



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

CRIMINAL CASE NO. 26 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

TYSON ODHIAMBO ALOISE.....ACCUSED

JUDGMENT

1. Tyson Odhiambo Aloise is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 12th day of July, 2018, at A Thousand Street in Oyugis Township, Rachuonyo South Sub County of Homa Bay County, murdered Pascal Okoth Ogweno.
3. The prosecution case was that when the deceased went to demand some money owed him by the accused, the latter stabbed him.
4. Tyson Odhiambo Aloise, the accused contended that when he failed to pay the deceased the entire amount, he (deceased) became aggressive and snatched the knife he (accused) was using and attempted to stab him. The two struggled over the knife and the deceased was accidentally stabbed.
5. The issues for determination are:
 - a) Whether the deceased was stabbed accidentally or not;
 - b) Whether the deceased was the aggressor or not; and
 - c) Whether the accused committed the offence he is charged with.
6. Evans Owino Onungá (PW3) testified that the deceased announced that he was going to demand a debt owed to him by the accused. Minutes later after he (deceased) had gone to the hotel run by the accused, he heard the deceased screaming. He rushed to the hotel and found the accused stabbing the deceased.
7. The other prosecution witnesses i.e. PW1 & PW2 testified that they were attracted to the hotel where the incident took place by noises. None of the prosecution witnesses was present when the incident started.
8. Tyson Odhiambo Aloise, the accused, testified that he owed the deceased some Kshs.1000/=. The deceased went I company of some other two people who remained outside the premises and demanded to be paid. He said that the deceased was very aggressive and threatened to kill him. He entered the kitchen area and picked a knife and charged at him. He however held him and a struggle ensued. It was during the struggle that he was accidentally stabbed.
9. His witness was Brighton Odhiambo Omollo (DW2). He testified that he was in the hotel eating. The deceased went to the hotel with some other two people who remained at the door. He went to the accused and demanded for his money. He insisted to be paid all his money. He (the deceased) went to the door and talked to the two people. He then returned to where the accused was and snatched the knife the accused had. There was a struggle over the knife. The deceased was stabbed by the accused as they struggled over the knife.
10. From the narrations of the witnesses, I am persuaded that the deceased was the aggressor. This why as he left to demand to be paid, he announced that he was going to demand for his money. Secondly, the prosecution witnesses went to the scene after the incident had started for they were attracted by the noises. They could not therefore be in a position to give an account of the events before the stabbing.

11. The evidence of Dr. Peter Ogola (PW4) was that the deceased had a single stab wound to the abdomen. The cause of death was severe haemorrhage secondary to the stab wound.

12. The upshot of the analysis of the evidence on record is that the prosecution has not proved its case against the accused person. I accordingly acquit him of the offence of murder and set him free unless if otherwise lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 22ND DAY OF JULY, 2021

KIARIE WAWERU KIARIE

JUDGE