



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CRIMINAL (MURDER) CASE NO. 43 OF 2015**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**ERICK ODHIAMBO ACHIENG aka Daddy aka Woud Police.....ACCUSED**

**RULING**

1. **ERICK ODHIAMBO ACHIENG aka Woud Police**, the accused herein is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that:

**On 29th September, 2014 at Kamakowa area, Kisumu at around 10.00 am at Kanyamedha village in Kisumu East District, within Kisumu County murdered LODVICK OWINO ANYOSO**

2. The prosecution summoned only one witness in support of its case.

**Prosecution Case**

3. **PW 1 Hassan Abdalla Onyango**, the deceased's cousin stated that took the deceased to hospital where he died on 30th October, 2014 while he was undergoing treatment.

**ANALYSIS AND FINDINGS**

4. For Prosecution to secure a conviction on the charge of murder, it has to prove three ingredients against an Accused person. In **Anthony Ndegwa Ngari vs Republic [2014] eKLR**, the elements of the offence of murder were listed as follows:-

***(a) the death of the deceased occurred;***

***(b) that the accused committed the unlawful act which caused the death of the deceased; and***

***(c) that the accused had malice aforethought.***

5. Except for the evidence by PW1, there was no medical evidence to confirm the death of the deceased. Having said that, it would not be necessary to delve into the issue of *actus reus* and *mens rea*.

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

7. This case has failed mainly due to failure by the investigating officer to avail the doctor among other witnesses and such negligence on his part calls for action from the relevant authority. Consequently, I find that there is no evidence that the accused person committed the offence of murder that he is charged with. I find him NOT GUILTY and order that he be set at liberty unless otherwise lawfully held. It is so ordered.

**DATED, DELIVERED AND SIGNED THIS 6<sup>TH</sup> DAY OF DECEMBER 2018**

**T. W. CHERERE**

**JUDGE**

Read in open court in the presence of-

**Court Assistant - Felix**

**Accused - Present**

**For Accused - Mr Achura/Wafula**

**For the State - Mr Barasa**