



REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

CRIMINAL CASE NO. 40 OF 2013

BETWEEN

REPUBLICPROSECUTOR

AND

DENIS OCHIENG alias NELSON MANDELAACCUSED

RULING

1. On 29th April 2013, this court was informed that **DENIS OCHIENG ALIAS NELSON MANDELA** (“the accused”) had murdered **WILLIAM AGUNYO AMOLLO** (“the deceased”) on 24th April 2013 at Kamenya Village, Kanyaluo South Location within Homa Bay District contrary to **section 203** as read with **section 204** of the *Penal Code (Chapter 63 of the Laws of Kenya)*.
2. The accused pleaded guilty and the trial proceeded a pace before Maina J., and was completed under **section 200** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*. The prosecution case was the accused murdered the deceased who was his grandfather. It lined up 8 witnesses to prove its case and after the close of the prosecution case, counsel for the accused, Mr Ojala, submitted that the prosecution had not put forth sufficient evidence for the accused to answer in his defence.
3. According to the testimony of Dr Peter Ogola (PW 8), the doctor who carried out the postmortem on the body of the deceased on 4th May 2013, the cause of death of the deceased was a severe head injury that was a resulted from a skull fracture due to trauma. He opined that that the injury appeared to have been caused by a blunt object. The body of the deceased was identified by Peter Amollo Asuke (PW 2), a clan elder and the deceased’s nephew and Thomas Otieno Onguru (PW 4), the deceased’s nephew.
4. The prosecution established the death of the deceased and the cause of death. The issue then is whether there was any evidence connecting the accused to the death of the deceased. PW 1, Thomas Mboya Oima, the Assistant Chief of South Kamenya Location testified that he was called on 24th April 2013 at about 1.30 am by PW 2 who informed him that the accused had killed his grandfather. He informed the chief, the District Officer and the Officer Commanding Kosele Police Station (OCS). He went to the scene at about 8 am and found the deceased body in the sitting room covered. He uncovered the body and saw that that the deceased had an injury on the cheek. When he arrived at the homestead, the accused had been tied on a tree. PW 2, the clan elder, stated that he knew the deceased and the accused and that he was not present when the deceased died but was called after he had died.
5. PW 3, Dorina Aluoch, the deceased’s wife and the accused’s grandmother, testified that on 24th April 2013 she left home and went to the market. She left her husband at home and he was normal. When she returned he was dead. She did not see anything on his body which was at the door of their house. She

stated that she found the accused crying outside the compound and there were no people in the compound at the time.

6. PW 6 and PW 7, Segeant Damary Ombima and Corporal Thomas Mutua were the police officers who investigated the matter. Both of them proceeded to the scene of the incident at Kanyaluo on 25th April 2014 where they found the body lying in the grass thatched house. They both confirmed that that the deceased had a puncture wound on the cheek. They found DW 3 at the home and recorded her statement. PW 6 stated that she also took a statement from a Jackline Achieng, the deceased's daughter in law. She stated that she could not be found subsequently as her people had taken her away. They also found the accused tied by the villagers as he had been suspected of committing the murder. They collected the body and took it to Simbiri Mortuary for the post-mortem.

7. PW 6 testified that according to her investigations, the accused hit the deceased using his father's somali sword causing him to fall and that when he fell. After the incident, PW 3 raised alarm and accused her grandson of killing the deceased. The villagers responded to the alarm, come to the homestead and tied the accused. PW 6 testified that later on witnesses became hostile.

8. It is apparent the there was no eye witness who saw the accused inflict the injury that led to the death of the deceased. The only possible eye witness, PW 3, did not give any direct evidence. She recanted what she had told the police which seems to have implicated the accused probably in the hope of saving her grandson from the consequences of the law. Her testimony was not of any assistance. While I no doubt in my mind that the accused is the person who perpetrated the felonious act, I cannot act on mere suspicion however strong without evidence that would call upon the accused to defend himself.

9. According to the provisions of **section 306(1)** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*, I must record and I do hereby record a finding of not guilty against the accused.

10. Accordingly, the accused is acquitted and is set free unless otherwise lawfully held.

DATED and DELIVERED at HOMA BAY this 18th day of December 2014

D.S. MAJANJA

JUDGE

Mr Ojala, Advocate for the accused.

Ms Ongeti, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions.