



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT HOMA BAY**

**CRIMINAL MURDER CASE NO.47 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ALEX ONGOJI CHETENDE.....ACCUSED**

**JUDGMENT**

1. **ALEX ONGOJI CHETENDE** (the accused) is charged with the offence of murder contrary to **Section 203** as read with **204** of the **Penal Code**; the particulars being that on 17<sup>th</sup> and 18<sup>th</sup> day of November 2014 at **KOWUOR** sub location, **RACHUONYO NORTH** District, Homa Bay County, he murdered **WILSON ONCHONGA OJWANG**. The accused denied the charge.

2. **CHRISTINE ANYANGO ONYANGO** (PW1) lived with **WILSON ONYANGO OJWANG** (deceased) as husband and wife for about 1 ½ years after her husband had died. She also knew the accused, as he used to do shamba work within their village. On 17/11/14 while inside their house with the deceased and one **GEORGE OCHIENG** and the accused arrived and she asked him why he had insulted her husband earlier on at the Lake Shore. The accused's response was that he knew her foolish husband was the one who had told her about the alleged insults.

3. The deceased got angry and a fight erupted between him and the deceased. The accused slapped the deceased; who then ran after him but the accused ran away. The deceased never returned home nor did PW1 see the accused again.

4. On 18/11/2014 at 7.00 a.m., one **KEVIN OKOTH** arrived at PW1's house asking for the deceased and upon being told that he did not sleep at home, he told PW1:-

**“Go there and see him lying dead with a phone placed on his body and his shoes next to him.”**

5. PW1 went and saw the deceased lying dead near **KEVIN**'s home. She observed his body and noted that his face and head were full of blood and a crowd had already gathered at the scene which was about 1 kilometre from her home.

6. On cross examination PW1 explained that when the accused arrived at their home she actually asked him why he was gossiping about her at the beach and he replied:-

**“it's this fool who told you about it”- while pointing at the deceased.**

The deceased then responded thus:-

**“Whatever you said was at the beach and everyone heard you.”**

PW1 further stated on cross examination:-

**“No one told me they saw Alex and Wilson fighting until he died. I did not see them fighting nor did I see my husband fall down.”**

7. She also confirmed that the accused did not have any weapon and that she did not know who killed the deceased but all she saw was accused slapping the deceased, followed by a chase and the deceased never returned.

8. It was her contention that no one ever complained or disapproved about her being inherited by the deceased who was not from her ethnic community.
9. **KEVIN OKOTH ARIMBA** (PW2) had woken up on 18/11/2014 at 7.00 a.m. to answer a call of nature using the toilet situated outside the house. Before reaching the toilet he noticed someone lying along the path leading to the beach with blood oozing from the side of the face. He recognized the person as someone who came from a nearby home and who people used to call Jakisii (meaning the man from Kisii).
10. He went back to their home and informed his father what he'd seen.
11. After confirming that the person he'd seen was dead, he rushed to PW1, and informed her about what he'd sighted.
12. PW2 confirmed that many people (including him) were not happy that PW1 was inherited by the deceased who did not hail from her ethnic community.
13. PW3 (**GEORGE ORIMBA OWUOR**) confirmed that his son **KEVIN** reported to him at about 7.00 a.m. that he'd spotted a body lying on the path used to access the beach. He rushed there and confirmed that it was **WILSON** (deceased) and he was indeed dead with blood oozing from the side of his head. Word spread that **WILSON** was at a drinking den when a fight erupted after someone poured liquor on him and the fight was between the deceased, **GEORGE ODONDO** and the accused.
14. People wanted to go and kill the accused, but PW3 intervened in his capacity as the chairman of the beach and handed him over to the chief.
15. On cross examination he stated that when he went to look for the accused, he found him preparing to leave his house. He was running away because people wanted to beat him. Later both **GEORGE** and the accused were arrested but the former was released under unclear circumstances.
16. According to **ALOIS ONGERE NGOR** (PW4) the Chief of **KANAM** location PW1 reported to him that one **CHARLES** and **ALEX** went to her home and begun quarrelling with the deceased then **ALEX** slapped him and ran away. The deceased followed them but never returned. He arrested both the accused and **CHARLES**, but he could not tell why the other man was released.
17. A post mortem conducted on the body of the deceased by **DR. ANDREW KIPYEGON CHERUIYOT** (PW5) noted that deceased had bruises on the upper limbs and blood stains on the head and neck. There were deep cuts on the neck and temporal region with a depressed skull fracture and haemorrhage into the brain. He formed the opinion that the cause of death was epidural haematoma due to severe head injury and severe haemorrhage from the cuts.
18. The accused in his defence said he was arrested and taken to a place where the deceased's body lay. PW3 had mentioned to him that there was a group baying for his blood on claims that he had killed the deceased. So two people brought a rope and tied his hands alongside another young man who was not known to him. It was his contention that he had nothing to do with the death of the deceased. He insisted that he was arrested simply because he was new in the area, having been there for only 7 months.
19. There is no dispute that **WILSON ONCHONGA OJWANG** was found lying dead on a foot path early on the morning of 18<sup>th</sup> November 2014. PW1 claims he'd quarrelled with the accused and ran after him – and the next time he was seen lying dead with injuries. No one could tell what happened after the pair ran off – did they engage in a fully fledged fight, or was the deceased attacked by other persons that night and left along the foot path?
20. The medical evidence did not suggest what caused the injuries but a slap whether on the face nor check would be inconsistent with the cut wounds the deceased had which led to a fractured skull. It is also instructive that the accused was not seen with any weapon.
21. There is also the question surrounding the role of **CHARLES** or **GEORGE** in the matter. Both were mentioned as having assaulted the deceased, yet none testified to confirm or deny – infact it was suspicious the circumstances under which they were released after arrest.
22. I think this is a case not proved beyond reasonable doubt – it raises very many probable or likely possibilities surrounding the deceased's death. The circumstances certainly do not point to the guilt of the accused exclusively and to the exclusion of any other reasonable hypothesis. Consequently, there would be great danger in concluding that accused murdered the deceased – due to these gaps the accused must have the benefit of doubt and I find he is **NOT GUILTY**. He shall be set at liberty forthwith unless otherwise lawfully held.

**Delivered and dated this 16<sup>th</sup> day of October, 2017 at Homa Bay**

**H.A. OMONDI**

**JUDGE**