



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KISUMU**

**CRIMINAL CASE NO. 16 OF 2016**

**BETWEEN**

**REPUBLIC .....PROSECUTION**

**AND**

**JACOB RANDA OLUOCH alias LEONARD DONDE.....ACCUSED**

**JUDGMENT**

1. The accused, **JACOB RANDA OLUOCH alias LEONARD DONDE**, is charged with the murder of his father, **JOSEPH OLUOCH ABUNDE RANDA** (“the deceased”) contrary to **section 203** as read with **section 204** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The incident took place between the night of 20<sup>th</sup> and 21<sup>st</sup> April 2016 at Kogony Sub-location, Kisumu West within Kisumu County. The prosecution case, which was based on circumstantial evidence, was supported by the testimony of 5 witnesses while the accused elected to give sworn testimony.

2. The key prosecution witness was the accused’s sister, Teresia Oluoch Randa (PW 1). She testified that on 20<sup>th</sup> April 2016 she visited the deceased at his home in Kanyamedha. She was at his homestead with the accused and another brother, James Oluoch, who had come to visit. While James left earlier, she remained there until 3.00pm. On her way back to Kisumu, the accused escorted her. As they talked, the accused told her that one he would beat the deceased and they would all be shocked. She did not make much of the threat as he had made similar threats before although this time he seemed more serious. The accused told her that when the deceased arrives home drunk, he comes to steal his things.

3. PW 1 also told the court that the since the deceased lived alone in the house, she would often call him but when she arrived home on that evening, she tried to call him but he did not return the call. As deceased did not answer her calls, PW 1 decided to visit him on the next day. When she arrived at the homestead, she found the accused seated under a tree and when she asked him where their father was, he told her that he was he had left for work early that morning. She went to his house and after gaining access to it, she was shocked to find the deceased lying still on the floor face down with blood oozing from his head. She immediately raised alarm causing neighbours to come.

4. Among the people who arrived at the scene was Maricus Otieno Mitiro (PW 2). He entered the house and found the deceased body lying on the ground. He was bleeding and there was a screw driver and pliers next to the body. APC Tobias Okelo Ojunga (PW 3) also arrived at the scene after being called by village elder. He was shown the deceased’s homestead and found the accused had been arrested by members of the public on suspicion of having committed the murder. He re-arrested the accused and called Police Officers from Kisumu Central Police Station who came to collect the deceased’s body. The investigating officer, PC Isaac Kemboi (PW 4), testified that he recorded the witness statements and

organised for the post mortem on the deceased's body to be done.

5. Dr Bosire Moraa of Jaramogi Odinga Oginga Teaching and Referral Hospital performed the post mortem on the deceased body on 20<sup>th</sup> April 2016. She observed that the deceased's body had multiple bruises on the head and neck region and a laceration on the right temporal region of the face. Internal examination of the head revealed a comminuted fracture over the right temporal bone and a linear fracture over the right parietal region with bleeding into the brain. In the post mortem form produced by Dr Nelly Wanjala (PW 5), Dr Moraa concluded the cause of death was severe head injury secondary to blunt force trauma.

6. When put on his defence, the accused confirmed that PW 1 had visited the deceased on the material day and he escorted her to the bus stage. When he returned home, the deceased told him he was going out for a drink. On his part, he went to the shops, came back, made supper and slept. On the next day, PW 1 came and told him that the deceased was not answering his phone. When they went into the house, they found the deceased dead. He denied that he issued threats to the deceased or that he fought with his father.

7. There is no doubt that the deceased was murdered. What is in issue is whether the accused who committed the felonious act. The prosecution relied on circumstantial evidence as the prosecution did not lead any direct evidence implicating the accused. In ***Abanga alias Onyango v Republic CA CR. A NO. 32 of 1990 (UR)***, the Court of Appeal set out the principles which should be applied in order to test circumstantial evidence as follows:

*It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.*

8. In order to establish the accused's culpability, the prosecution suggested that the accused was the last and only person to be the deceased on the material night and as he was the only one who lived with him in the homestead. It also founded the case on the threats the accused had uttered to PW 1.

9. While the evidence is that the accused was the only one residing in the homestead alone with the deceased, the prosecution did not foreclose the possibility that the deceased could have been murdered by someone else between the time the accused escorted PW 1 when she left home the previous evening to the time PW 1 found him seated at home in the morning. There is evidence that the deceased would go out to drink at night by himself and return home. Could he have been murdered by someone he met that evening, night or morning? Was the accused at the home all that time?

10. The fact that the accused had issued threats before without more is insufficient to complete the chain of circumstantial evidence. The suspicion that the accused could have murdered the deceased outweighs the actual evidence implicating him. I therefore have no option but to acquit him.

11. The accused, **JACOB RANDA OLUOCH** is hereby acquitted of the murder of **JOSEPH OLUOCH ADUNDE RANDA**. He is set free unless otherwise lawfully held.

**DATED and DELIVERED at KISUMU this 21<sup>st</sup> day of September 2017.**

**D.S. MAJANJA**

**JUDGE**

Mr Indimuli, Advocate for the accused.

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

State.