



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CRIMINAL CASE (MURDER) NO. 10 OF 2008**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DICKSON ODHIAMBO ODHIAMBO.....ACCUSED**

**J U D G M E N T**

The accused person herein has been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on the night of 11th February 2008 and 12th February 2008 at Yiro West sub location, South Ugenya location Siaya district within Nyanza province murdered one James Oboko Lusaka.

So as to demonstrate their case the prosecution called six witness before closing their case.

**PW1 Jennifer Akinyi**, said that she was the deceased's wife . She told the court that the deceased left home on the evening of 11-2-2008 and did not return. His body was found the next morning in a nearby homestead with serious bodily wounds. She did not witness any incident that night.

**PW2 Stephen Ochor Oboko**, the son of the deceased witnessed the postmortem being carried out on the deceased body at Siaya District Hospital.

**PW3 Jennifer Majuma Ogulo**, told the court that at around 5 p.m. on 11-2-2008 the accused came to her house, where she sells changaa and ordered for the same which he drunk upto around 8 p.m. She told the court that the deceased also came to her house at around 6 p.m very drunk. He left at 7 p.m while the accused left at 8 p.m. The following day at around 8 a.m while on her way to he shamba she saw people running away. On inquiry she was told that the deceased had died.

**PW4 George Odhiambo**, who sells bananas and told the court that he heard people alleging that he had killed his father. He denied having seen the deceased on the material day. He reported the incident to the chief and recorded statement with the police.

**PW5 Dr. Jackton Omolo**, produced the postmortem report which showed that the deceased had died due to severe haemorrhage after being inflicted with severe wounds on the head which fractured the skull.

**PW6 P.C. Moses Talo**, was the investigating officer. He told the court that he received report from PW1 concerning the deceased's death. He went to the scene and confirmed the same. He told the court the accused surrendered himself at AP's camp at Ruwe. He also collected one rungu and a knife allegedly used to attack the deceased.

That was the prosecution's case. I have perused the entire proceedings as well as the parties written submissions. The issue before court now is whether or not the accused should be put on his defence. Has the prosecution established any prima facie case against the accused?

From the evidence so far, I do not find any direct evidence to attach the death of the deceased to the accused. There is no eye witness to the incident. PW2 told the court that the accused left her house one hour later after the deceased. The deceased was already drunk by the time he came to PW2's house. Is it possible that the accused caught up with the deceased and attacked him?

Equally, PW6 told the court that the accused surrendered himself to the AP's camp at Ruwe where he confessed that he had killed the deceased. There is no evidence led to back up this allegation. No officer from the AP's camp wrote any statement. No confession was extracted from the accused.

Was there any circumstantial evidence in connection with this matter? I do not find any. PW4 spoke of being suspected and he even made statements at chief's camp. That was all. Nobody followed up the source of this suspicion and why.

Equally, I do not find any grudge between the deceased and the accused. Apparently they were related to the deceased as well as PW1, 2, 3 and 4. None of these family members spoke of any bad blood between them.

In the premises I do not find any prima facie case established so far against the accused. The prosecution case was badly investigated to say the least. The accused is thus acquitted under the provisions of section 210 of the Criminal Procedure Code unless lawfully held.

**Dated, signed and delivered at Kisumu this 31st day of July, 2014.**

**H.K.  
JUDGE**

**CHEMITEI**