



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 29 of 2009

REPUBLIC..... PROSECUTOR

VERSUS

FRANCIS WARUKU OKUTA..... ACCUSED

RULING

The accused, **FRANCIS WARUKU OKUTA**, was charged with the offence of **Murder contrary to Section 203 as read with section 204 of the Penal Code**. He is alleged to have murdered **SHEM OCHIENG** on 14th March 2009 at Ngei Phase 1, Huruma, Nairobi.

PW 1 testified that she saw the accused beating the deceased. She first saw the events when she was still on the third floor of the building where her house was located.

PW 1 thereafter climbed down and went to the house of **PW 2**, who was a Village Elder.

PW 2 accompanied **PW 1** back to the scene, where they found the accused beating the deceased. Those two witnesses testified that they were very close to both the accused and the deceased. They testified that they were therefore able to clearly recognise the accused.

When **PW 2** sought to intervene, the accused threatened to beat her up. At that point, **PW 2** phoned the police.

PW 3 took photographs of the body of the deceased, at the City Mortuary.

PW 4 is the mother of the deceased. She identified his body, for purposes of the post mortem examination.

PW 5 is the father of deceased. After he reached the scene, he immediately arranged for transport to take his son to hospital. However, the son died shortly after being admitted at the hospital.

Later, **PW 5** identified the body of the deceased, for the purposes of post-mortem examination.

PW 6 testified that the deceased had gone with 2 other boys, to collect a debt from the accused. However, the accused turned violent against the boys but 2 of them escaped. The deceased was not so lucky.

After the deceased had been rushed to hospital, the accused is said to have reported at the police station, that 3 young boys had attacked him.

However, the accused had no injuries.

His shirt had blood stains. And **PW 6** testified that the said blood stains were from the injuries sustained by the deceased when the accused was beating him.

PW 7 is a police officer. He was at the Huruma Police Post when the accused arrived there. **PW 7** said that the accused reported to the police that the deceased, with 2 other boys had stolen from his house.

It was the evidence of **PW 7** that the accused justified his beating up of the deceased, on the grounds that the deceased was a thief.

PW 8 is a Government Analyst. He examined the vest and trousers belonging to the accused. He also analysed the blood samples of the deceased and of the accused. The blood of the deceased was of group 'A', whilst the accused had blood of group "AB". The vest, the trousers, the club and metal bar all contained blood of group 'A'. Consequently, **PW 8** formed the considered opinion that the blood stains on the various items was from the deceased, after he had been injured.

PW 9 is a medical doctor. He performed a post-mortem examination on the body of the deceased. The body had a laceration on the scalp; multiple bruises on the scalp; bleeding under the skin on both arms; and bleeding below the skin on the left leg.

Internally, the deceased had a fracture of the skull and massive bleeding just below the brain covering.

The doctor concluded that the cause of death was Head Injury due to blunt trauma.

PW 10 is a medical doctor. He examined the accused and found him fit to stand trial.

PW 10 also found a scar on top of the accused's head. The scar was about 10 days old, as at 24th March, 2009.

PW 11 is a police officer. He was one of the first police officers to arrive at the scene, He found the accused at the said scene, where the deceased lay on the ground, bleeding profusely.

From the foregoing evidence, it is clear that the prosecution has proved that the deceased, Shem Ochieng, is dead. The cause of death was head injury due to blunt trauma.

There are two (2) persons who have testified that they saw the accused assaulting deceased. The kind of weapons or instruments which the said persons saw the accused using are consistent with the cause of death.

One witness has even asserted that the accused sought to explain that he beat up the deceased because the deceased had stolen from him.

In effect, the accused appears to have been placed at the scene of crime. He also appears to have been seen actively assaulting the deceased. In the event, I am satisfied that the prosecution has established a *prima facie* case against the accused. I therefore find and hold that the accused has a case to answer.

Dated, Signed and Delivered at Nairobi, this 31st day of January, 2013.

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FRED A. OCHIENG
JUDGE