

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL CASE NO. 73 OF 2012

BETWEEN

REPUBLIC.....PROSECUTOR

AND

COLLINS OMONDI OTIENO.....ACCUSED

RULING

1. The accused **COLLINS OMONDI OTIENO**, is charged with the murder of **SHADRACK NYAKAKO ATINDA** which took place on 3rd November 2012 at Kasogo Village, Miwani in Muhoroni District of Kisumu County contrary to **section 203** as read with **section 204** of the ***Penal Code (Chapter 63 of the Laws of Kenya)***. After the accused pleaded not guilty, the prosecution called 3 witnesses.

2. Dr Dixon Mchana (PW 3) testified and produced the post mortem report in respect of the deceased on behalf Dr Peter Omwenga who conducted the post mortem on 15th November 2012 at Ahero Sub-County Hospital. The significant finding by the doctor was that the deceased died as a result of a head injury which led to internal bleeding following trauma.

3. The deceased's wife, Beatrice Apiyo Atinda (PW 1) testified that on 2nd October 2012, the accused, who was their neighbour, attacked and assaulted her. She reported the matter to Miwani Police Station and was referred to hospital. She left home early in the morning on the next day to look for money and when she came back home at about 8.00am, her two-year-old grandson told her that the accused had cut the deceased. She found the deceased lying outside under a tree with injuries on his head. She arranged for a motorbike to take the deceased to Ahero District Hospital but was referred to Jaramogi Odinga Oginga Teaching and Referral Hospital where he was admitted. He succumbed to the injuries on 23rd October 2012.

4. PC John Njogu (PW 3) told the court that on 5th November 2012 at about 5.00pm, he was at Miwani Police Station when he received a call from a member of the public that the accused had been arrested on suspicion of murder. Together with other officers, he rushed to Kasogo Village where he re-arrested the accused.

5. I am now called upon to decide whether to put the accused on his defence. In this case, there is no evidence placing the accused in the vicinity where the deceased died. The only evidence connecting the accused to the death of the deceased is a statement by a third party who was not called as witness and who told PW 1 that her husband had been assaulted. Although there is motive to implicate the accused in the murder, such motive and suspicion cannot outweigh the evidence required to put the accused on his defence. Even if he remained silent, he would be acquitted. I therefore enter a verdict of not guilty against **COLLINS OMONDI OTIENO** in accordance with **section 306(1)** of the ***Criminal Procedure Code (Chapter 75 of the Laws of Kenya)***. The accused is acquitted and set free unless otherwise lawfully held.

DATED and DELIVERED at KISUMU this 5th day of April 2017.

D.S. MAJANJA

JUDGE

Mr Onsongo, Advocate for the accused.

Ms Barasa, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions, for the State.