



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**CRIMINAL CASE 9 OF 2009**

**REPUBLIC ----- PROSECUTOR**

**-VERSUS-**

**JAMES ODERA ORIENDI ----- ACCUSED**

**JUDGMENT**

The accused **James Odera Oriendi** is faced with the offence of murder contrary to Sections 203 as read with 204 of the Penal Code. The particulars are that on the 2<sup>nd</sup> day of December, 2008 at Gongo Sub-Location, Siaya District, within Nyanza Province he murdered one **Victor Omondi Odera**. A plea of not guilty was entered and the matter proceeded to full hearing.

The prosecution called a total of 4 witnesses and the defence 1.

The prosecution case is that the deceased was the son of the accused. That the deceased was last seen at his father's house his having parents separated in October, 2008. It is alleged that the accused had murdered the deceased placed his body in a gunny bag and threw the same in river Yala.

**PW1 Rosemary Aoko Odera** stated that she learnt of her son's disappearance on the 7<sup>th</sup> of January, 2009 while selling her wares at a market in Nyangweso from the wife of the Central Gem Chief. On the 8<sup>th</sup> of January, 2009 she enquired from the Assistant Chief **Mbuya Okongo**, who in turn contacted the chief who asked to see her. On her visit to the chief he informed her that the son may have been killed but his body had not been located. The matter was then reported to the Assistant Chief of Gongo Sub-

Location who on 9<sup>th</sup> of January, 2009 received a message that the accused had killed the boy. On the same day **PW1** in the company of the assistant chief of Gongo and the village elder went to the accused house but did not find him. Later she learnt that the body of her son was found; she identified the same at Siaya mortuary on the 17<sup>th</sup> of January, 2009. It was her evidence that the body was all skeleton but she identified his teeth and legs. She initially found the body in a bag and tied with a rope as it was discovered, at the Siaya mortuary. **PW2** was **John Barrack Oloo** the assistant Chief of Gongo sub-location who stated that the deceased was known to him. She received news from **PW1** that her son had been murdered. They had 2 weeks prior to this report retrieved an identified body from river Yala a few metres away from the home of the accused. However on receiving the information that **PW1's** son may have been murdered in the company of **A.P.C Githume** and **PW1** they headed to the accused house, inquired about the accused and the deceased from the accused other wife and were told that accused left in the morning and the deceased had gone to fish in Yimbo. They left with Odhiambo another son of **PW1** who later in the day gave information to the effect that the night before the deceased disappeared he had heard him cry. The following day again they embarked on looking for the accused and near a road leading to the accused home, the accused on seeing the witness and his company, ran into the bush and disappeared the witness went to his home and interrogated another son **Barack** who informed them that his father fought with the deceased one night overpowered the deceased and threw him in the river.

**PW3 JACOB ODHIAMBO** a brother to the deceased informed the court that the night before his brother disappeared they were made to eat early and sleep. Later he heard his late brother cry. That was the last time he saw him.

**PW4 DR. JOSEPH ERICK AJWANG** produced the post mortem filed and signed by **Dr. Esiaba** whom he had worked with and whose signature and writing he knew. The details on the report referred to an African male of about 25 years. The body had decomposed. The corpse was about 7 weeks old. The hand and legs were tied with rope. Other system looked normal. The Cause of death was given as drowning.

The court found that the accused had a case to answer and he was put on his defence. He choose to make a sworn statement as follows. He is James Odera Oriendi from Yala Siaya. He is a farmer. The deceased was his son. He recalled the day he came home and learnt that the police were looking for him and how he reported to the police station the next day where he was asked whether he knew of a death in his home. It was his evidence that he was then not aware, he informed the court further that he does not know who killed his son. He never saw the body neither did he hear any screams as alleged by other witnesses.

While answering questions put to him by the court he said his late son did not live with him but stayed in Yimbo and he last saw him in October, 2008.

None of the counsels' made any submissions at the close of the case. They relied on the evidence on record.

Having considered the evidence before me the issue for determination is whether the prosecution has placed sufficient evidence and to the required standard linking the death of the deceased to the accused herein.

It is a cardinal principle of Law that in criminal cases the onus of proving the case beyond all reasonable doubt squarely lies with the prosecution. Having alleged that the accused murdered his son the court must establish whether this was proven beyond any shadow of doubt.

There is no eye witness in this matter at all. The prosecution has mainly relied on circumstantial evidence. The evidence on record is that **PW1** the estranged wife of the accused heard from the chief's wife of the disappearance of her son the deceased herein whom she left with the accused when she left her matrimonial home. This is what triggered the search for the deceased who is said to have disappeared for some time found having died 7 weeks prior. **PW3 Jacob Odhiambo** recalled how on the night before the deceased disappeared the accused his father made them eat and retire to sleep early. Later he heard his late brother cry. He did not see him thereafter. He is the one who also confessed to the chief of the

altercation between his father and his late brother.

Now the only witness to have remotely implicated the accused is **PW3**. This evidence alone is not safe to be relied upon to convict the accused however there is other circumstantial evidence in my view pointing to the accused person. One, the accused, the father of the deceased did not bother to look for his son who had disappeared for several weeks. He had not reported to the authorities, he appeared not bothered. The post mortem indicated time of death as 7 weeks this by any standard is long enough time to have raised concern. Secondly the act of running away when the accused saw **PW2** the assistant chief of the area as not compatible with the action of an innocent person. The explanation by the accused in his defence in my view does not displace the evidence of the prosecution. He did not strike me to be truthful. I disbelieved his evidence.

In **Simon Musoke VS R** (1958) E.A at 715 where the Court of Appeal held inter alia;

**“In a case depending exclusively upon circumstantial evidence, the court must, before deciding upon a conviction, find that the inculpatory facts are incompatible, with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of guilt.”**

All in all based on the above, I am convinced beyond any shadow of doubt that the accused person unlawfully cut short the young life of his son **VICTOR OMONDI ODERA**. All pieces of evidence pierced together adds to no other conclusion but that the accused had an intention to murder his son and he gruesomely executed the same he got his family to have dinner and sleep early to enable him execute his plan. He thereafter together with his wife had come up with a story that the deceased used to live in Yimbo where he fished. Evidence on record was to the contrary. I hereby therefore convict him of the offence of murder.

Before sentencing the accused I will invite him in mitigating and in reference to Section 324 and 329 of the Criminal Procedure Act to mitigate against the penalty of death as the ultimate punishment for the offence of murder.

**DATED AND DELIVERED THIS 29<sup>th</sup> DAY OF JUNE 2012.**

**ALI-ARONI  
JUDGE**

**In the presence of:**

..... **for State**

..... **Accused person(s) present**