



**REPUBLIC OF KENYA**  
**HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL CASE 22 OF 2005**

**REPUBLIC.....PROSECUTOR**

**=VERSUS=**

**WILLIAM OMONDI.....ACCUSED**

**RULING**

The Accused was charged with the offence of murder contrary to the provisions of Section 203 as read with Section 204 of the Penal Code.

It was alleged that on the night of 7<sup>th</sup> and 8<sup>th</sup> November 2004 in Langas in Uasin Gishu District of the Rift Valley Province, he murdered one Daniel Owino. The Prosecution called 9 witnesses.

Frederick Oduor Oguta P.W.1 testified that on 7<sup>th</sup> November, 2004 after 8 p.m., he met the deceased, Dan Owino and one Lawrence Oduor. They decided to have a drink at Langas Star Club near Kisumu Ndogo in Langas Eldoret at 9 p.m. They drank until midnight. They left for home but at the bus stage, Lawrence Oduor requested that they escort him to “Our Base bar” to see the owner. They agreed and went to the Our Base Bar. P.W.1 and Lawrence Oduor went and sat at a table with the owner of the bar, one Dan Omoro. They started drinking.

P.W.1 heard the sound of a fallen glass near the counter. Someone then said “Utalipa” (you will pay). Another answered “Nitalipa” (I will pay). Then a fight broke out which spread to the place where P.W.1 was sitting. The fight was between the deceased and William Omondi, the accused. The owner of the bar Dan Omoro directed the watchman to take them out. The watchman took out the deceased while William Omondi went to the toilets at the back. P.W.1 said that the accused left using the back exit. It was almost at the same time as the time the deceased was shown out. The watchman came back. After about 30 minutes, while outside, they saw a person lying on the ground. They went to him. They recognized him. He was bleeding. After some persuasion the owner of the bar sent his watchman to call for a vehicle. A Nissan Matatu was brought and the accused was taken to hospital. In the morning Lawrence who had accompanied the deceased to hospital said that Daniel Owino had died.

P.W.1 said that the deceased himself and Lawrence were drunk but aware of what was going on.

P.W.2 was Lawrence Maraka. He was the watchman at the bar. He knew the accused as a customer. He saw the accused with a woman. They sat near the counter and ordered for drinks. The deceased came later with two gentlemen. They ordered for drinks.

As the watchman went to the door to open the door for other customers, he heard the deceased and the accused quarrelling. They started fighting. They broke a glass and bottles.

P.W.2 then pulled the deceased outside and closed the door. He then took out the accused – after 15 minutes. He took the accused through the back door to the toilets and escorted into the bar and then out through the main door. He said the deceased looked drunk but not the accused.

After another 30 minutes, the friends of the deceased left the bar. After a while he heard a knock at the main door. He found the two friends of the deceased who had brought the deceased to the verandah. They inquired if P.w.2 had seen anybody injure the deceased. After they insisted, he called the bar owner who said that the matter did not concern him.

P.W.2 saw blood streaming from the deceased and he went to tell the owner that the deceased was badly injured. The owner then sent the watchman to look for a vehicle. A vehicle was brought and the deceased was taken to hospital.

On Cross-examination, P.W.2 said that he took the deceased to main gate after passing through the corridor. He said that nobody had been injured inside the bar. He took the deceased outside and after 20 minutes the accused. The two friends remained in the bar for another 30 minutes.

P.W.2 did not see how the deceased was injured. He did not hear screams.

P.W.3 was the bar-owner. He also heard the glass fall. He did not know who dropped it. He heard somebody say “lipa” (i.e pay for the broken glass). The accused and others started fighting. He told his watchman to take them out. He said the watchman took 3 men outside and after 5 minutes the accused left. Later the watchman came and told him that the deceased had been injured.

When he went out he found the deceased outside. There was light. He sent for a vehicle. The deceased was taken to Hospital. He did not see what happened.

P.W.4 who was also at the bar and witnessed the fight. He saw the accused fighting with three others. He did not know who was fighting who.

The watchman removed the deceased from the bar. He said after 7 minutes, the accused also left through the front door.

After 30 minutes the watchman was called. He came back and told them that one person had been injured. He saw the deceased lying on the ground, bleeding. He did not go to the hospital.

On Cross-examination, he said that the people fighting were 4 in number. They were pulling each other and struggling.

P.W. 5 was at the bar on the material night. He saw three men enter the bar at about midnight. They were Daniel Owino, Lawrence Oduor and Fred Oduor. They sat at a table.

Daniel Owino went to the bar with his drink. William Omondi arrived and stood behind the deceased. A glass fell down to the ground. It was the deceased who had dropped his bottle. An argument started between the deceased and the bar-man. And then a fight broke out between William Omondi and the deceased.

The deceased was taken outside while the accused stayed back. He said that the accused left after 5 minutes. After one hour as he left the bar, he saw two people trying to assist a third person who was lying on the ground.

They were Fred Oduor and Lawrence who had come with the deceased.

P.W.5 assisted to getting the vehicle and took the deceased to hospital. The doctors came to the vehicle and upon examination pronounced him to be dead.

He said that during the fight at the hotel the two people used fists. Nobody was armed.

P.W.6 Lawrence Oduor witnessed the fight. He had come to the bar with the deceased. He said both the deceased and the accused were taken out.

After 30 minutes he left the bar and that when he saw the deceased on the ground he was bleeding from the head.

He said that they took about one hour looking for a vehicle. On the way they had a tyre puncture which took 20 minutes to fix.

He said that initially he had been arrested as a suspect. He was in custody for 4 days. Those arrested were Frederick Oduor, Dan Omoro, (Pub owner), Alfred Odera, William Omondi and Vincent Otieno.

P.W. 7 gave testimony about what happened the next day. He stopped a mob from beating the accused and asked them to take him to the Police. He also informed the mother of what was happening.

P.W. 8 was the investigating officer and P.W. 9 the doctor who produced the Post-mortem report in evidence.

From the foregoing evidence, it is clear that none of the witnesses called saw how and who injured the accused.

The evidence before the Court is that the deceased and the accused had a fight and they were sent out of the bar. The deceased was taken out first. The accused followed after between 5 – 10 minutes.

There is all probability that the two met outside and continued with their fight. But nobody saw them together. Nobody saw them extend their fight outside. No one among the witnesses called saw the accused attack, assault or injure the deceased. There was no weapon which was found or recovered on the body or at the scene.

There were no shouts or screams. All there is against the accused is the suspicion that he was the most likely attacker considering the proximity of the moments the two left the bar after their fight.

I am of the view that these circumstantial evidence is not sufficient and strong enough to convict the accused for murder or even consider the alternative offence of manslaughter.

There is nothing to link the accused with the death of the deceased. The brawl in the bar is not proof that the accused killed the deceased. The deceased left the bar unharmed. No weapons were involved. Only fists. The accused followed the deceased out after 10 minutes after they were ejected. Despite this close proximity and the opportunity yet more was required for this court to find that the prosecution had proved their case beyond any reasonable doubt. There is no direct evidence. No eye witnesses. No weapon. The circumstantial evidence is weak and based on conjecture and speculation. It is clear that the accused died on the road side – a public place. Though it was late others had the opportunity to injure the deceased.

I find that there is no evidence that the accused committed the offence and that he is therefore not guilty. (Section 306 of the Criminal Procedure Code).

I therefore do hereby acquit the accused. He shall be released from custody forthwith unless otherwise lawfully held.

**DATED AND DELIVERED AT ELDORET ON THIS 13TH DAY OF DECEMBER 2007**

**M.K. IBRAHIM,**

**JUDGE.**