



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Case 243 of 2003**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PAUL JUMA WANJIRA.....ACCUSED**

**JUDGMENT**

The accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge state that on the 29<sup>th</sup> October 2000 at Kasabuni village Nairobi within Nairobi area he murdered, PETER OTHIENO OPONDO. In order to prove its case the prosecution called 7 witnesses. PW 1 MOSES OLOO told the court that on the material date there was a traditional dance at Kasabuni village about 100 meters from his house. At about 8 p.m. he heard some screams from the dancing place and he rushed there, he found the accused assaulting the deceased using a panga. He saw the accused cut the deceased with the panga.

PW 2 VITALIS ODIPO in his evidence told the court that although he was present at the dance when the fight broke out and people ran to all directions he also ran away when he later heard screams he went back to the hall and found the deceased had been injured. He observed the body and he had a cut wound. He found the accused standing near the body and he had a panga. He did not see the accused cut the deceased.

P.W. 3 GEORGE OTIENO on evidence told the court that on the material date he had accompanied the deceased to the dance. They bought some beer and placed bottles on the ground. Some people came and started beating from alleging that they had broken a bottle. Accused was one of those people who attacked them. He escaped leaving the deceased behind. He went to Ruaraka Police Post and made a report. On his way back he met the accused and other people who arrested him and took him back to the police station where he was locked in the cells for 2 weeks.

P.W. 4 NO.38361 S/SGT ISAMIAH MUTISYA in his evidence told the court that on the material date while he was on duty at Ruaraka Police Post he received a report from members of the public about the assault of the deceased. He booked the report and proceeded to the scene. On arrival he found the deceased had died. The body was removed from scene.

P.W. 5 NO. 67906 PC MOSES in his evidence told the court on the material date while on duty he received the accused from youth wingers. He rearrested the accused and placed him in the cells. He also received a murder weapon a panga which was stained with blood.

P.W. 7 DR. JANE WASIKE in her evidence told the court that at the request of the police he performed a post mortem on the body of the deceased and formed opinion that the cause of death was due

to head injuries due to a blunt object.

The accused PAUL JUMA WANJIRA in his sworn defence denied the charge. In his evidence he told the court that on the material day there was a traditional dance at Kasabuni village. He was one of the organizers. He was at the gate collecting entry fees. While there, the deceased came accompanied by PW 3 Otieno. They looked drunk. They asked about the entry fees and he told them it was Shs.50 per person. They argued that that was a lot of money and wanted to pay Shs.20/= each. They were refused entry. They went away and came back later and paid the required amount and entered. A few minutes later he heard some noise from the dancers. When he inquired he was told that those boys (P.W3 and the deceased) had broken a bottle. They were ejected from the dance by the patrons and those members of the dance started beating them. There was a huge crowd. The accused tried to intervene but he was also assaulted. P.W. 3 managed to escape. He went for First Aid but when he came back he found the deceased had been removed and placed inside the tent, so that a doctor who was also one of the patrons could attend to him. But on examination he was pronounced dead. They closed the dances and went to Ruaraka Police Post to report the matter.

On the way they met P.W. 3 and members of the public started beating him. They took him to the police post while there the uncle for P.W. 3 came there and asked P.W.3 about the incident. P.W. 3 told his uncle that accused was one of those who had assaulted the deceased. He was arrested and placed in custody together with P.W. 3. He denied that he was armed with a panga and that he did not see P.W. 1 and P.W.2 at the dance. He called 3 defence witnesses. D.W. 2 OBUYA OINDO who told the court that he was one of the organizers of the said traditional dance and he saw when the deceased and P.W. 3 entered. They were drunk and became unruly. One of them broke a bottle and they were requested to stop their behaviour but they could not listen. They were thrown out. The deceased and P.W.3 came back with a panga and started cutting the fence near the entrance.

The revelers became agitated as the two were disrupting the dance and started beating them. P.W. 3 managed to escape but the deceased did not manage to escape. He saw when accused tried to intervene but he was also assaulted by the mob. He also said he never saw P.W. 1 and P.W. 2 at the dance but they are relatives of the deceased. D.W. 4 JOHNSON DAWA who was also one of the dance organizers gave similar evidence to that of D.W.3.

From the evidence there was no witness who saw the accused cut the deceased except P.W. 2 who is brother to the deceased. The murder weapon was produced in court. The panga which was said to have been stained with blood. But according to the evidence of P.W. 7 DR. WASIKE who performed the postmortem on the body of the deceased the cause of death was due to head injury due to a blunt object so that the evidence by P.W. 2 that he saw the accused cut the deceased cannot be believed and the murder weapon, a panga stained with blood contradicts the evidence of the doctor.

It is evident that P.W. 2 was telling lies. He never saw accused cut the deceased. There is evidence that the deceased in company of the P.W. 3 Otieno came to the dance while drunk. They became unruly and were forced out. They came back and started cutting the fence. The dancers became annoyed with their behaviour and started beating them.

P.W. 3 managed to escape but the deceased was subjected to mob justice and died due to the injuries he sustained due to the attack.

In criminal cases the burden of proof always lies with the prosecution to prove its case beyond any reasonable doubt. It never shifts. Thus the prosecution has failed to do. The evidence against the accused is far below what is required in criminal case to sustain a conviction. The assessors returned a unanimous verdict of "Not Guilty" and I concur with their verdict and I make a finding of not guilty against him.

The accused is acquitted and is set at liberty with immediate effect.

Dated and delivered at Nairobi this 3<sup>rd</sup> May 2005.

**J.L.A. OSIEMO**

JUDGE