

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CRIMINAL CASE NO. E006 OF 2024**

**REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS**

**VERSUS**

**JIMMY IDEIT OMONYA.....**  
**ACCUSED**

**JUDGEMENT**

1. The accused person was charged with the offence of murder of Desmond Omoit Papa, on 15<sup>th</sup> August 2024, at Kakurkit village, in North Teso, within Busia County, contrary to section 203, as read with section 204, of the Penal Code, Cap 63, Laws of Kenya. He denied the charge, and a trial was conducted. 8 witnesses were presented by the Republic.
2. PW1, Evans Omonya Eyeloko, was a brother of the deceased. He stated that the deceased asked him to escort him to the police station, and he drove him there. The accused then asked him not to get into the police station, but to leave him outside. He testified that the accused did not divulge to him why he wanted to go to the police, but he later heard that the accused had allegedly killed someone, the deceased herein.
3. PW2, Geoffrey Okumu, was alerted, by his child, to a commotion that was allegedly happening at the roadside, near their home. He rushed there, and saw the deceased on the ground, with the accused stepping on him, saying that he, the deceased, was the one who was destroying his family. The accused then allegedly telephoned the local Assistant Chief, and reported to her that he had finished the person that he had reported to her earlier, as destroying his family. he also allegedly telephoned his brother, PW1, asking him to

come over, to take him to the police. PW1 came, on a motorcycle, and took the accused away. The police came later, and took away the body of the deceased. He stated that he had seen the deceased earlier, when he parked his motorcycle by the roadside, and leave, to a destination that the witness could not tell.

4. PW3, Esnas Ija, was the daughter of PW2. She was the one who alerted him to what was happening on the road. She allegedly heard a voice of someone, which she identified as that of the accused, telling another, that he, the other, was destroying his *boma*. She later learnt, from PW2, that that other person had died.
5. PW4, Nancy Imruon, was the Assistant Chief for that area. She testified that the accused telephoned her, and informed her that he had finished a person that he had found with his wife, in a compromising situation. She was not in a position to go to the scene, as she was in hospital, attending to a sick child, and she telephoned several persons, asking them to follow up the matter. Those individuals later called her, to inform her that that person had died. She learnt that that person was the deceased herein. She stated that the accused had previously reported to her about another man, called Samuel, who he accused of having an affair with his wife, but who denied the charge, after she summoned him.
6. PW5, No. 259333 Police Constable Joseph Muthami, was on duty at Moding Police Station, when the accused showed up, and reported to him that he had killed the deceased, after he found him in a compromising situation with his wife. The accused informed him that a crowd had formed at the scene, and wanted to subject him to mob justice. The same narrative was given to the officer who was deputising the Officer Commanding the Station, who also interviewed the

accused. He said that he had used a stone to kill the deceased. He later revised that to say he used a knife.

7. PW6, Dr. Omondi Barack, was the medical officer who performed postmortem on the body of the deceased, on 26<sup>th</sup> July 2024. He noticed injuries on the face, on the eyes, chest and head. Upon dissecting the body, he noted that some ribs were broken, on both sides of the chest. There was blood in the chest cavity. The heart too had blood, between the outer and inner layers, and there was a blood clot. There was also a fracture on the left side of the head, and the brain had blood. He concluded that the blood clot in the heart caused the shock, which stopped the heart. He opined that a blunt trauma could have also been caused by a fall on a hard surface.
8. PW7, No. 96383, Police Corporal Zafia Abdi, was the investigating officer. She detailed the steps that she took in the course of the investigations. PW8, No. 239082, Police Inspector Geoffrey Migiro, was the deputy head of the Moding Police Station. He mobilised officers to guard the station against a possible attack by angry villagers, in pursuit of the accused. He also led a team to the scene, where he found the body of the deceased surrounded by a crowd. He removed the body to the police station, and onwards to the mortuary at Kocholia. The accused was moved to Malaba Police Station, for safety.
9. I found the accused to have a case to answer, in my ruling of 31<sup>st</sup> July 2025. I put him on his defence.
10. He testified on oath, on 9<sup>th</sup> October 2025. He denied the charge, asserting that the witnesses lied. He said that when he got home, he found his children alone. They told him that their mother had been called by someone, whose name they did not tell him. He went in the direction that the children

said their mother had taken, into a maize farm. He found someone making love to his wife. He screamed, and people rushed to the scene. He rushed to the police station to report. The police kept him at the police station, while some officers rushed to the scene. He stated that he was later moved to the police station at Malaba. He stated that he did not know why he was detained at the police station. He said that he did not know that the deceased had been killed. He said he reported to the police that he had found someone with his wife.

11. The elements for the offence of murder are well settled. The prosecution is required to prove the death, the cause of it, the role of the accused person in the causation, and the fact that the causation was with malice aforethought.
12. On the proof of the death of the deceased, the evidence was overwhelming. PW2 saw the body lying on the ground, on the road. PW8, the deputy head of the Moding Police Station, saw the body at the scene, and removed it, and took it to the mortuary. PW6 was the medical officer who did the post-mortem on the body. Indeed, the deceased died. There was a death. The body was found.
13. On the cause of death, the evidence of PW6, the medical officer, is critical. He noted physical injuries on the body. He opened up the body, and noted head injuries, which had caused bleeding or haemorrhaging into the brain. There were numerous bone fractures, of the ribs and of the head. There was a blood clot in the heart, which, he opined, caused shock, which stopped the heart, causing the death.
14. On whether the accused was party to the causation, there was evidence that placed him at the scene. PW3 heard the commotion, and the voice of the accused, which she identified, whereupon she alerted PW2, who rushed to the

scene, and found the deceased on the ground, with the accused stepping on him, accusing him of wrecking his family.

15. There was evidence tendered by various witnesses, who either were at the scene, but did not describe it, or who did not go to the scene at all. PW4 did not go to the scene, but she testified that the accused telephoned her, and informed her, as the local administrator, of what he had done, which was to kill a person that he found in a compromising situation with his wife. The brother of the accused, PW1, testified that the accused called him, requesting to be taken to the police. He took him there. He did not disclose where he picked him from, but PW3 said that PW1 collected the accused from the scene. The evidence from the police was that the accused person took himself to the police, and sought sanctuary, as he had killed a paramour, that he had found in *flagrante delicto* with his wife.
16. In his defence, the accused denied that he killed the deceased, but his testimony tallied with that of the prosecution witnesses, in many aspects. Firstly, there was concurrence, that the whole incident had something to do with him finding the deceased in a compromising situation with his wife. Secondly, he said that he did rush to the police, to report the matter of finding someone with his wife, although he sought to say that he did not understand why the police detained him. The explanation that he gave, as to what took him to the police station, could not displace the narratives that came from the prosecution witnesses, which presented the background.
17. The accused impliedly attributed the death of the deceased to a mob. He stated that after he found his wife with the deceased, he raised alarm, and a crowd formed, and

he suggested, without expressly saying so, that it was that crowd which harmed the deceased. None of the prosecution witnesses testified along those lines. None of them talked of a hostile crowd attacking the deceased. Indeed, it would appear that it was the accused who was in danger from the crowd, hence he had to seek the assistance of his brother, to be rushed to the police station, for safety. The police had to mobilise, to protect or secure their station, from attack, from persons in pursuit of the accused. Indeed, he had to be moved away from the local police station, to another, further away.

18. My conclusion is that there was material, placed on record, to establish the role of the accused, in the causation of the death of the deceased.

19. On malice aforethought, the various ways it manifests itself are spelt out in section 206 of the Penal Code. There is direct intention to kill, sputtered out verbally or in writing. It could be inferred, from the conduct of the accused. One, where the injury caused it so bad that it can only be inferred that there was an intention to kill, or cause grievous harm, from which death occurs. Two, the injury is caused in circumstances which suggest an intention to commit a felony, of one kind or other, and death occurs in the process. Three, where the injury is caused in circumstances where there is indifference, on the part of the accused, as to the consequences of what he is doing, when he is expected to know that his conduct could cause a deadly injury.

20. The injury that caused death, according to PW6, was to the heart. The deceased had been given a thorough beating, which caused injury to various parts of his body, particularly around the face and the chest. There were fractures of the ribs, and of the bones of the head. There was haemorrhaging into the chest cavity and the brain. The blood collection in

the chest cavity caused blood clotting around or in the heart, which caused it to cease functioning. Such injury could only have been caused by a person, who either intended to kill, or cause grievous injury, or was indifferent to the consequences of what he was doing. The multiple serious injuries caused on the deceased, no doubt, pointed to malice aforethought.

21. I believe that I have discussed enough, to demonstrate that there is ample evidence that the accused did the deed of killing the deceased person herein, with malice aforethought. I, accordingly, find him guilty of the murder of Desmond Omoit Papa, contrary to section 203, as read with section 204, of the Penal Code, and I hereby convict her, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya.

22. For the purposes of sentencing, I hereby direct the Busia County Director of Probation and Aftercare Services to look into the antecedents of the accused, take the views of the family of the victim, and file a report within 14 days. A sentencing hearing shall be conducted, on 9<sup>th</sup> February 2026. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA,  
ON THIS 19<sup>TH</sup> DAY OF DECEMBER 2025.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

**Mr. Onanda, instructed by the Director of Public Prosecutions,  
for the prosecution.**

**Ms. Wasswani, instructed by Laki WI & Company, Advocates  
for the accused.**

