



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 10 OF 2015**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**GEOFFREY OTIENO BOR .....1<sup>ST</sup> ACCUSED**

**NAHASHON PAMBO PAMBO .....2<sup>ND</sup> ACCUSED**

**JECKONIA OTIENO AYUB ..... 3<sup>RD</sup> ACCUSED**

**PETER NYADIMO OLIEKO ..... 4<sup>TH</sup> ACCUSED**

**RULING**

1. I have carefully considered the evidence on record. **GEOFFREY OTIENO BOR** (1<sup>st</sup> Accused), **NAHASHON PAMBO PAMBO** (2<sup>nd</sup> Accused), **JECKONIA OTIENO AYUB** (3<sup>rd</sup> Accused) and **PETER OLIEKO** (4<sup>th</sup> Accused) were charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

2. The particulars stated that on the night of 19<sup>th</sup> and 20<sup>th</sup> March 2015 at **OCHOL ‘B’ Village, RURI WEST** sub location, **LAMBWE EAST** location in **MBITA** sub County within **HOMA BAY** County, jointly with others not before court, they murdered **PETER OYUGI ABURA**. All the accused denied the charge.

3. **BERNARD OTIENO OWINO** (PW1) left a funeral wake within **OCHOLA ‘A’** village walking to his home within the area at about midnight. He was alone and a full moon was shining. After a short distance he met three people who were known to him and recognised them as **NAHASHON PAMBO** (2<sup>nd</sup> Accused), **OTIENO GOR** (1<sup>st</sup> Accused) and **OTIENO AYUB** (3<sup>rd</sup> Accused). They all assaulted him using sticks while saying that he was too proud.

4. The next morning as PW1 was going to hospital he heard that someone had been killed along the Homa Bay-Mbita road, but he could not see because his eyes were swollen from the beatings. Based on this incident and the fact that the deceased’s body was found more or less within the vicinity where PW1 had been attacked, the accuseds were arrested. PW1 (due to his injuries) was also arrested as a suspect but he was later released.

5. **KEFA AUMA OBURA** (PW2) a brother to the deceased was woken up by some people at dawn who informed him that his brother had been found dead by the roadside. The reportees suspected that he’d been run over by a motor vehicle along Mbita highway. He proceeded to the scene and observed that the deceased had a deep blunt injury on the forehead suggesting he’d been hit on the forehead. His T-shirt was wet, as though it had been washed, but it still had stains of blood. Some blood was also flowing onto the road.

6. The last time PW2 saw the deceased was in the evening before he died – he was at a bar next to the one owned by PW2 at Koyani Centre taking beer. He too did not know whether the accuseds murdered his brother, saying they were arrested because on the evening before the incident they were harassing people, beating them indiscriminately. It was therefore suspected that the deceased fell victim to their attack.

7. **DENNIS OTIENO ODERA** (PW3) was in the company of **JOSHUA OTIENO** (A3) on 19/03/2015 at about 10.00 p.m. inside a bar. They left to go to another bar, but found it was closing, so they did not go inside. At the entrance of the bar, they found **PETER ABURA** (deceased) trying to wake one **OBOYI OREGI** who was sleeping at the bar entrance. Since they could not get into the bar, they decided to leave. They parted ways as the deceased and **OREGI** went to the funeral wake while PW3 went to his home. The next morning he was woken up by motor cycle riders who said an incident had taken place near Peter's home and his explanation was required.

8. That was all the evidence presented to the court – surely need I say anything beyond pointing out that no evidence was presented linking the accuseds to the offence? There was only some suspicion that because they had been harassing people that night, they could be the ones who fatally injured the deceased. However this is not sufficient to warrant the accuseds being placed on their defence to answer the charge and I return a finding of **NOT GUILTY** for each accused under **Section 306 (1) Criminal Procedure Code**.

9. They shall be set at liberty forthwith unless otherwise lawfully held.

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

**H.A. OMONDI**

**JUDGE**