

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MURDER NO. 11 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

PETER OCHIENG OBONDO.....ACCUSED

RULING

1). The accused herein was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars were that on the nights of 2nd and 3rd February 2011 at Marera sub location, Kisumu West District within Nyanza Province murdered Yuanita Abonyo Ndolo.

2). The accused person pleaded not guilty to the charge. The prosecution called a total of 3 witnesses. **PW1 James Ndolo**, who was the deceased husband told the court that on 1-2-2011 his wife left the homestead at around 6 p.m. She did not come back that night. The following day he was informed that a body of some lady had been burned at the homestead of the accused. The witness then went to the scene and identified the body to be that of his wife.

3). **PW2 Nahashon Opiyo**, was taking changaa that evening with the deceased, the accused among others. The following morning the accused came to his house and told his wife that he had been attacked that night by thugs and his house burned

4). **PW3 Owenga Anyango**, was equally in the group that were taking changaa in the house of one Opiyo. He left after drinking his portion of the changaa. The following morning he learned that the accused house had been burned.

5). These were the only prosecution witnesses called. The prosecution was however unable to call any other witnesses despite myriad of adjournments granted to it. The prosecution closed their case.

6). Having perused the evidence of the three witnesses I do not find that the prosecution have been able to establish a case capable of putting the accused person on his defence. There was no eye witness to the murder of the deceased. Nobody was able to explain the whereabouts of the deceased from the time she left the drinking place. Equally, nobody was able to tell whether or not the deceased was actually with the accused that fateful night.

7). Further and of great significance, there was no evidence adduced to suggest the cause of death of the deceased. No medical evidence which is a crucial element in such a case was ever produced.

8). In the premises I shall order that there is no sufficient evidence adduced so as to put the accused in his defence. He is therefore acquitted under section 210 of the Criminal Procedure Code Chapter 75 Laws of Kenya unless lawfully held.

Dated, signed and delivered at Kisumu this 9th day of December, 2014.

**H.K.
JUDGE**

CHEMITEI