



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ojijo (Criminal Case E018 of 2022)
[2024] KEHC 17059 (KLR) (19 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 17059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL CASE E018 OF 2022
RPV WENDOH, J
JUNE 19, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JARED OGUTU OJJO ACCUSED

JUDGMENT

1. Jared Ogutu Ojijo was by an information dated 19/1/2023, charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the charge are that 16/10/2022, at about 11:00p.m at Siruti Village in Kanyamgony Sub Location, Awendo Sub County, jointly with others not before the court, murdered Brian Otieno Dulo.
3. The Accused denied committing the offence and the case proceeded to full trial with the prosecution calling the following witnesses; Dr. Awuonda Victor (PW1), John Dulo Nyandiga; the deceased's father (PW2); Michael Okoth Opiyo (PW3); Steven Odhiambo Onyango (PW4); Joseph Onyango (PW5); CPL Livingstone Katusiot scene of crime (PW6); and CIP William Kandie (PW7).
4. When called upon to defend himself, the Accused gave a sworn statement and did not call any other witness.
5. PW1 performed post mortem on the deceased's body and found that it had a stab wound 2.5 c.m at the base of the neck (between the neck and throat); that involved the skin, subcutaneous tissue, sternum, and ended in the aorta, the main vein leading to the heart; that there was marked pallor on the fingernails which is evidence of excessive bleeding from the stab wound; that there was massive haemothorax (blood in the lungs); blood clots in the sternum and aorta and blood in the lungs. He formed the opinion that the cause of death was excessive bleeding from the punctured aorta which led to cardiorespiratory arrest and that the probable object that caused the injury was sharp.



6. PW3 told the court that the deceased, Brian Dulo, was his son; that while asleep about midnight on 16/9/2022, he heard somebody calling him. He did not see who was calling but was informed that they had brought home Brian who was drunk. He went to Brian's house, and saw Brian with a stab wound on the neck and he was dead and his clothes were soaked in blood. He called the village elder and Assistant Chief who come and called police I from Awendo. The body was removed to Rapco Mortuary. He witnessed the post mortem with other relatives.
7. PW3, a friend of the deceased recalled that on 16/9/2022, he was in church at 9:00p.m with Steven Odhiambo, PW4. PW3 saw the deceased at the church and he left on his motor cycle; that the deceased left riding towards his home. After a few minutes, he left with Steven to go home and found a person lying on the road and a motor cycle was on top of him. They looked closely and found that it was Brian, the deceased; that a pastor came by on his motor cycle and they asked for help, placed him on the motor cycle and took him to his home. According to PW3, the deceased could not talk but was groaning and they believed he was drunk. They called out Brian's father's (PW2) and took the deceased to his house and it is then they noticed that the deceased's clothes were wet.
8. When they tried to lift him, they noticed that the deceased was bleeding and they went to call deceased's father and when he came, he said that Brian was dead; that the mother started screaming and after a few minutes they left; PW3 and Steve (PW4) went to PW3's house and police from Sony picked him up.
9. PW4 reiterated what PW3 told the court; that they were together on the night they found deceased on the road with a motorcycle on him and carried him home.
10. PW5, the deceased's friend, He recalled that on 16/7/2022, the deceased found him at Siruti stage and they went to take changaa together; that the deceased left the changaa place to go and get fuel at Awendo. He went home at 2:00p.m and returned to the drinking place at 5:00p.m where the deceased found him at 7:00p.m; that they drunk together with the Andrew Owuor and Accused left them there and they left at 8:30p.m; that when at the drinking place one Dan Ochieng called the deceased, they talked and deceased left promising to be back. Dan Ochieng was left with him, but left after about 10 minutes. He denied knowing of a dispute between Accused and deceased over a woman.
11. PW6 of scenes of crime was on 8/12/2022 asked to prepare a certificate for photographs delivered to him so that they could be produced before the court, He produced the photographs taken to him and the certificate as PEX 1 and 2.
12. PW7 of DCI Awendo learnt of a murder on 16/9/2022 from the OCS. They went to John Dulo's home with other officers and found deceased's body in his house on a sofa. He observed the body and found a stab wound on the neck. They removed the body to Rapcom Mortuary where post mortem was done. After investigations, they were led to Jared Ojijo, Accused; that one Monica and one Dan had that information were arrested but were treated as witnesses but had disappeared.
13. The Accused was called upon to defend himself and gave sworn defence where he stated that on 16/9/2022, he tilled the land in the morning till 10:00a.m and went to the market at Awendo as it was market day. He stayed there till 5:00p.m and went back home, cooked till 8:30p.m after eating he went to sleep. Next day, he heard riders hooting and on making enquires as to what was happening, was informed that Brian had been murdered, and he went to see what had happened. He recalled Brian's home and even helped carry the body to the vehicle. He denied having a dispute with deceased and also denied having met him on 16/9/2022; that on Wednesday, when he went back home, his mother informed him that police had been looking for him and next day he reported to police station and was arrested and found two others arrested. He denied killing the deceased.



14. Having considered both the prosecution and defence, the question is whether the prosecution has discharged the burden placed on it to prove the charge of murder beyond reasonable doubt. The legal burden of “beyond reasonable doubt” was aptly explained in the case of *Woolmington vs. DPP (1935) A. C. 462* pp 481. The court observed that proof beyond reasonable doubt is not proof to the hilt or absolute. The court held as follows:-

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

15. This court has the singular duty to consider the three ingredients necessary to prove a charge of murder
1. The death of the deceased;
 2. That the death was caused by the unlawful Act or omission of the Accused;
 3. That the accused person possesses malice aforethought.

Death of the deceased

16. There is overwhelming evidence by PW2, the deceased’s father, PW3 and PW4 who found the deceased on the road, that the deceased, whom they knew well, was found lying on the road, injured and later succumbed to the injuries. Their evidence was corroborated by the testimony of PW1 who performed the post mortem on the deceased in the presence of PW2. Death was proved.

Whether it is the Accused who committed the unlawful Act.

17. According to PW7, the investigating officer, the witnesses who linked the murder to the accused have since vanished without a trace. The two were also suspects of the murder, were arrested but later released to be treated as witnesses. So far, there is no evidence on record connecting the Accused to the murder of the deceased. Having failed to prove that accused is linked to the murder in any way, this unnecessary for this court to consider the third element of presence of malice aforethought. For that reason, as charged I must acquit the accused of the charge of murder.

Accused is set at liberty forthwith unless otherwise lawfully held.

DELIVERED, DATED AND SIGNED AT MIGORI THIS 19TH DAY OF JUNE, 2024.

R. WENDOH

JUDGE

In presence of; -

Ms. Ikol for the state

Mr. Oseno hilding brief Mr. Singei for Accused

Ms. Emma –Court Assistant

