

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 76 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOHN OPONDO ODUOR.....ACCUSED

RULING

John Opondo Oduor faces a charge of murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the offence are that on the 5th day of August 2014 at Katwekera Village in Langata Area within Nairobi County he murdered C O O. The accused has pleaded not guilty to the charge. The prosecution has closed its case after the evidence of ten witnesses. The duty of the court at this stage of the trial is to determine whether the evidence by the prosecution witnesses establishes a *prima facie* case against the accused person. Section 306 of the Criminal Procedure Code requires the court to call upon the accused to make his defense where it finds that there is sufficient evidence establishing that the accused has a case to answer or recording a finding of not guilty and acquitting the accused where evidence against him is lacking.

I have considered the evidence of all the ten prosecution witnesses. In summary their evidence is that on 5th August 2014 at about 6.15am Rose Mueni, PW1, a resident of Katwekera in Kibera heard a child pleading with his father not to beat him. Mueni identified that child as the deceased and the father as the accused in this case. Mueni worked for Shining Hope for Communities an NGO based in Kibera. It operated a clinic among other community based programmes. Later on the same day at about 12.00 noon the deceased was taken to the Clinic where Mueni worked for treatment. Elizabeth Odede, PW2, testified that she received information from a certain woman that a child had been beaten by his father. This was on 5th August 2014. The woman led Elizabeth to home of the victim. Elizabeth confirmed the story and went to call Frederick Omondi, PW4, to assist her in bringing the child to the clinic. Elizabeth and Frederick worked for Shining Hope for Communities. They noted that the child whom they identified as the deceased had visible injuries on his body. They told the court that the deceased could not walk. Frederick told the court that he carried the deceased to the clinic and in the course of carrying him, the deceased managed to tell him that he had been assaulted by his father.

The deceased died on the same day while being treated at the Shining Hope for Communities Clinic. Diana Ayabei, PW6, a clinical officer working with Shining Hope for Communities testified that the deceased died as they were resuscitating him. According to Diana the deceased was in a semi-comatose state, could not talk or walk, his eyes and fingers were pale, a sign that he had lost a lot of blood. She said the deceased had a deep cut open wound on the left side of the forehead and bruises all over the body. She said that the deceased's pulse was weak and his blood pressure could not be recorded. She said that she gave him glucose and fluids to resuscitate him. She said that in the process of resuscitating him, the deceased started gasping. They administered CPR. After 30 minutes of vigorous CPR the deceased's cardiac activity ceased. Diana confirmed that the deceased had died at 10.45pm that same day.

Dr. Charles K. Muturi, PW7, examined the body of the deceased on 19th August 2014 at the City Mortuary. His observations were that the deceased had multiple extensive bruises on the upper and lower limbs. The right shoulder was dislocated and there were lacerations on the left forehead. Internally the deceased had multiple skull bruises and multiple brain contusions and right subdural haematoma. In his opinion the deceased died as a result of severe head injury due to blunt force trauma. The doctor produced the post mortem report as Exhibit 4.

At the close of the prosecution case, the Prosecution Counsel submitted that the prosecution has established a case against the accused and urged the court to place him on his defense. On the other hand, Mr. Wahome for the accused submitted that the prosecution has failed to make out a case against the accused and urged the court to acquit him. Mr. Wahome submitted the prosecution case is based on circumstantial evidence but there are other existing circumstances that weaken the chain of circumstances relied on by the prosecution. He submitted that the treatment administered by the clinical officer caused the death of the deceased. He submitted that the deceased had been well though weak from the morning of that day up to 12.00 noon when he was taken to the clinic and that his condition became weak and fatal after certain drugs and fluids were administered on him. Mr. Wahome urged the court to find that the evidence by the defense is sufficient to displace the circumstantial evidence. He further urged the court to apply the test that if the accused were to remain silent would the court convict on the available evidence.

I have considered all the evidence and the submissions and the cited authority *Republic v. Michael Muriuki Munyuri [2014] eKLR*. I agree with Mr. Wahome that the case is based on circumstantial evidence and that circumstantial evidence must meet certain parameters before it can be relied on to base a conviction on. I also agree with him on the test to be applied in determining whether to place the accused on his defense. I have considered that when Elizabeth and Frederick went to the home of the accused and the deceased, they found the deceased lying in bed with multiple injuries. They sought permission from his parents, the accused and his wife to take the deceased to hospital. I have taken into account that the deceased was in critical condition by the time he was picked from home and taken to hospital. The pathologist's report confirms how critical the deceased's injuries were. I am persuaded that the evidence adduced by the prosecution witnesses is sufficient to establish a case against the accused and it does establish a case against him. Under the provisions of Section 306 of the Criminal Procedure Code, I make a finding that the accused has a case to answer and shall be placed on his defense. I hereby inform him of his right to tell the court how he wishes to testify in his defense, whether by taking oath or without taking oath and whether he will call witnesses in his defense. Orders shall issue accordingly.

Delivered, dated and signed this 19th July 2018.

S. N. Mutuku

Judge