

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 13 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOHNSTONE OPANDA OTEMO.....ACCUSED

RULING

Johnstone Opanda Otemo, hereinafter “the accused”, is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the night of 5th February 2016 at Kawangware Stage 56 in Dagoretti Sub-County within Nairobi County murdered Victor Odhiambo Otieino. The accused pleaded not guilty to this charge. He is represented by Mr. Wamywayi, advocate.

The evidence against the accused was presented to the court by seven prosecution witnesses. Christine Akinyi (PW1) was selling roasted maize and *omena* on the roadside at Stage 56 in Kawangware on the evening of 5th February 2016 at about 9.00pm when she witnessed two young men confront the deceased and another man. They snatched a phone from the deceased. The person who snatched the phone from the deceased was identified as the accused before the court. The deceased was at the time receiving a call on his phone. He and his friend ran after the thieves shouting for help. The thieves, one identified as the accused before the court, ran towards the home of one Irene where people had gathered for a funeral meeting. The people gathered heard the distress call and came out. They pursued the thieves and caught up with the accused. They recovered the phone from him. The phone was handed back to the deceased. Members of public threatened to lynch the accused but the deceased pleaded with them to let him go since he (deceased) had recovered his phone. The accused was allowed to go. The deceased complained that the cover of his phone was missing but he was persuaded by the members of public to let it be because he could buy another cover. Shortly after the accused returned, picked a stone and hit the deceased with it. The deceased fell down. He was assisted to St. Teresa clinic for treatment but he was pronounced dead. The accused was arrested and taken into police custody. After the investigations he was charged with this offence.

The body of the deceased was examined by Dr. Oduor Johansen (PW5) on 11th February 2016 at the City Mortuary. He formed the opinion that the deceased died of head injury due to blunt trauma.

I have examined this evidence. At this stage of the trial the court is not required to conclusively determine whether the evidence adduced proves the case beyond reasonable doubt. Suffice it to state that the case made out against the accused at this stage should be one “on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defense” (See **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332** and **Republic v Abdi Ibrahim Owl [2013] eKLR**).

I find that the evidence in the case before me establishes such a case and therefore my finding is that the accused has a case to answer. Consequently, he is hereby placed on his defense in compliance with section 306 (2) of the Criminal Procedure Code. This court hereby informs him of his right to address this court as to how he wishes to defend himself, whether by taking an oath or without swearing and whether he will call any witnesses to his defense. Orders shall issue accordingly.

Dated, signed and delivered this 7th June 2017.

S. N. Mutuku

Judge