



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL (MURDER) CASE NO. 8 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

ZACHEUS APOT OKETCH.....ACCUSED

RULING

1. Accused person 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 **3rd February, 2015** at Kowiyo, Seme Sub-County within Kisumu County with another not before court murdered **Lameck Ogilo Nyakinda**

In support of its case, the state called a total of five (5) witnesses whose evidence I have summarized as follows:

2. **PW 1 Francis Olel**, recalled that on 3rd February, 2015, at about 1,00 pm, his grandson Tonny Omondi informed him that his mother was being threatened by the deceased. That he went to the house of Everlyn, his deceased son's wife and found her in the kitchen while the deceased was standing outside armed with a panga and a knife. That he raised an alarm and several people arrived at the scene and dissuaded the deceased from beating Everlyn and deceased went away. That at 8.00 pm on the same day, the witness received information that deceased had died.

PW2 Victor Okoth Ondieki, a bodaboda rider recalled that on 3.2.15 at about 4.00 pm, he carried 2 customers to Kombewa Police Station and later to Kombewa stage where he dropped them. He was stepped down before he could complete his testimony and was not recalled.

PW3 Joel Juma Olio, assistant chief Kadongo Sub-Location recalled that on 3.2.15 at about 12.00 pm, one Martin Okeyo informed him that the deceased had attacked a neighbor and he advised Okeyo to report the matter to police. That later at about 3.00 PM while he was at Polo Police Post, deceased who looked ill was taken there by accused, Victor Okoth Ondieki, Ben Okeyo and Francis Olewe and a bodaboda rider. That police advised accused and the here others to first take deceased to hospital. That at 6.00 pm the same day, he was called by police and he identified the body of deceased who had been found dead along Kisumu-Bondo Road.

PW4 Bernard Achieng Okeyo, a bodaboda rider recalled that on 3.2.15 at about 4.00 pm, he carried accused and another customer to Kombewa Police Station while PW2 carried two others. It was his evidence that one of the men carried by PW2 looked ill and that police advised them to first take the sick looking man to hospital. He said he dropped accused at Kombewa stage and went away.

5. **PW5 IP Lawrence Kiilu**, the Investigating Officer recalled that on 3.2.15, he was informed that about a man lying along Kisumu-Bondo road and upon arrival at the scene noticed that the man was dead. That before removing the body to the mortuary, he noticed that it had injuries on the back and on the limbs. That the body was also identified by the area assistant chief as that of a man that had inherited accused's mother. That in the course of investigations, he received information that deceased was attacked by a mob on 2nd and 3rd February, 2015 after it was alleged that he had attempted to defile accused's sister. That he also gathered information that accused had returned home from Kisumu on 3.2.15 and finding the deceased at their home injured took him to Holo AP Camp but police advised them to first take him to hospital. That on the way to hospital, the bodaboda rider abandoned the deceased since he was not able to support himself on the bodaboda and that's how he was later found dead. It ruled put poisoning. She produced the report as **PEXH. 2**.

6. At the close of the prosecution case, there is no doubt that the deceased died. The postmortem form, **PEXH. 1**, shows that deceased died of severe head injury secondary to blunt force trauma.

7. None of the prosecution witnesses stated that accused committed the unlawful act that caused the death of the deceased. Indeed the investigating officer confirmed that accused was not at the scene where deceased was allegedly assaulted by a mob after it was alleged that he had attempted to defile accused's sister.

8. The investigating officer also confirmed that accused's only role was that, finding deceased injured, he took him to the police station. He

conceded that police failed in their duty when they declined to receive the deceased or take him to hospital.

Disposition

9. As a result, I am not persuaded that there is sufficient evidence to warrant this Court to put the Accused person on his defence because to do so would be an academic exercise in futility.

10. Consequently Accused is hereby acquitted under the Provisions of Section 210 of the Criminal Procedure Code and it is ordered that he be set at liberty unless otherwise lawfully held. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 3RD DAY OF MAY 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Accused - Present

For Accused - Mr. Emukule

For the State - Mr. Muia