



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL CASE (MURDER) NO. 25 OF 2019

BETWEEN

REPUBLIC PROSECUTOR

AND

JARED OMONDI OTIS.....SUBJECT

RULING

1. **JARED OMONDI OTIS**, the subject herein is charged with the offence of Murder Contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars of the charge are that:

On the night of 07th and 08th February, 2019 at Kanyakwar sub location in Kisumu Central Sub-County within Kisumu County murdered one EVANS EKADA

2. In support of its case, the state called a total of six (6) witnesses. **PW1 Cornel Ochieng Rakwaro** a resident of Obunga estate stated that at midnight on 07th and 08th February, 2019, he heard screams and heard someone say “Jaro why have you stabbed me with a knife”. He stated that he went to the scene and found two people struggling. He stated he had a torch that enabled him to identify the subject who was holding a knife and the other young man’s neck and that the subject ran away when he saw him. He stated that he walked to the man that the subject had been holding by the neck and who was then lying down and noticed that he was bleeding from the nose and mouth. He stated that he reported the matter to Ssgt Mutiso and to chief Maurice Ojwang and police arrived an hour later by which time the bleeding man had died and they removed his body to the mortuary.

3. **PW2 Fredrick Ochuka** stated that at about 12.20 am on the night of 07th and 08th February, 2019, he saw the subject whose clothes were bloodstained running while holding a knife. He stated that he immediately thereafter heard that someone had been stabbed to death and he proceeded to the scene where he found PW1 and several police officers and members of public and saw also saw the body of a young man whom he identified as Ababu.

4. **PW3 Jenepher Etyang** recalled that on 04.06.19, the subject who is indisciplined and doesn’t get well with people in Obunga Estate went to her vegetable kiosk and threatened to stab her the same way he had stabbed another Teso man. She stated that she reported the matter to the area chief and the subject was arrested and charged with this murder.

5. **PW5 Benjamin Osarit Kasimba** did not know how the deceased who was his brother in law died.

PW5 Ssgt Mengányi on 12.02.19 escorted two relatives of the deceased to Jaramogi Oginga Odinga Teaching and Referral Hospital Mortuary where they identified deceased's body to the doctor that conducted an autopsy.

6. **PW6 PC Cheren** on the night of 07th and 08th February, 2019 proceeded to the scene of crime with his colleagues where they found members of public and other police officers among them Ssgt Muteti who informed them that the deceased who was lying at the scene had been killed by mob. He removed the body of the deceased to Jaramogi Oginga Odinga Teaching and Referral Hospital Mortuary.

7. **PW7 Ssgt Mathias Muteti Mutiso**, the investigating officer stated that on the night of 07th and 08th February, 2019, PW1 informed him that someone had been stabbed to death within Obunga estate. He proceeded to the scene and found the victim and members of public who he heard saying that the victim had been killed by a mob. He called his colleagues who removed the body to the mortuary. The witness stated that on 04.06.19, PW4 reported that the subject had threatened to stab her as he had stabbed the deceased as a result of which he arrested the subject. Thereafter, he recorded statements from PW1 who stated that he had seen the subject stab the deceased and from PW2 who stated that he had seen the subject armed with a knife and had blood stained clothes on the material night and on their evidence caused the subject to be charged. He produced the deceased's autopsy report PEXH. 1 which shows that he was killed by a mob and had a penetrating injury on the left temporal occipital region and had died of subdural hematoma following trauma by sharp object.

8. I have considered the evidence on record. Both **PW1 Cornel Ochieng Rakwaro** and **PW2 Fredrick Ochuka** stated that they had information from the very day that the deceased was killed that it was the subject that was responsible. **PW7 Ssgt Mathias Muteti Mutiso** told court that the murder was reported to him by PW1 who informed him that the deceased was killed by a mob and not by the subject as PW1 stated in his testimony before this court. PW2 arrived at the scene immediately after the murder and finding PW7 and other police officers did not inform them that he had seen the subject running from the direction of the murder holding a knife and wearing blood stained clothes.

9. Armed with information from PW1 and other members of public that the deceased had been killed by a mob, PW7 informed his colleagues who went to collect deceased's body from the scene, including **PW6 PC Cheren** that the deceased was killed by a mob. This thread of information that the deceased was killed by a mob flows through the whole of the prosecution case including the postmortem report which clearly demonstrates this fact.

10. An analysis of the evidence by PW7 discloses that he obviously changed the concept that the deceased was killed by a mob on 04.06.19 after the subject allegedly threatened to stab PW3 the same way that the deceased was stabbed. Indeed, the subject was only arrested on 05.06.19 over three months after the deceased was killed not because of being a suspect in the murder case but for threatening to stab PW3. This fact is fortified by the fact that the statement of PW1 who alleged to be a witness to the murder was not recorded until 13.06.19, one week after the subject was arrested and about 4 months after the deceased was killed. The statement by PW2 who alleged to have seen the subject on the night of the murder running from the direction of the murder holding a knife and wearing blood stained clothes was also recorded long after the subject was arrested for threatening PW4.

11. The evidence by PW1, PW2 and PW7 properly evaluated falls in the category of what the Court of Appeal described in **NDUNGU KIMANYI vs. REPUBLIC [1979] KLR 282;**

“The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.”

12. From the foregoing analysis, I have come to the conclusion that PW1, PW2 and PW7 are persons of doubtful integrity, and therefore unreliable witnesses which makes it unsafe to accept their evidence.

13. In the premises, I am not persuaded that there is sufficient evidence to warrant this Court to put the subject on his defence because to do so would be an exercise in futility. The evidence on record is such that it cannot sustain a conviction in the event that subject is placed on his defence and he opts to remain silent.

14. Consequently, under the Provisions of Section 306 of the Criminal Procedure Code, the subject is hereby found **NOT GUILTY** and it is ordered that he be set at liberty unless otherwise lawfully held. It is so ordered.

DELIVERED AND SIGNED IN KISUMU THIS 21st DAY OF November 2019

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Amondi/Okodoi

Subject - Present

For the Subject -

For the State - Ms. Gathu