



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL CASE (MURDER) NO. 07 OF 2017

BETWEEN

REPUBLICPROSECUTOR

AND

RICHARD ONYANGO OTITO.....1ST ACCUSED

JONES MAKOTA.....2ND ACCUSED

FREDRICK HOSEA.....3RD ACCUSED

ROSE AKINYI.....4TH ACCUSED

RULING

1. **RICHARD ONYANGO OTITO**, Accused 1 herein is charged with the offence of Murder Contrary to **Section 203** as read with **Section 204** of the Penal Code.

2. **JONES MAKOTA**, **FREDRICK HOSEA** and **ROSE AKINYI** who are the 2nd, 3rd and 4th accused persons respectively are charged with being accessories after the fact to murder Contrary to **Section 222** of the Penal Code. The particulars of the charge are that:

Well knowing that RICHARD ONYANGO OTITO did on 06th February, 2017 in Anyiko Sub-Location in Gem Sub-County within Siaya County murder ERICK OUMA ODONGO did on 06th February, 2017 and days thereafter assist the said RICHARD ONYANGO OTITO to escape punishment

3. In support of its case, the state called a total of fourteen (14) witnesses. From the evidence on record, only the evidence by **PW2 JAMESTONE OKATO** and **PW13 IP FRANCIS WAMBUA**, the investigating officer touch on the 2nd, 3rd and 4th Accused persons.

4. From the totality of the evidence by the said two witnesses, it is apparent that the 2nd, 3rd and 4th Accused persons were charged only for the reason that the statements they recorded during interrogation were similar.

5. Black’s Law Dictionary Tenth Edition by Byryan A. Garner defines accessory after the fact as:

A person who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon, in order to enable him to escape from punishment, or the like.

6. No evidence has been tendered to demonstrate that the 2nd, 3rd and 4th Accused persons either received, relieved, comforted or assisted anyone and more so the 1st accused in order to enable him to escape from punishment.

Disposition

7. As a result, I find the 2nd, 3rd and 4th Accused persons found **NOT GUILTY** of the offence of being accessories after the fact to murder Contrary to **Section 222** of the Penal Code and I order that they be set at liberty unless otherwise lawfully held. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 07th DAY OF November 2019

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi

Accused 1 - Present

Accused 2 - Present

Accused 3 - N/A

Accused 4 - Present

For Accused 1 - Ms Onsongo/Mr Yogo

For Accused 2, 3 and 4 - Ms Onsongo/Mr Otieno