



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 20 OF 2013

REPUBLIC----- PROSECUTOR

VERSUS

DORREN ACHIENG ONYANGO-----ACCUSED

JUDGMENT

1. The outcome of this Trial may not answer the question whether and who may have murdered Joseph Sando (the Deceased).
2. Although Dorren Achieng Onyango (the Accused) faces the charge of murdering the Deceased on 27th November 2013 contrary to Section 203 as read with Section 204 of the Penal Code, none of the 5 (five) witnesses for the Prosecution gave evidence that implicated the Accused.
3. On 27th November 2013, Paul Ojiambo Ocholi (PW1) and Nelson Masiga (PW2) received information of the Death of the Deceased. PW1 is the father to the Deceased while PW2 is a brother. Both visited Busia District Hospital Mortuary where the body of the Deceased lay. On viewing the body, they noticed that it had a stab wound on the left hand side. Both identified the body to Dr. Patson Kubuta (PW4) who performed a Post Mortem examination on it.
4. The Post-Mortem examination revealed the following externally ,–

“A wide and deep penetrating injury in the left upper chest and lateral but anterior to the infra-clavicular area approximate dimension were 4cm x 2cm x 6cm. A blunt force injury on the sternal area was also noted. Small multiple bruise injuries were noted on the right knee.”

On the internal appearance to the body, the heart was pierced through and through and, the penetrating injury passed through the heart. The Doctor formed the opinion that the cause of death was “Hypovolaemic shock/Brain death/Cardiovascular collapse”

5. P.C. Raphael Kesei (PW3) received information of the attack of the Deceased through a telephone call of a member of public who the Police Officer could not identify. The Officer was told that a lady who had stabbed the Deceased had been arrested by members of the Public. Together with a colleague (Cpl. Kipkorir), PW3 re-arrested the Accused and escorted her to her house at Marachi Estate. Upon conducting a search there, they did not recover the Murder weapon. They then moved to the scene, where in a house they found a pool of blood. Again they were unable to recover any weapon.
6. Inspector Walter Onganja (PW5) was, on 27th November 2013, minuted to investigate the alleged Murder of the Deceased. He visited the scene in the company of some Police Officers who included PW3. At the doorstep to a house at Marachi Estate, they found blood stains on the ground. Inside the house was a pool of blood on the floor. A search for the “killer” weapon was in vain as none was found. This was the same in respect to a search at the house of the Accused.

7. From the above evidence none implicates the Accused person either directly or circumstantially. PW1 and PW2 told Court that one Beatrice Achieng who was a friend to the Deceased told them that she was with the Deceased when he met his tragedy. But Beatrice Achieng was not called by the Prosecution as a witness and her account to PW1 and PW2, however true it may be, is hearsay.
8. The only Decision I can reach is that the Prosecution has failed to prove its case against the Accused person. I hereby acquit her of the charges she faces. She is hereby set free unless detained for some other lawful cause.

Dated, signed and delivered at Busia this 24th day of November 2015.

F. TUIYOTT

J U D G E

In the presence of :-

Oile – Court Assistant

.....for State

..... for the Accused