



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY
COURT NAME: MOMBASA HIGH COURT
CASE NUMBER: HCCRC/E002/2025
REPUBLIC VS FELIX JOMO AND SAMMY OMOLLO

RULING

THE OFFENCE

1. The two accused persons were charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code.
2. The particulars of the offence are that on the 22nd day of December 2024 at Solomon's Gate, Nyali Sub-County, within Mombasa County, jointly with others not before court murdered YUSUF JOSEPH MWANG'OMBE.
3. They pleaded not guilty and the State called 8 witnesses.

BACKGROUND

4. The case is a very unfortunate incident which captures the dangers facing our youth today and the challenges of modern day parenting. The late Yusuff Joseph Mwangombe was living with his parents, the father being Charisa Charo PW 2, and his siblings Emmanuel, PW 1, Yusuf, Monica and Jamila. On this ill fated, 22/12/2024, the family had dinner at around 9.00pm and the deceased and Yusuff retreated to their bedroom.
5. At around 10.00pm, PW 1 saw the deceased wake up and dress up. Upon inquiry the deceased said he was attending a party at a private enclosed place. This private place turned out to be a house within Solomons gate estate in Nyali. We get this from the evidence of Mohammud Amawi (PW 4) who testified that they left home at 10.30pm with the deceased. THAT one Mokwana was said to be hosting a birthday party in an airbab within Solomon gates estate.
6. PW 3 testified that they travelled in a Tuk Tuk to Solomon's gate. That an arrival, they met many young men outside the gate. That he was behind the deceased and it was dark. That the deceased



wanted to shake hands with these young men but they did not respond. That one of them asked them where the phone was but they did not respond. That they were ordered to stripe. He complied but the deceased did not. That one group was with him whilst another group was with the deceased. That when the deceased was ordered to remove his clothes, he declined and he (PW 4) heard him say "; Panda why are you embarrassing me?"

7. The name Panda or Pantha is the only evidence we had against the 2 accused persons. PW 3 Evaline Anyango, the mother to A1 testified that A1 goes by the street name Pantha from the programme pink panther because of his dark tint.

8. She testified that on 23/11/27 a crowd went to her home asking for Pantha and they told her that he had committed a crime the previous night. She told them that her son had been with her at 10.00pm the previous night. Nevertheless, she reported the incidence at Nyali Police Station and she picked A1 from his place of work at English Point and surrendered him to the police.

9. **The Law**

Article 26 of the Constitution of Kenya guarantees the right to life, providing that no person shall be deprived of life intentionally except as authorized by law.

The accused was charged under Sections 203 and 204 of the Penal Code. The elements of murder were articulated in **Republic v Andrew Omwenga [2009] eKLR**, namely:

- i. Proof of death and cause thereof;
 - ii. That the accused's act or omission caused the death (actus reus);
 - iii. That the act was accompanied by malice aforethought (mens rea).
10. The death was proved.

THE DEATH

11. There is no dispute as to this. The body was picked from Solomons gate by police officers, properly identified and a post mortem conducted. The said Postmortem shows the cause of death was Hemorrhagic shock secondary to penetrating sharp trauma on the epigastric region due to high force sharp trauma. It was an unlawful death as PW 4 said the group just descended on them intending to rob them.

WHETHER THE TWO ACCUSED PERSONS CAUSED THE DEATH

12. Despite the tragic end to this young life, tricky bit was on the identification. EVEN THOUGH we had a witness at the scene, do not know who the perpetrators are. PW 4 the eye witness, said he was at the scene but he says it was dark. That he did not see the attackers. At some point he mentioned classmates and that may imply he saw more than he was disclosing. Nevertheless, even the investigating officer testified that after analysing the evidence, there was no connection between the 2 accused persons to the offence because A1 was arrested because of his alias name black pantha and A2 was just rescued from a mob and there was no tenable evidence. Her recommendation was that an inquest be held. That when the file was taken to the DPP she was over ruled.

13. The prosecutor cross examined her on their correspondence and some recommendations for further investigations ,

but it would appear the gaps were not sealed. We remained with a shell of a case.

CONCLUSION



14. The burden of proof rests upon the prosecution and the standard of proof is beyond reasonable doubt.

In this case, there was no evidence to show that A1 was the only Pantha or the one the deceased referenced. There was no attempt to link A2 TO THE CASE AT ALL. Clearly, the case rested a Sandy soil and it cannot be sustained.

15. I find that there was no evidence adduced to link the two accused persons to the offence.

16. The two SAMMY OMONDI OMOLLO alias BLACK PANTHA and FELIX ODUOR JOMO are acquitted of the offence of murder contrary to Section 203 as read with Section 204 of the penal code under section 306 (1) of the Criminal Procedure Code.

17. They should be set at liberty forthwith.

It is so ordered

**Dated, signed and delivered in Open Court/online through MS TEAMS,
this 14th day of NOVEMBER 2025**

**HON. LADY JUSTICE W. K. MICHENI
JUDGE**

In the presence of: -

**THEIR ADVOCATE MR LISANZA
MR NGIRI FOR THE STATE
MS BEBORA COURT ASSISTANT**

**HON. LADY JUSTICE W. K. MICHENI
JUDGE**

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2025-11-15 23:45:16

