

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL CASE NO. 74 OF 2012

BETWEEN

REPUBLIC PROSECUTOR

AND

NICHOLAS ODUOR OKUMU ACCUSED

RULING

1. The accused **NICHOLAS ODUOR OKUMU**, is charged with the murder of **MICHAEL MUHOMA** whom it is alleged he murdered on the night of 12th - 13th August 2009 at Tingare East Sub-Location, Ugunja District, Siaya County contrary to **section 203** as read with **section 204** of the *Penal Code (Chapter 63 of the Laws of Kenya)*.

2. The accused pleaded not guilty and the prosecution called 3 witnesses to prove its case which was based on circumstantial evidence. The case was that the accused was the last person to be seen with the deceased at 8.00pm on 17th August 2009. According to the postmortem done by Dr. Esiaba at Yala Sub-District Hospital, the cause of death was strangulation resulting into asphyxia.

3. The main issue for determination is whether the accused strangled the deceased. Charles Peter Osama (PW 1) testified that he saw the accused on the 12th August 2009 at about 8.00pm seated and talking in low tones. He did not talk to them. In cross-examination, he stated that they were not fighting or doing anything that would be termed as suspicious. Philister Akinyi Asango (PW 2) testified that she found the deceased's body on a road near her shamba and alerted the authorities. Corporal Edward Munene (PW3), the investigating officer gave an account of the investigation and admitted that the only evidence that led him to suspect the accused is that PW 1 was the last person to see him with the deceased on the previous day at 8.00pm.

4. Since I am now called upon to decide whether to put the accused on his defence, I must test the evidence to see whether it meets the test in *Ramanlal Trambaklal Bhatt v R [1957]EA 332*. I must be satisfied that a reasonable tribunal directing its mind to the law and the evidence would convict if no explanation is offered by the defence.

5. Apart from meeting the deceased, there is no other evidence pointing to the accused. There is no evidence of motive and given that the deceased was found dead in a public place means that he could be murdered by anyone between 8.00pm and the time his body was discovered in the morning. In my view, to put the accused on his defence would be like chasing the wind. If he remained silent no conviction could ensue. Accordingly, I enter a verdict of not guilty in accordance with section **306(1)** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)*. The accused **NICHOLAS ODUOR OKUMU** is acquitted. He is set free unless otherwise lawfully held.

DATED and DELIVERED at KISUMU this 4th day of April 2017.

D.S. MAJANJA

JUDGE

Mr Kirenga, Advocate for the accused.

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