



**Republic v Ambetsa (Criminal Case 27 of 2014)  
[2023] KEHC 17981 (KLR) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 17981 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 27 OF 2014  
WM MUSYOKA, J  
JUNE 2, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**AYUB OSORE AMBETSA ..... ACCUSED**

**JUDGMENT**

1. 5 witnesses testified in this matter. None of them were present when the deceased was fatally assaulted. PW1, Laban Bushiru Amboko, found the deceased dead outside the door to his house. PW2, Elijah Maloba Ananda, was not present when the deceased was assaulted, but he went to his home and found his dead body. PW3, Tom Nyawate Obadiah, found the deceased lying dead at his home. PW4, Kennedy Ron Atsaba, was told by his wife of screams at the home of the deceased, and later that he had died. He rushed there and found him dead. PW5, No. 59986 Corporal Thomas Bii, was the investigating officer. He testified that the accused was arrested on suspicion that he had killed the deceased.
2. I put the accused on his defence. He testified that he was with the deceased on the material day. He then left for the market, leaving the deceased home. He was later informed that the deceased had died. When he approached home, he heard the crowd baying for his blood, so he slept in the bush. He was arrested the following day .
3. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, he did it with malice aforethought.
4. On whether the deceased died, I have the evidence of PW1, PW2, PW3 and PW4, that they all saw the dead body of the deceased. The pathologist did not testify, and so there is no evidence on the cause of death. The cause of death was not linked to the accused. No one saw him assault the deceased, and, in any case, there was no evidence on what might have caused the death. There is no evidence that



the death had anything to do with the accused. The investigator, PW5, testified that the accused was arrested on suspicion. There is no circumstantial evidence pointing to his complicity. He stated that a stick and slasher were collected from the scene, and forensics were done on them, by the Government Chemist, but the results were negative. There is nothing to connect them to the accused. As there is no evidence linking the accused to the death, the issue as to whether he had any malice aforethought should not arise.

5. In view of everything stated above, I do not find the accused herein, Ayub Osore Ambetsa, guilty of the offence of the murder of Daniel Ambetsa Isindu, contrary to section 203 of the Penal Code, as read with section 204 thereof, and I hereby acquit him accordingly, under section 322 of the Criminal Procedure Code, Cap. 75, Laws of Kenya. He shall be set free from remand custody, if he is still in remand, unless he is otherwise lawfully held.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 2<sup>nd</sup> DAY OF JUNE 2023**

**WM MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Appearances**

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Munyendo, Advocate for the accused person.

