

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

KISUMU

MURDER NO.8 OF 2010

REPUBLICPROSECUTOR

VERSUS

WILLIAM ONDAWA WAMBANIACCUSED

R U L I N G

At the close of the prosecution case, and after submissions have been made for and against the case, the court has to determine whether sufficient evidence has been produced to support the charge to enable the calling of the accused to his defence. If the evidence is insufficient the accused is entitled to an acquittal.

The accused was charged with murder c/s 203 and 204 of the Penal

Code whose particulars were that on 19/1/10 at Siaya township in Siaya District of the Nyanza Province he murdered George Okoth Onyango (“the deceased”). He denied the charge and was represented by Mr. Okoth. The state was represented by M/s Oundo and subsequently by Mr. Makoma.

The post-mortem conducted on the body of the deceased on 27/1/10 by Dr. Annette Metho (PW1) at Siaya District Hospital showed that the cause of death was excessive bleeding due to stab wounds which had perforated the stomach. The deceased had been admitted into the hospital on 13/1/10 with the injuries and operated on by the Doctor only to die the following morning while being treated. The only other material evidence was adduced by Catherine Mbatia (PW4) who stated that on 19/1/10 at about 6.30 p.m. she was outside her charcoal kiosk when she saw the deceased and accused arguing over a medicine bottle. She then saw the accused chasing the deceased. She went to keep her charcoal which was about 100 metres from the scene which was near a stage and had many people. When she returned she found the deceased had been knifed. She was informed by the people here that it was the accused who had knifed him. She did not personally witness the incident. On the following day at the police station she was shown a knife and told it was the one used to knife the deceased. It was her kitchen knife.

PW4 did not see the accused stabbing the deceased. She did not see the accused with the knife. When she last saw the two, the accused was chasing the deceased. She testified that the two were friends. The scene had other people. She did not know at what point the knife left her kitchen to be used to stab the deceased. I find that this evidence would be insufficient to warrant the calling of the accused to his defence. It would not be the kind of evidence on which the accused would be convicted if he were to keep quiet in his defence.

The result is that the accused has no case to answer. Under section 306(1) of the Criminal Procedure Code a finding of not guilty is returned and the accused acquitted of the charge.

Dated, signed and delivered this 9th day of December 2013

A. O. MUCHELULE

J U D G E