



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CRIMINAL MURDER CASE NO.05 OF 2016**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**CALVINCE OUMA OORO ..... ACCUSED**

**JUDGMENT**

1. **CALVINCE OUMA OORO** (the accused) faces a charge of murder contrary to **Section 203** as read with **Section 204 PC**.
2. The particulars of the charge being that on the night of 16<sup>th</sup> and 17<sup>th</sup> March 2016 at **KARABOK** village in **RACHUONYO SOUTH** Sub County, he murdered **JACKLINE AKOTH OUMA** (deceased). The accused who was represented by **MR. OSORO** denied the charge.
3. The accused and the deceased lived together in **KAMUMA** village, **KARACHUONYO**, as husband and wife. **GRACE ACHOLA** (PW1) – the accused’s mother told this court that **CALVINCE**, who was her 4<sup>th</sup> born son, had a home which was 50m from her own compound. On 16/03/2016, at about 4.00 p.m. she had gone to untether her cows which were within the accused’s compound when she heard the deceased laughing.
4. She asked what was amusing her and the deceased said the accused had said something which was amusing and had made her happy. She exchanged pleasantries with the deceased who suggested that the next day they should go together to collect sweet potatoes from a certain woman’s field.
5. PW1 also spoke to the accused then she went back to her house. The accused was only with the deceased, as their children had gone to visit a relative.
6. The next morning PW1 prepared breakfast and went to tether her goats –  
  
she noticed that the deceased’s door was closed. She requested her  
  
grandchildren to accompany her to the deceased’s house because they were supposed to go and harvest some sweet potatoes. She did not find anyone at home and she assumed the deceased had gone to **MWALIMU**’s house and the accused had gone to his brick making chore.
7. PW1 later noticed a crowd milling not too far from her home and went to see what was going on. On arrival, she saw the body of her daughter-in-law lying on the ground naked with what appeared like a stab wound on the neck and under the arm part. The accused was not at the scene.
8. On cross examination, PW1 stated that the couple had always related well, and the accused loved his wife. On the night of the incident PW1 did not hear any noise or commotion from the couple’s home.
9. **KEVIN OMONDI JUMA** (PW2) a cousin to the accused had escorted his youngest sister to school at 6.00 a.m. on 17/03/2016 when he met the accused whom he greeted but got no response. He proceeded with the child to school on a motor cycle and after reaching **KENDU** Junction, he saw the accused who called him and informed PW2 that his wife had died. PW2 did not believe him and infact told him that he was lying and left to go to the boda boda parking stage.
10. Shortly the accused approached him and requested to be taken home. PW2 obliged and carried him on the motor cycle. On the way at about 9.10.00 a.m., they met the accused’s eldest brother **KENNEDY** and accused requested to be allowed to alight. The accused’s brother asked PW2 “**where did you find this guy? Do you know what has happened? He has killed his wife.**”
11. The accused’s brother requested PW2 to accompany him to Oyugis police station to make a report.

PW2 explained:-

**“when Collins told me his wife had died, he did not disclose under what circumstances.”**

12. On cross examination, PW2 explained that he'd met the accused near **CHOMA BAR** at 6.00 a.m.

13. The accused's elder brother **KENNEDY OTIENO OORO** (PW3) told this court that on 17/03/2016 at 7.30 a.m., he heard his mother shouting and wailing saying:-

**“Kennedy run, Ouma has killed his wife and dumped her in the forest.”**

14. PW3 ran of his house and saw a group of people gathered. He met his mother and upon inquiring what was going on, she told him:-

**“go and see for yourself.”**

15. When he got to the scene he found the deceased lying on the ground, wrapped with polythene paper. She lay on her side but the face was not covered. He turned the body and noticed that blood was oozing from the neck and nose. A soda bottle was placed next to her naked body and a black sandal was inserted onto a rope which was used to tie the polythene paper around her body. When the body was eventually taken to the mortuary PW3 noticed that the deceased also had a stab wound under the arm, next to the left breast.

16. PW3 made a call to the area chief who advised him to report to police. While at **OYUGIS** police station, his wife called to say police officers from **KOSELE** police station had arrived at the scene and collected the body.

17. He confirmed that while on his way to make the report to police, he met **KEVIN** carrying the accused as a passenger on his motor cycle, and he asked the latter whether he was aware that accused had killed his wife to which PW2 said accused had informed him so, but he had not believed him. PW3 said he did not want to see the accused and called some young men who were at the trading centre to apprehend the accused. However the accused became very hostile, so the group left him. Eventually police called PW3 to inform him that they had arrested the accused.

18. PW3 joined the police and accused and they went to the accused's house where accused showed them where he'd hidden a knife behind a chair. PW3 also noted that the couple's mattress had been turned upside down and when it was turned to face up, they realized it was soaked in blood. PW3 identified the recovered knife which was in a black sheath when it was presented in court. The knife which had a serrated edge was blood stained. PW3 pointed out that the 500ml **FANTA** soda bottle found next to the body also had red blood like stains. He also identified that soda bottle in the photographs taken by **CPL SHEM** (PW1) and produced in court.

19. On cross examination, PW3 confirmed that when he saw the accused, he told him he did not want to see him because of what he had done.

He did not witness the killing and it's his mother who said accused was the culprit. He too confirmed that accused and deceased had been happily married for 4 years.

20. PW3 explained however that the couple had been running a small business which collapsed, and thereafter they begun to quarrel and fight and sometimes the deceased would leave and sleep out at their place of business. PW3 had tried to talk to them and the accused assured him that he had stopped the quarrels so PW3 could not tell what may have triggered the incident.

21. **CPL THOMAS MUTUA** (PW4) formerly of **KOSELE** police station confirmed receiving a call on 17/03/16 at 8.00 a.m. that a dead female body had been seen at **WIRE** forest. He immediately proceeded to the scene accompanied by other police officers. On arrival he found a dead female wrapped in a polythene bag and fastened with a rope. Next to the body was a black plastic shoe, two empty soda bottles, and the body was covered with some branches. The body was photographed before being taken to the mortuary.

22. Photographs of the body at different angles were produced as exhibit in court. Members of the public who were at the scene said the dead person was Jacqueline Akoth wife of **CALVINCE**.

23. Later they got information that the deceased's husband had been seen near **KARABOK** market and an angry mob wanted to kill him on suspicion that he'd killed the woman. Police officers rushed to **KARABOK** market and found a mob baying for the accused's blood – they were infact already beating him. Police rescued him and took him to **KOSELE** police station and later on he was escorted to **OYUGIS** police station.

24. Accused's home is not far from **KARABOK** or **WIRE** forest, and on the way to the police station, the police officers were shown the accused's house by his mother. The police officers entered into the house accompanied by the accused's mother and the accused. They observed that there was blood all over, on the mattress and the house appeared disorganized.

25. They also recovered a knife (sword) which was in a sheath and bore the inscription **“Columbian Scorpion King Knife”** (produced as exhibit). He also produced two empty **FANTA** soda bottles.

PW4 could not establish the motive for the murder.

26. This evidence was confirmed by **PC IBRAHIM WANJOHI** (PW10) who was the investigating officer and who clarified that the police officers were accompanied into the accused's house by his mother, brother Kennedy, and accused who was leading them. PW10 noticed blood on the mattress and the bedroom floor. Accused told them the knife was behind the sofa set and he indeed recovered it behind a seat which was adjacent to the wall. The serrated knife had wet blood stains.

27. When **DR. OGOLA** performed a post mortem on the body, police requested for blood samples from the deceased's body so as to see whether it matched the blood on the knife and the same were sent to the Government Chemist for analysis. PW10 established that the accused and his wife had domestic issues and killed her at night after she had fallen asleep. He came to this conclusion because there was a lot of blood on the mattress which was on the bed.

28. PW10 explained that when he arrested the accused, his clothes were clean but he appeared drunk because he was staggering and also smelled of alcohol. He also got information that accused was seen buying alcohol after the incident – however the shop owners were reluctant to confirm that position.

29. **DR. PETER OGOLA** (PW6) of **RACHUONYO DISTRICT HOSPITAL** conducted the post mortem and noted that deceased had a cut wound at the lower part of the front left neck which had gone deep into the tissues of the neck. She also had a cut wound on the left side of the chest wall at the front, just above the 3<sup>rd</sup> rib measuring 6cm long and penetrating into the tissues of the chest.

30. When the chest cavity was opened, he found that the left lung had been punctured and there was a collection of blood in the left chest cavity. The left carotid artery which takes blood to the head from the heart had also been cut, and the Doctor concluded that the cause of death was severe haemorrhage resulting from a puncture wound in the lung and a cut wound to the major vessel due to trauma with a sharp object.

31. He confirmed receiving a request from police station for a blood sample for comparison with the blood stains found on the knife and he obliged. The post mortem report was produced as **Exhibit 6**.

32. The Government Analyst **RICHARD KIMUTAI WANGAI** (PW9)

upon receiving the blood stained knife and blood samples of the deceased (Jacqueline) analysed the same to determine the genetic relationships by generating a **DNA** profile and found that the blood stains on the knife matched the blood of Jacqueline Ouma – his report was produced as **Exhibit 7B**.

33. In his sworn defence the accused stated that he left his home on the night of 16<sup>th</sup> March 2017 to attend to his brick baking process within Oyugis. He spent the night there, and in the morning proceeding to buy domestic suppliers within Oyugis town. On his way at about 8.30 a.m. he met his brother Kevin (a boda boda cyclist) who asked him –

**“my brother do you know what has happened?”**

34. It is his evidence that it is **KEVIN** who disclosed to him that his wife had been found dead. He then requested the latter to take him to the scene to confirm the situation. Thereafter his brother came to the trading centre and slapped him saying:-

**“Omera you are the one who has killed your wife.”**

The accused protested, but his brother said –

**“I last saw you making bricks, so you returned home. If it is not you, then who could've done this?”**

35. Shortly police arrived and he was arrested – he denies accompanying police to his house.

36. It is his contention that he had a harmonious relationship with the deceased whom he had even promised some money she needed to contribute towards some church activities. He maintains that he knows nothing about his wife's death and is still in shock.

37. On cross examination, he stated that he had never seen the knife police claimed to have recovered from his house. He admits that when he was arrested, he was in a drunken state because he'd been drinking while working to keep warm, and he also needed something to boost him to have the will in performing the difficult task.

38. There is no dispute that the deceased (who was married to the accused) was found lying dead in a thicket, wrapped in a polythene paper with two bottles of soda next to her.

39. The issue for determination is who killed her, and why?

The couple lived in their own home but not too far from the homes of PW1 and PW3 – infact if there was commotion at his house, then according to PW1, she could hear them – however she did not hear any commotion or noise on the night in question. No one witnessed the killing which (from the post mortem report) was inflicted using a sharp object.

40. Although the accused claimed he was never taken back to the scene upon arrest, his mother (PW1) and his brother (PW3) confirm that he was taken to his house and they were present. There is no evidence to suggest that there was bad blood between accused and these two

witnesses – in any event he too confirmed that there was no grudge existing between them.

41. Photographs of the blood covered scene in the bedroom and the mattress were presented to this court and confirmed by his mother and brother as a true reflection of the situation that they witnessed inside the house. In any event, despite his claims of not being taken to his home upon re-examination, the accused stated:-

**“I saw blood on the door when I was taken to the scene.”**

42. I have no doubt in my mind that the mattress and the door had blood stains. The mattress had been turned down so that the blood soaked side faced down. Of course there was no evidence presented to demonstrate that the deceased was dragged to the forest where she was found lying dead, yet could it be a coincidence that she was missing from her house and her matrimonial bed was soaked in blood, which also stained the

door?

43. According to PW10 (the investigating officer) everything in the house appeared intact and from what he saw, there was no commotion – this is what led him to conclude that she must have been killed in her sleep, then wrapped and taken to the priest.

44. Yet what could have been the motive? From the accused’s mother and brother, the couple lived in harmony and in fact on that day PW1 had found them in a good mood. Was the accused overcome by some momentary madness, or was this an attack by someone else who stole into their house and killed Jacqueline while the accused was away attending to his brick baking tasks?

45. I think PW3 gives a clue to what really prevailed – although the couple lived in harmony, there had been disagreements (which) I note the accused did not deny. These disagreements begun once their economic situation took a down turn, and led to the deceased’s sometimes spending the night away from home. It was not all so rosy ... but then again one could easily argue that these were just the usual upheavals that add colour to a relationship.

46. I think this is a case where one has to look at the circumstantial evidence and draw out whether they inculpably point to the guilt of the accused to the exclusion of anyone else.

47. The evidence presented does not in any way suggest that the deceased had differences with anyone else in the village, to the extent that they would want to eliminate her.

48. Although the accused claims to have left their home later in the night to go for brick making tasks – that remains a mere claim with nothing whatsoever to support it. The first person who met him in the morning was his cousin **KEVIN** who greeted him but got no response. Later accused approached him to say he’d killed his wife – the former thought it was a joke and only realised the truth when **KENNEDY** told him the same thing. There is nothing presented to this court to suggest why **KEVIN** would make up such a thing – as both he and accused confirm they had no grudges – again it cannot be a mere coincidence that accused made such a claim to his cousin, followed shortly by information by PW3 and finally it turned out to be true.

49. Then there is the evidence surrounding the recovery of the knife within the house – all those present were the accused’s own family members and they confirmed that accused was present during recovery. Indeed the police stated accused is the one who led them to recovering the serrated edged knife which was hidden behind a sofa seat next to the wall. The knife was stained with wet blood and which the Government Chemist confirmed matched that of the deceased. I am persuaded that the accused having committed the offence then went to boost on dull his senses by consuming alcohol or he had consumed the alcohol to give him the carriage to carry out the act – the tale about consuming the alcohol to fight the cold and help him cope with the heavy task is a Technicolor sob story intended to hood work the court.

50. The chain of events link each other to no other person than the accused person – his conduct of being away from the home was intended to make it appear like he had nothing to do with the death.

51. The case of **KIPKERING arap KOSKE and ANOTHER 91949) 16 EACA pg 135** held that circumstantial evidence is sometimes compared to a chain with its links as a rope with several strands, when carefully tested point to the irresistible conclusion, that the accused is the author of the dead and no one else.

52. Consequently, I make a finding that **CALVINCE OUMA OORO** is guilty of the murder of **JACQUELINE AKOTH OUMA**.

**Delivered and dated this 25<sup>th</sup> day of May, 2017 at Homa Bay**

**H.A. OMONDI**

**JUDGE**