



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/E017/2023

REPUBLIC VS HILLARY OCHIENG

JUDGMENT

THE OFFENCE

1. The accused, *Hillary Otieno Ochieng*, was 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 **23rd July 2023**, at *Jomvu area, Changamwe Sub-County, within Mombasa County*, jointly with another not before court, he murdered *Philip Rodi Opuk*.

2. THE EVIDENCE

3. Initially, the prosecution indicated that they
4. intended to call nine (9) witnesses, but only four (4) testified. None of them was an eyewitness to the incident. **PW1** was the landlord of the premises where the incident allegedly occurred, while **PW2**, the area village elder, was not even present at the scene at the material time. The remaining witnesses were the medical doctor who conducted the post-mortem examination, and the Investigating Officer.

Analysis of Evidence

1. Section 203 of the Penal Code defines murder as follows:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

1. From the above provision, the prosecution must establish the following elements to sustain a charge of murder:

- i. Proof of the fact and cause of death;
- ii. Proof that the death resulted from an unlawful act or omission by the accused; and
- iii. Proof that the act or omission was committed with malice aforethought.



Proof of Death and Cause

1. The fact of death was not disputed. The post-mortem report confirmed the same and detailed extensive injuries. The findings were summarized as follows:
 - **External Appearance:** Central and mild peripheral cyanosis; multiple healing frictional bruises on the left anterior chest and left shoulder; bruises on both elbows; swollen left orbital region; healing bruises on the left wrist.
 - **Respiratory System:** Extensive chest muscle hematoma, particularly on the left chest wall; hematoma on the sternum; fracture of the first right rib; extensive fibrosis of the right lung.
 - **Head:** Massive hematoma on the frontal and left orbital regions; extensive scalp hematoma; fracture of the occipital skull region; massive intracerebral and subdural hematoma; extensive brain edema.

The doctor formed the opinion that the cause of death was **severe traumatic head injury secondary to high-force blunt trauma.**

Linking the Accused to the Offence

1. No witness saw the accused assault the deceased. It was alleged that one *Bhisham Mgoko* had witnessed the incident, but despite the issuance of warrants of arrest and efforts spanning two years, he could not be traced. Consequently, the prosecution closed its case.
2. The deceased's brother and sister did not testify, nor did they cooperate with the Probation Officer when preparing the pre-bail report. This left significant evidentiary gaps in the prosecution's case.
3. In his defence, the accused attributed the injuries to drunkenness and an altercation involving a third party. He narrated how he attempted to assist the deceased by accommodating him, contacting his relatives, and arranging for medical and herbal treatment.

Determination

1. Upon evaluating the evidence, this Court finds that the prosecution failed to prove beyond reasonable doubt that it was the accused who inflicted the fatal injuries on the deceased.
2. **Malice aforethought** was likewise not established.
3. Accordingly, the accused is **given the benefit of doubt** and is hereby **acquitted under Section 322 (1) of the Criminal Procedure Code** of the offence of **murder contrary to Section 203 as read with Section 204 of the Penal Code.**

DATED, SIGNED AND DELIVERED at Mombasa (in open court/virtually via Microsoft Teams) this 14th November 2025.

HON. LADY JUSTICE W. K. MICHENI
JUDGE

In the presence of:

..MR NGIRI.....for the State
.....Mr Khamisi Salim.....for the Accused
.....Ms Bebora..... Court Assistant

SIGNED BY/FOR:



HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.

MOMBASA HIGH COURT

HIGH COURT CRIMINAL

DATE: 2025-11-16 00:27:47

