

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRC NO. 38 OF 2014

PROSECUTOR REPUBLIC

VERSUS

MOUREEN ATIENO ODUOR ACCUSED

RULING

The offender herein was on 6th May 2014 charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars being that on 25th April 2014 at Got Osimbo Sub-location, East Uhoho location in Ugunja District within Siaya County she murdered Ivy Achieng Ouma.

She pleaded not guilty to the charge and in the ensuing trial the Prosecution called a total of 7 witnesses. The Court heard that the deceased was the daughter of the offender and that on the material day the offender left her mother in-law's home with the infant and said she was going back to her parents. However on that very night she went to the home of a neighbour without the child. Then on 28th April 2014 the infant's body was found in the river. The offender was subsequently charged with this offence. This is a ruling on whether or not the Prosecution has established a prima facie case sufficiently to warrant her to be put on her defence.

Having considered the evidence adduced my finding is that no reasonable tribunal properly directing its mind would convict on that evidence and as such it is not sufficient to warrant this Court to put the offender on her defence. I refer to her as an offender as she is still a minor. To begin with there were a lot of inconsistencies and contradictions in the evidence of the prosecution witnesses.

Leonida Awino Ochieng (PW1) for one could not reconcile her evidence in-chief to that in cross-examination. Whereas in her evidence in-chief she told the Court that Maureen had left with the infant in the first instance in cross-examination she disclosed that she had returned and that the infant had fallen asleep and had been put to bed by Mercy, one of her daughters. It was her evidence that by that time the offender, Maureen had left. Colleta Awuor Milado (PW2) who alleged that the offender had telephoned her and insinuated that the body of the infant was in the river could not even remember the telephone number from whence this call was made. If indeed a call was made by the offender that was crucial evidence that should have been given to the police and the fact of that call was not proved beyond reasonable doubt. Notice also the contradiction between the evidence of Leonida (PW1) and Gladys Atieno Odero (PW4) on the whereabouts of PW1 on the day this incident is alleged to have occurred. Whereas PW1's testimony was that she was in her shamba with the offender and her daughter (PW3) Gladys Atieno Odero insisted that that was a lie. She (PW4) testified that the two of them were in her shamba that day only to later change and say they were in PW1's shamba. These inconsistencies can only be resolved in favour of the offender. Village elder Michael Oluoch Odonga (PW5) testified that the offender told him she had thrown the infant into the river. One then wonders why if she was willing to make such a "confession" she was not taken to the appropriate officer to make it. Whatever she is alleged to have told PW5 does not amount to a confession and cannot support a conviction. The Doctor who performed the Post Mortem did not attend to produce the report and as such the cause of death was also not proved.

Accordingly this Court finds that the offender has no case to answer and has acquitted her under Section 306(1) of the Criminal Procedure Code. She should be released forthwith unless otherwise lawfully held.

E. N. MAINA

JUDGE

Signed, dated and delivered this 28th day of January 2016

In the presence of:-

Mr. Siritui for state

Mr. Onsongo for offender

The Offender

CC: Felix.