



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII

Criminal Case 3 of 2006

REPUBLIC PROSECUTOR

VERSUS

CYPRIAN OYAMO OKUNGU ACCUSED

RULING.

The accused was charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 25th December 2005, at Kasewe B sub-location in Rachuonyo District within Nyanza Province, the accused murdered John Okungu Migoye, herein after referred to as “the deceased”.

The prosecution evidence briefly stated was that on 25th December 2005, Hesbon Otieno Aseo, PW1, the Assistant chief of Kasewe B Location, received information that the deceased had been assaulted. PW1 went to the place where he was told the deceased’s body was lying, that is along Kadongo Misambi road. PW1 knew the deceased prior to his death. When he went to the scene he saw the deceased’s body. He noticed that the body had a cut on the head and around the left jaw. PW1 was informed by the people whom he found there that the deceased had been cut with a panga by his son, the accused, who had run away.

PW1 went to the deceased’s home and asked for the accused’s where about. He was informed that he was staying with his grandmother. When they went to the grandmother’s house, she informed them that the accused left her house carrying a panga and later returned and told her that he had killed her son. PW1 was shown the panga that was used by the accused.

Administration Police Constable John Okello Baraka, PW3, testified that the accused was handed over to him by PW1 and was thereafter escorted to Othoro police patrol base. However, PW1 did not tell the court that he effected arrest of the accused.

The deceased’s body was identified for purposes of post mortem by Henry Ogola, PW2, the deceased’s cousin. The post mortem was done at Okita Nursing Home by Dr. Ogalo in the presence of Police Constable Jairus Agwa, PW4, who was at the time stationed at Othoro police patrol base. Dr. Ogalo handed over the post mortem report to PW4 who produced the same before this court.

The post mortem report revealed that the cause of death was cardiopulmonary arrest as a result of severe bleeding.

The prosecution was unable to call other witnesses and proceeded to close its case.

From the brief evidence on record, I find that a *prima facie* case has not been made out against the accused. In BHATT –VRS- REPUBLIC [1957] EA 332, The Court of Appeal for East Africa defined a *prima facie* case as “one in which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

In the absence of any direct evidence as to how the deceased met his death or even sufficient circumstantial evidence, it would be unsafe for this court to find that the evidence of PW1 alone is sufficient to warrant the accused being placed on his defence.

In the circumstances, the accused is acquitted of the charge of murder under Section 210 of the Criminal Procedure Code. The accused is set at liberty unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT KISII THIS 26TH DAY OF MAY, 2009.

D. MUSINGA

JUDGE.

26/5/2009

Before D. Musinga, J.

Mobisa – cc

Mr. Mogire for Mr. Kaburi for the accused

Mr. Kemo for the State

COURT: Ruling delivered in open court.

D. MUSINGA

JUDGE.