

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRC NO. 10 OF 2012

PROSECUTOR REPUBLIC

VERSUS

MICHAEL ONYANGO LANGWER ACCUSED

RULING

The accused is charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The Information states that on 29th June 2011 at Yiro West Sub-location, Ugunja District then within Nyanza Province he murdered **Michael Oduor Okaka**, the deceased.

He denied the charge and at this stage this Court is required – see Section 306(1) of the Criminal Procedure Code – to determine whether it is satisfied that he committed the offence so as to call upon him to defend himself.

Having considered the evidence adduced it is my finding that there is no evidence that the accused killed the deceased let alone that it was of malice aforethought. The two witnesses, a daughter and widow of the deceased both arrived at the scene after the event and whereas the daughter (PW1) alleges to have seen the accused at the scene with a club, it was her evidence that she did not see him strike the deceased. From the evidence this heinous crime was committed by a mob – what the deceased's widow referred to as the people of Jolum. There appears to have been a fight between that clan and the deceased's clan because the Court heard that one Peter Odhiambo also died.

In the absence of direct evidence that the accused participated in the unlawful act that culminated in the death of the deceased or evidence that he acted in concert with the killers this Court is unable to conclude that he killed the deceased. Moreover despite numerous adjournments the prosecution did not call evidence as to the cause of death. In the premises I find the accused not guilty and acquit him at this stage. He shall be released forthwith unless otherwise lawfully held.

E. N. MAINA

JUDGE

30/5/2017

Ruling signed, dated and delivered in Open Court in presence of:-

Mr. Odumbe holding brief for Mr. Omondi T for the accused

Mr. Muia for State

Serah Sidera – Interpreter

Accused Person

INTERPRETATION: English/Kiswahili