



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MURDER NO.21 OF 2011

REPUBLICPROSECUTOR

VERSUS

JOHN ORIYO OJWANG.....ACCUSED

RULING

1. The accused person is charged with the Offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on the night of 25th and 26th March 2011 at Siriwo Sub-Location Siaya District within Nyanza Province murdered **JARED OKOTH OTIENO**.

In establishing their case the state called 7 witnesses whose evidence can be summarised as follows:

2, **PW1 PHELGONA ATIENO OMONDI** was at her shamba on 25.3.11 at around 9.30 a.m. together with her 3 children. One Evans decided to go for a short call when he stumbled onto a naked male body which was not far from the scene. Being afraid they decided to call the village elder who came with the assistant chief. They called the police officers who came and carried the body.

3. During cross-examination the said witness said that she got to see the body when being loaded to the police vehicle. She confirmed that she did not witness the person who killed the deceased.

4. **PW2 VICTOR ODHIAMBO NYASIO** told the court that he knew the deceased person. He told the court that on 26.4.11 he had a conversation with the accused. They were ploughing at the shamba when they saw the police land-rover passing his gate. He followed it to the scene where the body was. He further told the court that one Nicholas Otiemo who was being sought for by the police wanted to cut them with a panga. He said that the deceased used to pray for people and he would move from place to place.

5. **PW3 WASHINGTON OCHIENG** told the court that the deceased was his herds-boy who had left home at 6.30 p.m. on 25.3.1 to buy cigarettes at a shopping centre called Dip. He later heard that he had been killed. On Cross-examination he confirmed that he was not present when the deceased died.

6. **PW4 EVANS ODHIAMBO** is the son to PW1. He told the court that he was at the shamba with his mother when he decided to go for a call. He saw a naked body with stab wound inside a trench facing upwards. He knew the deceased who was working in the homestead next to his. Later the village elder and the police came and took away the body.

7. **PW5 DR. COLLINS OTIENO OGINGA** produced the post-mortem report on behalf of Dr. Bob

Otieno. The final analysis showed that the deceased had died due to haemorrhage as a result of fractured spleen and liver due to assault.

8. PW6 INSPECTOR CHARLES MOKAYA was the investigating officer. He produced the rungu which allegedly was used to assault the deceased. The said witness produced the statements of one Acting inspector Samson Kanyi, the investigating officer in this matter. The content of the said statement suggest that there was a confession by the accused person.

9. Having heard the witness the basic question is whether or not based on the prosecution evidence on record there is a prima-facie case to put the accused person on his defence..

10. There is no direct evidence linking the accused persons to the offence. The question now is whether there is any circumstantial evidence either. None of the prosecution witnesses saw the accused person with the deceased either on the evening of 25th when he left to buy cigarettes and as to whether he actually bought the cigarettes was not proved.

11. Apparently, inspector Kanyi was persuaded by the confession made by the accused to one Chief Inspector David Gituma. However in the absence of such evidence, the same holds no water.

12. In the premises and in agreeing with the defence counsel I am persuaded that there is no sufficient evidence to warrant me put the accused person on his defence. Neither do I establish malice aforethought on the side of the accused. I do not find any intention by him to cause the death of the deceased as per the provisions of Section 206 of the Penal Code.

13. Consequently the accused is hereby released under the provisions of Section 210 of the Criminal Procedure Code unless lawfully held. Orders accordingly.

Dated, signed and delivered this 10th November, 2015

H. K. CHEMITEI

J U D G E