



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MIGORI
CRIMINAL CASE NO. 88 OF 2014

(Formerly Kisii High Court Criminal Case No. 51 of 2013

consolidated with Criminal Case No. 60 of 2013)

REPUBLIC.....PROSECUTOR

- VERSUS-

- 1. AMBROSE OTIENO ODIRA**
- 2. PAUL ODONGO SIKINA**
- 3. LUCAS OJUANG OMONDI.....ACCUSED**

RULING

1. Following the attack and cruel death of one **VINTAS OCHIENG OBARO** at Ogwedhi Vllage within Migori County on the 27th day of March 2013 (hereinafter referred to as **“the deceased”**) by members of public, **AMBROSE OTIENO ODIRA** and **PAUL ODONGO SIKINA** (hereinafter referred to as **“the first accused person”** and **“the second accused person” respectively**) were arraigned before the High Court at Kisii on 10/05/2013 and faced the information on the murder of the said deceased contrary to **Section 203** as read with **Section 204** of the Penal Code, Chapter 63 of the Laws of Kenya.

2. That was in Kisii High Court Criminal Case No. 51 of 2013. They denied committing the offence. Five days later; that is on 15/05/2013, **LUCAS OJUANG OMONDI** (hereinafter referred to as **“the third accused person”**) was also arraigned before the High Court at Kisii and equally faced the information on the murder of the deceased. That was in Kisii High Court Criminal Case No. 60 of 2013 and he also denied committing the offence. All the three accused persons were then put up for trial but before the commencement thereof, the two criminal cases were consolidated and transferred to this Court upon the establishment of a High Court station for trial.

3. This case was then handled by *Majanja, J.* who took the evidence of the first three witnesses before he was transferred from the station. The rest of the evidence was thereafter taken before me upon compliance with **Section 200(3)** of the **Criminal Procedure Code**, Chapter 75 of the Laws of Kenya.

4. In a bid to prove the charges, the prosecution called a total of six witnesses. **PW1** was one **VITALIS MATUNGA**. He was the owner of Motor cycle registration number KMCW 429D which he had given possession to one Junior Okello for purposes of conducting transport business within Migori town. **BARACK ODHIAMBO OGAYA**, the Assistant Chief of Nyamanga and Kirengo Sub-Locations within

Migori County testified as **PW2**. **APC No.87084378 CPL. MAURICE NGIRIAMA** of Masara Administration Police Post testified as **PW3**.

5. The Doctor who conducted the post-mortem examination on the deceased testified as **PW4** whereas **PW5** was another Doctor who produced Mental Assessment reports for the accused persons as well as an age assessment report for the third accused person which documents had been prepared and signed by other doctors whom he was familiar with as well as their handwritings and signatures. The investigating officer who took over the conduct of the case upon the transfer of the initial investigating officer testified as **PW6**.

6. At the close of the prosecution's case, the Defence Counsel, **Mr. Omonde Kisera** made brief oral submissions that no case had been made to warrant any of the accused persons to be placed on their defence. The State through Learned Counsel **Mr. Okaka** submitted that there was indeed ample evidence to have the accused persons placed on their defences.

7. In this matter there is no dispute as to the fact that the deceased was attacked and beaten by members of the public on the day he met his death on allegations that he was a habitual thief and on that day he was suspected to have stolen the motor cycle and the two carcasses of goat meat which he was arrested with. The attack occurred in the very early hours of the day. It was around 04:00am. and was still dark. All the witnesses who went to the scene testified that they were aided by torches to be able to see.

8. PW3 was the first police officer to arrive at the scene of murder. He had been awoken by an anonymous call and informed that some thieves were being pursued and one of them had been caught up and might be killed. PW3 immediately informed his seniors and a contingent of three officers including himself set out to the scene. On arrival at the scene, they saw a large multitude of people; armed with various crude weapons and highly charged and rowdy. The crowd which consisted of over 100 people was chanting that they had eventually killed a notorious thief.

9. The officers managed to take charge of the scene and cooled down the crowd. They then viewed the scene and saw the motor cycle burnt into a shell, a dead body of a male adult, two carcasses of goat meat without heads, legs and skins and many large stones littering the area. On a closer look at the dead body, PW3 noted that it had been injured allover most likely with clubs and stones. PW3 then informed the OCS of Migori Police Station and the body was later on collected and taken to the Migori County Referral Hospital Mortuary.

10. PW3 did not see any one attack the deceased. Infact by the time PW3 arrived at the scene the deceased had long died and the multitude were just celebrating. That was the very position with PW1 and PW2. Likewise that was the case with the initial investigating officer when he visited the scene.

11. This was a case where there was no single eye-witness. But that aside, none of the witnesses who testified before Court made any mention of any of the accused persons not as the possible killers of the deceased but that they were at least present at the scene of murder on the day the deceased was murdered. With an exception of PW2 who identified the accused persons as his subjects, the record has no further mention of the accused persons.

12. When PW6 testified before Court upon taking over the conduct of the case, she stated that the initial investigating officer had received intelligence report that the accused persons were the killers of the deceased and that the information was corroborated by the witnesses who had recorded statements with the police. I have carefully looked at the initial investigating officer's statement together with the Investigations Diary which were produced as exhibits. Surprisingly PW6's assertion is not supported and moreso none of the alleged witnesses testified before Court. The assertion therefore remains as pure hearsay and is for rejection.

13. The upshot is that there is nothing on record to link any and/or all of the accused persons with the death of the deceased. Indeed it remains unclear why the accused persons were arrested and charged in the first place. This Court therefore finds no basis at all in law in placing any or all of the accused persons

on their defences. Even if this Court is to close its legal eyes and place any and/or all of the accused persons on his/their defences, that will not yield anything much in law and will amount to wasting the already limited judicial time.

14. Having found that there is no nexus at all between the death of the deceased and any of the accused persons, then pursuant to **Section 306 (1)** of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, I find that the three accused persons herein namely **AMBROSE OTIENO ODIRA, PAUL ODONGO SIKINA** and **LUCAS OJUANG OMONDI** are **NOT GUILTY** of the murder of **VINTAS OCHIENG OBARO** and are hereby acquitted **accordingly**.

15. The Accused persons shall forthwith be set at liberty unless otherwise lawfully held.

DELIVERED, DATED and SIGNED at MIGORI this 21st day of December 2016.

A. C. MRIMA

JUDGE