



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

HCCRC NO. 49 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES OWITI OYUKO.....ACCUSED

JUDGMENT

The accused person **Charles Owiti Oyuko** was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars are that Charles Owiti Oyuko on the 7th and 8th day of June 2014 at Wangaya One Sub-location, Nyangoma Location, in Muhoroni District within Kisumu County jointly with others not before court murdered **Caren Adhiambo Owani**.

The prosecution in its quest to prove the charge of murder against the accused call six witnesses starting with the son of the deceased Lucas Otieno Owade PW1 who testified that on 8th June 2014 he woke up at 6.00am and proceeded to stage where he operated as a boda boda rider. While in his duties he received a call from one Okoth who told him to hurry up as his mother had been found dead. That he went home and found his mother lying on the floor dead and blood oozing from her body; That inside the house he saw a grey jacket which he knew belonged to Oyuko; That he went to Oyuko's house and asked him if he had lost something. Oyuko the accused inquired if it was shoes. PW1 asked the accused to accompany him to their house. On arrival police did not allow them to go into the house. PW1 did not see his mother being killed. He said there was disorder in the house and there was a pool of blood where the body was lying. He said it was Leonida PW2 who discovered the body. Ouma and Okoth were at scene. He said the grey jumper belonged to accused and no one else in the village but he did not tell police about it. He said the accused lived about 200m away from their home. He had known him since childhood.

Leonida Aoko (PW2) testified that she went to call the deceased on 8th June 2014 so they could go to the shamba but when the deceased did not respond, she entered the house whose door was ajar and found her lying on the floor as if dead. She went and called Jane Auma. That was when a policeman passing by saw them crying and went to the scene and also called other officers from Wang'aya. PW2 later recorded a statement. PW2 said that earlier she had found the deceased at the home of the late Joash and she was with Joash, Oyuko the accused and Ochieng – PW2's son. PW2 said there was no funeral where she found the deceased at Joash's home. She said she discovered the body of the deceased which was naked. Jane Auma (PW3) reiterated what PW2 said. She said she witnessed the post mortem being done on the body of the deceased whereafter they buried the body. She said that there was a funeral at a neighbour's home. PW3 said that at the funeral she sat next to the deceased and at 10pm she escorted her up to her house.

PW4 (Ip Peter Ashmani) investigated the death of the deceased Caren Adhiambo Owani. He said that when he was called to the scene he found body of the deceased and blood was oozing from her private parts and she was naked. He said a jacket recovered from the house was identified as that of the accused, by PW1 the son of the deceased. PW4 said that they received information the accused was seen near the scene. He said that they met accused while going to the deceased's house after missing him at his house. Accused had a fresh wound on his head which he could not explain how he sustained it. He could also not explain how his jacket got into the deceased house. PW4 produced a cap which he said was paired to jacket found in deceased's house. He said the jacket was alleged to belong to the accused. PW4 said there was sign of struggle at scene of crime and the deceased who was naked had injuries on her private parts. PW4 did not dust the scene for finger prints. No blood specimen was taken from the deceased, or the accused. PW4 said the deceased was drinking prior to her death. He said the only evidence linking the accused to crime is the jacket that was found in the deceased person's house, but the jacket was not analyzed by the Government Chemist.

PW5 (Scenes of Crime officer) took photographs at scene. He produced the eight photographs together with a certificate - Ex P4(a) to (h) and Ex P3.

PW6 Dr. Solomon produced Post Mortem Report in respect to the body of the deceased. Cause of death was opined to be probable penetrating perineal injury. A penetrating injury involving the rectum and colon was noted.

When placed on defence the accused in sworn statement said that on 7th June 2014 he was at a funeral within the village. He said he was with his cousin Omondi at the funeral. He said Omondi is since deceased. He said he accompanied his cousin Omondi to go and see how eucalyptus seedlings are planted after which they went for a drink at Ochieng's place. He said Omondi left while they were still refreshing themselves. He left at 10.00pm to go and bring cigarettes when Ochieng gave him 500/=. That on his way back after buying cigarettes and a drink he met people unknown to him who assaulted him. He got confused. He said he was cut slightly on the head with a panga and left there. Because he was drunk he fell asleep; That police officers on night patrol found him and had him taken to hospital. When he found himself at Ahero Hospital he walked back home; That when he got home he slept. That while sleeping Luka – PW1 came and told him he was required by the Chief; That he went bare feet while wearing blood stained T-Shirt. That he found a large crowd and police landcruiser. That he and Ochieng who was there crying were handcuffed. The clothes he was wearing were taken as exhibits and Collins got him other clothes. He was made to enter the landcruiser where he found a body covered in a blanket. He said Luka, Jane and Nyanyakach were also in the vehicle. He said he didn't know whose body was in the car. When they got to the junction Ochieng was released while he was taken to Ahero police station. He said he did not know about the jumper produced in court. He said that deceased was his neighbour. He said he narrated to a police officer what he had said in court and it was recorded. He confirmed he told police he did not know where he slept. He also told police he staggered home and slept. He said he was wearing an Aqua Fresh T-Shirt. He said he could not recall how the jumper got its way into deceased's house and could not recall such jumper. He said the deceased was like a mother to him and he could not do anything bad to her nor could quarrel her.

From the evidence on record for the prosecution's six witnesses and from the accused person's defence, the issues for determination are:-

- (1) Whether the prosecution has proved beyond all reasonable doubt that the deceased death was caused by the accused.
- (2) Whether the jumper produced in court as exhibit belonged to the accused.
- (3) Whether the finding of the jumper, if established to belong to accused is sufficient to find that he is the one who caused the death of the deceased.
- (4) Whether the investigations were properly conducted to establish whether or not the accused committed the offence.

The evidence linking the accused person to the offence only comes from PW1, Lukas Otieno Owade, the son to the deceased who stated that the jumper found in the mother's house belonged to the accused person. The investigating officer Inspector Peter Ashmani confirmed that apart from evidence of PW1 there was no other evidence linking accused to the offence. He did not dust the scene for finger prints. He did not subject the jumper and other clothes recovered from accused to forensic examination. PW2 said that earlier she had found Joash Ochieng the accused person and the deceased drinking. PW4 (the Investigating Officer) did not record statements of the said persons Joash and Ochieng to confirm this allegation. Jane Auma (PW3) said that her husband, the husband of the deceased and the husband of PW1 were brothers but the Investigating Officer does not say anything about their whereabouts and particularly the whereabouts of deceased person's husband. Jane Auma (PW3) also testified that the previous day she left the funeral of their neighbours with the deceased. She was however contradicted by PW2 who stated that she did not see any mourners the previous day. This is surprising given that they all lived in the same village.

It is not explicit that it is only the accused who could have committed the murder of the deceased. PW1 said she escorted her up to her house before she proceeded to her house to go and sleep only to find deceased dead the following day. What if it was PW1 who committed the murder? What if it was Joash or Omondi or Ochieng who committed the murder? What if it was the deceased's husband who committed the murder? The charge against the accused has not been proved beyond all reasonable doubt. I find him not guilty and acquit him. He should be released forthwith unless otherwise lawfully held.

Signed, dated and delivered at Kisumu this 27th day of July 2017

E. N. MAINA

JUDGE