

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CRIMINAL CASE NO. E007 OF 2025**

**REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS**  
**VERSUS**  
**BONFACE ITELA.....ACCUSED**

**JUDGMENT**

1. The accused person herein, Bonface Itela, faces a charge of murder. It is alleged that he murdered Alex Otoo, on 22<sup>nd</sup> January 2025, at Mogola village, Teso South Sub-County, within Busia County, contrary to sections 203 and 204 of the Penal Code, Cap 63, Laws of Kenya. He denied the charges, and a trial was conducted. The prosecution presented 9 witnesses.
2. PW1, Michael Omugogo, rushed to the compound of the father of the accused person, after he heard shouts, from there, about a thief. He found the deceased being beaten. He identified the assailants as the accused, August and Museveni. The assailants had a slasher and 2 cables. The deceased was beaten senseless, to a point that it was decided that he would be taken to hospital. PW1 entered the car which was to take him to hospital, with the accused, Museveni and August. The vehicle stopped at Mjini, where the deceased was removed from the car, and abandoned on the road, and the vehicle was driven back home. PW1 did not tell anyone about what he saw. After 3 days, he heard that the deceased had died. The police were referred to him, and he fled to Uganda. He was subsequently arrested, and he told the police all he knew about the matter.
3. During cross-examination, he said that he, Okas, Tom and Museveni were the persons who put the deceased in the vehicle. He said that Okas hit the deceased with the slasher, while Museveni assaulted him with the cables. He stated that the accused was not in the car that dumped the deceased, for he was left at the *boma*. He stated that he had not told the court who had assaulted the deceased, and that he

had not been told to say that the accused would be one of the accused persons.

4. PW2, David Odembo, was a fellow churchman with the deceased. He stated that Museveni visited him at his house, and informed him that he had found the deceased in his house with his wife. He showed him a picture, in his phone, of the deceased, and said that was the man he was talking about. Museveni informed him that they had just beaten the deceased, adding that if he, the deceased, managed to get up, he would be a man. He called someone, on his mobile phone, in his presence, and alleged that he was talking to the police. He advised him to take the deceased to the police. He agreed to go with him to the scene. He informed him that his 8 brothers were all around, and were involved in the beating. The next morning, PW2 went to the police, but he did not find the deceased there. He checked the hospitals and mortuaries, but to no avail. He later got information that the body of the deceased was at the mortuary, and he went there to confirm if that was true. He found the body there, with the face badly disfigured.
5. PW3, Dr. Michael Odhiambo, was a medical officer. He did postmortem on the body of the deceased. He saw a swelling on the frontal region of the face, but no bluish coloration, nor any defensive injuries. He said that there were blunt bruises on the anterior aspects of the leg. Internally, there was an intestinal bruise on the abdomen area, next to the navel. On the head, there was a diffuse intracranial hematoma on the frontal aspect, on the left cerebral region. He formed the opinion that the deceased died of massive intracranial haematoma, due to blunt injury to the head. He took samples, ostensibly for further examination.
6. PW4, No. 79277 Police Corporal Wycliffe Fundi, received the report that the body of the deceased had been found by the roadside in the Bugengi area. He and other officers rushed to the scene, processed it and removed the body to the mortuary. He stated that he did not investigate the matter, but went to the scene where the body was

found, and was party to removing it from that scene. He noted visible injuries on the head, and soiled clothes.

7. PW5, Sharon Marita Otoo, was not at the scene, but was called to identify shoes that were retrieved from a pit latrine, at the homestead where the deceased was allegedly assaulted. She said that the shoes belonged to the deceased, adding that he had even taken a photograph while wearing those shoes. She said that she had only heard that the deceased was killed by a Museveni.
8. PW6, Rose Ajiambo, was the mother of the deceased. She got informed that the deceased had been assaulted at some place, and had disappeared. She joined a search party, but they were unable to find him. The next day the police informed her that a body had been found at Bugengi, of a person who resembled her. She went to the mortuary, and found the body there, which she identified as that of the deceased. She was informed that he was killed by the husband of a married woman that he was associating with. The name she heard was that of Museveni.
9. PW7, No. 97110 Police Corporal Moses Maina Muraguri, was a scenes of crime police officer. He documented the scene at the homestead, at Wogola Village, where the deceased was allegedly assaulted at. He was shown a pit latrine by PW1, from where a black electrical cable was retrieved. He and his colleagues also retrieved a pair of black shoes, which were suspected to have had belonged to the deceased. He took photographs of the scenes and of the recovered items, which he produced as exhibits. He stated that he visited the scene for scene reconstruction, not investigation.
10. PW8, No. 238107 Inspector of Police Phares Makongo, received a phone call from Museveni, on the material day, who was his friend, informing him he had caught a person who had had conjugal connection with his wife. He said that he enquired from him whether the man had been assaulted, and Museveni said he had not, and he advised him not to beat him, but to escort him to the police. The following day, he received a call informing him that a body had been

recovered at the Bugengi area, and he arranged for it to be removed to the mortuary. He testified that the suspect that he knew in connection with the case was not in court.

11. PW9, No. 81501 Senior Seargent of Police Fredrick Muyodi, was the investigating officer. He detailed the steps that he took, with respect to investigations in the case, which led up to the arrest of the accused, and his arraignment. He stated that he arrested the accused, on the basis of information given to him by PW1, which indicated that PW1 witnessed as the accused assaulted the deceased with a black cable, removing the clothes of the deceased, and hitting his testicles with the cable. He said that apart from the cable, he had nothing else against the accused person. He stated that he did not interrogate the accused person, but he interviewed him, and established that he was a teacher, at St. Teresa's. He said that, from his investigations, Museveni was mentioned as the primary suspect, but he also got the impression that the accused was one of the principle suspects.
12. On 2<sup>nd</sup> February 2026, I delivered a ruling, where I found and held that a *prima facie* case had been established against the accused person, to warrant his being required to present a defence. A defence hearing was conducted. The accused person made a sworn statement, and called witnesses.
13. The accused person, Bonface Itela, testified as DW1. He denied killing the deceased. He testified that on the material date and time, when the deceased was allegedly assaulted, he was at school, where he worked as a teacher, discharging his duties as such. He said that at about 7.00 PM, that day, he was supervising students and staff at suppertime. After that he went to class, where he taught Grade 9. He was in class till 7.55 PM. He did some MPesa transactions, relating to a student, whose pocket money he was handling, before he marked some classwork, for some students, at about 8.00 PM. He produced an exercise book for a student, known as Victoria Isapuke, as an example. At about 8.10 PM, he went to the dining hall, where he was to assist in preparing a group of students for drama competition,

with another teacher, identified as Sr. Cecilia. The rehearsals went on till 9.00 AM. After that he and Sr. Cecilia handed the pupils over to the boarding master, after which they went to the office of the Senior Teacher, Mr. Paul Okamar, to sign out for the day, where they signed a record to that effect. He stated that he signed the said book at 9.20 PM, and that he had earlier signed in, on the same book, at 7.30 AM. After that he parted with Sr. Cecilia, who went to the convent, while he retreated to his house.

14. He said that his father's home was 6 kilometres from the school, at a village called Mogola. He said that that home was occupied by the first family, while his mother's family lived at Mumias, in Kakamega County. He said that he did not know about the events of the evening of 22<sup>nd</sup> January 2025, at his father's home at Mogola. He identified Museveni as his stepbrother. He said he was unaware of any love affair between the deceased and the wife of Museveni. He stated that he was arrested at school.
15. DW2, Solomon Okiriam Emomeri, was a watchman, at the school where the accused worked. He identified the accused as a teacher at the school. He testified that the accused was at work, on the material day and time of the alleged assault. He stated that he went to the dining hall at 6.30 PM, to pick up his supper, and he saw the accused there, assisting other workers with serving food to the pupils. At 7.00 PM, a bell rang, for evening classes, and he saw the accused in one of the classrooms, teaching. There was a break at 8.00 PM. He saw the accused move, after the break, to the dining hall, where some pupils were preparing for drama competition. Those pupils dispersed at 9.00 PM, and went to bed. He said that at 9.45 PM, the accused was in his house. He stated that other members of teaching staff were also present that evening, including Sr. Cecilia, Mr. David Onyango and Senior Teacher Paul Okamar. He said that he did not see the accused leave the school at all, that evening.
16. DW3, Sr. Cecilia Akello Onyiego, was one of the teaching staff who was at school that evening. She identified the accused person as one of the teachers at the Junior School section. She said that she

came to the school some minutes to 7.00 PM, to prepare for mass, as she was in charge of liturgy. While she was busy with that, essentially choir practice, the accused was busy in class, teaching. After that both she and the accused were involved, at the dining hall, with preparing a group of pupils, for drama. That went on until 9.00 PM. After the drama preparation, the 2 teachers went to the office of the Senior Teacher, to sign out, at around 9.20 PM. They parted ways after that, each going to their respective residences. She asserted that between 7.00 PM and 9.20 PM, the accused was within the school compound. According to her, it would be a lie to say that he was, at that same time, 6 kilometres away, killing someone.

17. DW4, Paul Okamari Oduori, was the Senior Teacher at the school where the accused worked. He identified the accused as a teacher at the Junior School wing. He testified that both he and the accused were at school on the material day and time, when the killing allegedly happened. The Senior Teacher was at school, to ensure that the pupils attended evening preps. He said that he saw the accused enter one of the classrooms, and conduct a lesson, until 8.00 AM. He also saw him at the dining hall, preparing students who were in for rehearsals. He said that the accused was one of the teachers involved in supervising the pupils preparing for drama festivals. The preparations ended at 9.00 PM or thereabouts, and he saw the accused and DW3 in his office, where they had come to sign out. They signed the relevant records, and left thereafter. He asserted that the accused was in school throughout, and could not have participated in the killing of the deceased.

18. DW5, Julius Otakweny, was a neighbour of the father of the accused. He stated that he did not hear any commotion, at the home of his neighbour, at 7.00 PM, on 22<sup>nd</sup> January 2025. He said that he did not, in fact, hear any fracas in the village, whether by way of quarrelling, fighting or screaming. He said that that night, at that village, was quiet that evening, till the morning of 23<sup>rd</sup> January 2025. He said his home was 60 metres from the home of the father of the accused. He said that PW1 came from the same clan or family with the accused. He described PW1 as a petty criminal, who was not

reliable, suggesting that he perhaps lied to the court, as he was party to the killing. He stated that the mother of the accused lived in Mumias, and so did the accused. He asserted that there was no possibility of the accused being at the home of his father at Mogola, given that that day was a working day.

19. DW6, Fredrick Ogwana, was another resident of Mogola village. He stated that the accused did not live at Mogola village, but in Mumias, where his father had a business, where he lived with the mother of the accused. He said that he heard no commotion on 22<sup>nd</sup> January 2025. He said that his home was 200 metres from the *boma* of the father of the accused, and any screams or shouts from there could be heard. According to him, it would be a lie to say that there was a commotion there, and that someone was killed there that evening. He said that he heard on radio, the next day, that a body had been collected at Bugengi. He said that Bugengi was far from Mogola village.
20. The parties did not, at the close of the oral hearings, file final written submissions.
21. The offence of murder has 4 elements: proof of the death, the cause of it, the role of the accused in the causation, and malice aforethought. A conviction should be founded upon these elements being positively proved.
22. On proof of the death, PW2 and PW6 saw the body at the mortuary. PW4 was among the police officers who removed the body from the scene of its dumping. PW3, the medical officer, performed postmortem on the body. Proof of the death was overwhelming.
23. On the cause of the death, PW3 did an autopsy on the body, and noted injuries on the head and the abdomen. He noted a diffuse intracranial haematoma, which he opined was the main cause of the death. He described it as a blunt injury to the head.

24. On the role of the accused, in the causation of the death, the prosecution presented only 1 eyewitness, PW1. He said that he heard commotion at the home of the father of the accused, and rushed there, where he found the accused and others assaulting the deceased. He said, *“I saw someone being beaten ... I found it was Alex. He was being beaten by Bonface, August and Museveni.”* He did not give details, at examination-in-chief, of what each of those alleged assailants did to the deceased. However, at cross-examination, which was founded on his recorded statement, he did give those details. He talked of what Museveni and Okas or August did. He made no mention of the accused. He said:

*“I talked of Okas holding an electric cable. In my statement. I also say Museveni took cable from Okas, and beat Alex with it. I was not among those who hid the cables. They were put in a pit latrine. It was Walter who did it ... Okas was the one holding the slasher. He used it to hit the deceased. Museveni hit the deceased with the cables.”*

25. No other eyewitness testified. The police said that the key suspects fled, and the other persons present were mean with information. PW9, the investigating officer, gave a detailed narrative of the role that the accused allegedly played in the assault of the deceased. He talked about how PW1 informed him that he found the accused beating the deceased, with a black cable, and how he, the accused, hit the deceased with the cable on the testicles. Yet, PW1 did not give any such details, when he testified. He did not give any particulars, to the court, of what the accused was armed with, and where he hit the deceased with whatever he had in his hand. He merely made a general statement, that the accused was among those that he saw beating the deceased. PW9 was not present at that scene, he was just an investigator. The main source of his information was PW1. PW9 could not, possibly, be expected to know more about what transpired, at that event, than his own alleged eyewitness informant. At postmortem, no injuries were noted on the testicles, for PW3, in the postmortem, reported the genito-urinary system to be grossly intact.

26. The other issue is about the role of the accused in the dumping of the deceased, by the roadside. During examination-in-chief, PW1 stated that the persons who entered the car, which removed the deceased from the scene of the assault, included the accused. He said, *"I was in the car. We were 4. Museveni, August and the accused and I."* In cross-examination, he removed the accused from that list, saying that the accused was left at home. He said, *"It is I, Tom, Okas, Museveni who put the deceased in the vehicle and dumped him ... The accused was left at the boma, as we took the deceased away in the car."*
27. The evidence, presented by the prosecution, on the role of the accused in the events of 22<sup>nd</sup> January 2025, is hazy. Other than the general statement, by the eyewitness, that the accused was among those who assaulted the deceased, there was no detail or particulars, from that witness, on the exact role that the accused played. While there were details of what Museveni and August or Okas did, inclusive of the weapons or arms used, there was no such detail or particulars on the part of the accused. On the dumping of the deceased, PW1 made contradictory or inconsistent statements. In examination-in-chief, he said that the accused was in that party, but, at cross-examination, he said that he was not.
28. The accused person denied being at the scene, when it all happened. His defence was in the nature of an *alibi*. His case was that he was at his place of work, actively working. He presented 3 witnesses, all of them his workmates, who gave clear testimonies on how they were with the accused throughout that evening at school, where he was busy assisting with serving supper to the pupils, teaching, marking scripts and supervising drama practice. The prosecution did not make a serious effort at undermining those testimonies, and the accompanying evidence. The issue, of the accused being elsewhere at the material time, was raised with PW9, during cross-examination, on whether he conducted investigations on that angle, and he said that he did not.
29. So, there are 2 versions, on whether the accused was present at the scene of the fatal beating of the deceased. PW1 testified that he

was, while the accused testified that he was not. The testimony of PW1, on the presence of the accused person, at the killing, was not supported by other evidence, while that of the accused was supported by the testimonies of 3 of his workmates. The testimonies of the 4 were flowing and corroborative of each other.

30. I am inclined to find weight in the defence evidence, that the accused was not at that scene. I make that finding, influenced by my holding, hereabove, that PW1 was vague on the role that the accused person played in the causation of the death. He gave no details, of what the accused exactly did, given that it was said that many other people were involved, other than claiming that the accused was among those who assaulted the deceased. He did not talk about what he was armed with, nor describe the weapon he used to commit the assault. The dumping of the gravely injured deceased person, must have contributed to the death, for he was still alive, according to PW1, when he was dumped, and he, possibly, might have lived, if he had gotten prompt medical intervention. PW1 was vague on the role of the accused person in that dumping. With one side of his mouth, he said he was present, with the other, he said he was not.

31. There was another aspect, which cast some shadow on the reliability of the testimony of PW1. In examination-in-chief and cross-examination, he said that it was shouts and noise at the home of the father of the accused that attracted him there. However, when confronted with his own statement, he conceded that he had informed the police that when he got into that home, he found the place quiet, and nothing was happening there, and there were not many people. He said that his home was some 100 metres away, from the scene of the beating. 2 witnesses testified for the defence, who were also neighbours of the father of the accused. The home of one of them was just 60 metres away. Yet, these other neighbours, one of whom was closer to that home than PW1, did not hear any commotion, which would have drawn them to that home at that material time, if at all there was any such commotion.

32. Additionally, PW1 was an active player in the events. He was not a mere spectator, contrary to the image of himself that he sought to portray to the court. Although he alleged that he was attracted to that scene by commotion, and merely looked on as the assault unfolded, yet when time came for the disposal of the deceased, he found himself in the vehicle that transported the deceased from the scene of the assault to the place of his dumping. That made him privy or party to the goings on. Although he had firsthand knowledge of what transpired, he did not make any effort to report to the police, or other State authorities responsible for security, and maintenance of law and order. He was only arrested after someone else mentioned his name, as having been among those present, and, perhaps, as an active participant. He was an accomplice, and his testimony should be treated as accomplice evidence. He, in his own words, fled to Uganda. Upon his arrest, he remained in custody, as a suspect for the murder, for 1 month, but a decision was made to use him as a prosecution witness, rather than as a suspect. For all purposes, he was complicit.

33. The one thing, that is certain, is that PW1 was what is called an accessory after the fact. The deceased was badly injured, to a point of death. He was disposed of, before he died, by way of being removed from the primary scene of his beating, to a secondary scene, of his death, so that, were he to die, he would not die at the homestead of his assailants, for that would incriminate them in his killing. His dumping was meant to distance them from the crime of either causing grievous harm or injury to him or in connection with his death. His removal, from the primary scene, was an effort to conceal either crime. PW1, if he did not actually participate in the actual assault on the deceased, was party to moving him from the primary scene, to conceal the evidence or the crime, which was itself an offence. I reiterate, that his dumping, by the roadside, at night, exposed him to the elements, and, in all probability, accelerated his death, which, no doubt, made everyone involved in the dumping, inclusive of PW1, complicit in the death.

34. There was also the disclosure, by himself, that his father sold land, for Kshs. 700,000.00, after his arrest. There was a suggestion,

that the decision not to prosecute him, might have been influenced, given his role in the affair, and his conduct in the aftermath. There was no proof of that allegation, for it remained in the realm of a mere suggestion, but it ought to be one of the things or factors, to weigh, in the mind of the court, when taken alongside everything else.

35. In the end, I am not persuaded that there is proof, beyond reasonable doubt, that the accused person played a role in the causation of the death of the deceased herein, in the circumstances.

36. On malice aforethought, the same is defined in section 206 of the Penal Code. It is about intention to kill, and knowledge that certain acts could cause death, yet the perpetrator engages in them, regardless. The intention could be direct, where the perpetrator voices or utters or expresses that he was going to kill. It could be indirect, to be implied from the conduct of the perpetrator, which causes or leads to the death.

37. The deceased herein died of injuries from the assaults on him, by a group of people, using assorted crude weapons. PW1 was an eyewitness, and a possible participant. He described what befell the deceased. The injuries were confirmed by PW3, from the postmortem exercise. Whoever inflicted those injuries, given that they led to death within hours of their infliction, must have intended to cause death, or to cause grievous harm, or to commit some felony, or were indifferent that the beating, they were meting on the deceased, could lead to his death. The said assaults were with malice aforethought, on the part of whoever was responsible. However, in view of the conclusion that I have made above, there is insufficient evidence, to connect the accused to the fatal injuries.

38. PW1 identified the actual assailants of the deceased as Museveni and Okas or August. Museveni had the motive. It was his wife with whom the deceased was romantically or sexually linked. PW8, a police officer, and a friend of Museveni, said as much. PW2 also testified to the same effect. Other individuals, such as Tom, Okas, Walter and PW1, were named as involved in concealing evidence, by

way of either removing the deceased and dumping him by the roadside, or disposing of the items used to assault the deceased. These are the individuals that the police should have pursued, and prosecuted, and not the accused, who appears, from the recorded evidence, to be tenuously linked to the whole affair.

39. Overall, there is inadequate evidence to establish malice aforethought, on the part of the accused person, in the causation of the death of the deceased, from the evidence recorded herein.

40. In view of everything said above, I do hereby find and hold that the prosecution has not established, beyond reasonable doubt, that the accused person herein, is guilty of unlawfully causing the death of the deceased, Alex Otoo, on 22<sup>nd</sup> January 2025, contrary to sections 203 and 204 of the Penal Code. I, accordingly, acquit him, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya. The surety shall be discharged, and the security deposited, if any, shall be released to him. Orders accordingly.

**DELIVERED, VIA MICROSOFT TEAMS, DATED AND SIGNED, AT  
MILIMANI, NAIROBI, ON THIS 10<sup>TH</sup> DAY OF APRIL 2026.**

**W MUSYOKA  
JUDGE**

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

**Advocates**

**Mr. Tony Onanda, instructed by the Office of the Director of Public Prosecutions, for the Republic.**

**Mr. Tony Omeri, Advocate for the accused person.**

COPY