the evidence is that the accused engaged in a fight with the deceased. He took a stick, hit the deceased and chased her from her homestead towards the homestead of PW 2 where she collapsed and died from an internal injury resulting from the assault.

13. On the issue of malice aforethought, I find that the accused hit the deceased with a stick on the abdomen causing a severe internal injury namely a rupture of the spleen. Such an assault was vicious and

the resulting injury was consistent with the unlawful killing of the deceased actuated by malice aforethought within the meaning of **section 206(a)** of the *Penal Code*.

14. I therefore find the accused, **ANDEREA OWUOR OBUDI** guilty of the murder of **ELIZABETH AUMA OWUOR** and I convict him accordingly.

**DATED and DELIVERED at KISUMU this 30<sup>th</sup> day of March 2017.**

**D.S. MAJANJA**

**JUDGE**

Mr K. Omollo, Advocate for the accused.

Ms Osoro, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions, for the State.