

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAPSABET**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. E087 OF 2021**

**REPUBLIC**.....  
.....**PROSECUTOR**  
  
**VERSUS**  
  
**JOSEPHAT ASMAN AKHALUKHA ALIAS**  
**ODIPO**.....**ACCUSED**

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**JUDGMENT**

**1.** The Accused, **Josephat Asman Akhalukha** also known as **Odipo**, is charged with the murder of **Hellen Chemasunde** [deceased] on the night of the 19<sup>th</sup> /20<sup>th</sup> August 2021 at Kirondo – Nandi East – Nandi County. The prosecution case against him was that the deceased and him lived together as husband and wife and on the night of the 19<sup>th</sup> August 2021 at about 8:00pm their neighbour **Geoffrey Peter [PW2]** accompanied by one **Derrick** found the deceased in a state of intoxication, but declined to take her home despite her request. Shortly thereafter, they met the Accused looking for the deceased and carrying an object. He requested them to assist him take her home.

**2. Geoffrey [PW2]** declined to offer the assistance and went home only to be later approached by the Accused for a candle and being told by the Accused that his intoxicated wife was at her grandmother's home. Earlier at about 8:00pm screams were heard near the home of **Millicent Vugunza [PW1]**. She proceeded to the scene of the screams in the company of neighbours and found the deceased on the ground crying loudly with the Accused standing next to her holding a black whip which he used to assault the deceased despite her state of intoxication.

**3. Millicent [PW1]** and her neighbours restrained the Accused and urged him to settle their dispute at home. He told them that his action of beating the deceased was due to her getting intoxicated at the market. He later took her to hospital with the assistance of a neighbour, but she passed away later. She **[PW1]** viewed the dead body of the deceased and noticed a stab wound. On the day that followed **Geoffrey [PW2], Eliud Maiyo [[PW3]** and a son to the deceased, **Amos Kiplagat Mutai [PW4]**, learnt that the deceased's dead body was found lying down on the ground near the farm of one **Tuwei**. They proceeded to the scene.

**4. Eliud [PW3]** and **Amos [PW4]** noted that the body had a stab wound on the chest. The police were notified. They arrived at the scene and removed the body to the mortuary at Nandi Hills Hospital where a doctor **Joseph**

**Kangol** carried out a post mortem and compiled the necessary report [**P. Exhibit 2**] produced herein by his colleague **Dr. Emmanuel Kipleting [PW5]**.

5. The post mortem report showed that the deceased died from severe haemorrhagic shock due to severe bleeding secondary to a stab cut wound through the chest cavity cutting through the right Aortic arch.

**Sgt. Benjamin Nyongesa [PW6]**, indicated that the suspected murder weapon was a long and sharp pointed knife [**P. Exhibit 1**] which was recovered in the one roomed house of the Accused who was traced later and arrested after allegedly escaping from the scene after the offence.

6. On being arraigned in court, the Accused denied the offence and continued doing so in his defence in which he stated that he was on the material night told by one Eric that the deceased was calling for him [the Accused]. The two proceeded to where the deceased was situated and found her on the ground extremely intoxicated. She requested to be taken home by him [Accused]. He carried her with the assistance of Eric who gave up and went away. He [Accused] was in the process of taking her home on his own when he was hit with a whip by an unknown person causing him to run away without returning back. He learnt of the death of the deceased a month thereafter.

**7.** The offence of murder occurs when a person intentionally causes the death of another. The intention may be manifested directly or indirectly by way of causing grievous harm to the victim.

The prosecution was therefore required to prove beyond reasonable doubt that the deceased herein was actually murdered and that the person responsible for the unlawful act was the Accused.

**8.** The Accused's defence was a denial of having caused the death of the deceased and an indication that a third party was responsible for the offence.

However, the Accused did not deny having been at the scene of the offence with the deceased prior to her death. This was confirmed by the prosecution witnesses in particular **Millicent [PW1]** and **Geoffrey [PW2]**.

**Millicent [PW1]** pointed out that the Accused was found at the scene assaulting his "wife" i.e. the deceased.

**9.** The doctor's postmortem report [**P. Exhibit 2**] showed that the deceased suffered grievous harm from which she bled to death. The degree of the injury left no doubt that the Assailant intended to terminate the life of the deceased and actually did terminate it by use of a sharp object which was later found with the Accused.

**10.** Although there was nobody who saw the Accused in the act of stabbing and fatally wounding the deceased on her chest the circumstances surrounding her death placed the Accused as the prime suspect.

He was seen at the scene assaulting the deceased, he was left alone with her, but was never traced at the scene or within his neighbourhood after the body of the deceased was found at the scene. He actually disappeared from the area before he was traced and arrested. The suspect murder weapon was recovered in his house.

**11.** All those factors pointed towards his criminal culpability for the death of the deceased and rendered his defence an afterthought. The allegation that he was hit with a whip by an unknown person as he was taking the deceased home was nothing short of a “bull and cock” story. This was aptly captured by the prosecution when it submitted as follows: -

**“It is not a coincidence that the Accused was seen with a dagger on the night of the incident and about two days later the body of the deceased discovered with a deep stab wound to the chest. Further the same dagger that was in the possession of the Accused [Exhibit 1] was retrieved from the house where the Accused and the deceased were cohabiting.**

**The only logic conclusion that flows from the foregoing set of facts is that the Accused stabbed the deceased using a dagger and thereafter fled to avoid capture until about a month later when he was brought to book.”**

This court cannot agree more with the submissions aforementioned.

**12.** It may be added that the disappearance of the Accused from the scene and area of the offence after its commission was a clear demonstration of his guilt and guilty mind. **[See, Malowa Vs. Republic 1980 KLR 110].**

Other than the direct evidence of the Accused assaulting the deceased provided by **Millicent [PW1]** the circumstantial evidence against him was water tight and justified an inference that he was responsible for the murder of the deceased to the exclusion of any other person.

**13.** This court is satisfied that the inculpatory facts are incompatible with the innocence of the Accused and incapable of explanation by any other reasonable hypothesis than that of guilt of the Accused. There was no demonstration of co-existing circumstances which

could weaken or destroy the inference of guilt [**See, Simon Muboke Vs. Republic [1958] E.A. 715**].

In sum, it is the finding of this court that the prosecution discharged its burden of proving its case against the Accused beyond reasonable doubt. The Accused is hereby found guilty as charged and convicted accordingly.

**Dated and Delivered this 2<sup>nd</sup> day of April, 2026**

**HON. J. R. KARANJAH,  
JUDGE**