



**Republic v Ambutsi (Criminal Case 36 of 2016)
[2023] KEHC 20370 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 36 OF 2016
WM MUSYOKA, J
JULY 21, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID SUMBA AMBUTSI ACCUSED

RULING

1. 4 witnesses testified in this matter. None of them witnessed the killing of the deceased. PW1 received a telephone call, and was informed that the deceased had been killed. PW2 was left by the deceased at their grandmother’s house, and after some time a Victor came into the house, and informed them that the deceased had fallen down, and was bleeding. PW3 told of how he heard screams that a Jombi was killing the deceased, and he rushed to the scene, and found the body lying outside the house of his grandmother. PW4 was the pathologist.
2. None of these witnesses were with the deceased when he sustained his fatal injuries, and did not witness what happened to him. None of them placed the accused person at the scene, nor linked him to the death. The Jombi referred to by PW3 was not the accused person herein. Similarly the Victor that PW2 talked about was not the accused herein.
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. The deceased in fact died, the body was seen by the witnesses, PW1, PW2 and PW3. PW4 produced a post-mortem report, on the autopsy done on the body by another pathologist. On the cause of death, the post-mortem report states that the deceased died of subdural haematoma. None of the witnesses directly linked the accused to the death, and the issue as to malice aforethought does not arise. There is also no circumstantial evidence linking him to the death.



5. It is my finding and holding that no prima facie case has been made out against the accused person herein, to warrant his being put on his defence. I accordingly find him not guilty, and acquit him, under section 306(1) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, of the murder of Abudala Okutoyi Sumba Omukangu, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya.
6. The accused shall be set free, if he is still in remand custody, unless he is otherwise lawfully held.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 21st DAY OF JULY 2023

W M MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

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

Ms. Khatshi, Advocate for the accused person.

