



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**Murder Case 33 Of 2004**

**REPUBLIC .....PROSECUTOR**

**-VERSUS-**

**ENOCK OTIENO MOLA**

**MOSES AGUMBA OKEYO ..... ACCUSED**

**RULING**

At the close of the prosecution case, it was submitted by the counsel for the accused persons that no prima facie case was established to warrant the accused persons being put on their defence.

PW1, Edwina Anyango Ogaro, told the Court that she was at Wasafiri Bar at about 10 pm on 15<sup>th</sup> February 2004, before she left for a nearby butchery where she roasted some meat for the customers. PW1 claimed that she heard some customers shouting saying that they wanted their money while she was at the butchery. PW1 also added that one Peter who was a customer had called a watchman to take away the two customers who were drunk and rowdy. PW1 claimed that two watchmen took away the two rowdy customers and she left for home.

The evidence of Peter Ogwel Odhiambo, PW2, is of little value as he was declared a hostile witness.

PW3 was in her house at about 7. 00 am of 16<sup>th</sup> February 2004 when the barmaid of her bar took to her the money for the sales of the previous evening. PW3 claimed that she was told by the barmaid that there had been two unruly and rowdy customers who had had to be removed from the bar by watchmen.

PW4 claimed that on 16<sup>th</sup> February 2004 at about 8.00 am when he was preparing and sorting out his fishing nets a watchman at the beach known as Enock told him that in the previous evening at about 10 pm he and another watchman had to remove two unruly customers from a local bar. PW4 said that he went to beach office where he found two people of whom one was seated while the other was lying down. PW4 claimed that he saw the man who was lying down taken to a shade of a nearby tree.

PW5 was the investigation officer who said that it was not possible to know who had assaulted the deceased as the witnesses claimed that they were very drunk and unruly.

Dr. Oduor, PW6, who performed post mortem examination on the body of the deceased said that there was a disruption of the spinal column where the neck joints the head. The witness admitted that he did not open the head so as to see whether the injury had been caused to the head.

There was in my view no sufficient evidence linking the accused persons to the offence. They are

therefore acquitted under Section 306 (1) of the Criminal Procedure Code. It is ordered that they be released forthwith.

Dated and delivered this **8<sup>th</sup>** day of **February 2006**.

**B. K. TANUI**

**JUDGE**

In the presence of; Mr. Jabane for Mutai for state.

Mr. Mwamu for Accused persons.

Accused persons present.

Assessors present.

**ORDER** - Assessors to be paid.

**B. K. TANUI**

**JUDGE**

*BK/hao*