



REPUBLIC OF KENYA



**Republic v Ontita (Criminal Case 5 of 2023)
[2025] KEHC 4280 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE 5 OF 2023**

**KW KIARIE, J
APRIL 4, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

NELSON MOMANYI ONTITA ACCUSED

JUDGMENT

1. Nelson Momanyi Ontita is charged with two counts of murder, contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of the offence in count one are that on the 6th day of January 2023, at Bomogo village, Kiobegi sub-location, Nyamache Sub County of Kisii County, he murdered Gloria Kemuma Momanyi.
3. In count two, the particulars are that on the 6th of January 2023, at Bomogo village, Kiobegi sub-location, Nyamache Sub County of Kisii County, he murdered Mitchell Momanyi.
4. The two children died from head and spinal injuries caused by sharp force trauma. The prosecution maintained that it was the accused who was responsible for the fatal injuries.
5. The accused denied any involvement in the deaths of the deceased. He insisted that he was called home after the discovery of the deceased children.
6. The issues for determination are:
 - a. Whether the accused was involved in the deaths of the two children, and if so,
 - b. Whether the prosecution proved the charges against him.



7. None of the prosecution witnesses linked the accused to the killing of his two children. They all gave a narration which indicated that he suffered from an ailment that made him not conscious of his surroundings. For this reason, his parents and wife left him at home when they had to pick tea leaves.
8. From their narration, they kept a closer watch to prevent him from straying. This explains why his father followed him to the trading Centre when he said he wanted to cut his hair. This information was provided by Teresa Mong'ina Momanyi (PW1), his wife, and his mother, Rael Nyamisi Ontita (PW2).
9. Although the accused claimed his illness began while he was in remand for this case, this is not accurate. The evidence on record indicates that it was before this unfortunate incident. I find that there is insufficient evidence presented to infer that he murdered the deceased in this matter. The prosecution submitted evidence, suggesting that they intended for the court to infer involvement based on mere suspicion. The Court of Appeal, in the case of *Sawe vs Republic* [2003] KLR 354, held as follows:

Suspicion, however strong, cannot provide the basis of inferring guilt, which must be proved by evidence beyond reasonable doubt.
10. Based on the preceding analysis of the evidence on record, the prosecution has not met the required standards to prove its case against the accused. I, therefore, acquit him of the murder charges on both counts. He is released unless lawfully detained otherwise.

DELIVERED AND SIGNED AT KISII ON THIS 4TH DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

