



**Republic v Wambo (Criminal Case E035 of 2022)
[2024] KEHC 2827 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE E035 OF 2022**

**KW KIARIE, J
MARCH 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSHUA OTIENO WAMBO ACCUSED

JUDGMENT

1. Joshua Otieno Wambo is charged with an 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 23rd day of October 2022, at Kombe village, in Mbita Sub County of Homa Bay County, jointly with another, murdered Daniel Otieno Akacha.
3. The deceased and the accused were among the people taking chang’aa in the house of Mama Isah, also known as Mama Alafu. When the accused stepped out, the deceased followed him there, and the two were found struggling. After they were separated, the deceased complained of pain in his stomach. He did not have any physical injuries. He later succumbed and died. The cause of death was cardiac arrest (cardiac hypertrophy).
4. Joshua Otieno Wambo, the accused, in his defence, contended that when he was smoking, the deceased complained that the smoke was affecting him. He, therefore, went out to smoke. The deceased followed him there and started beating him. He held him, and they fell while struggling with each other. They were separated, and he went home.
5. The issues for determination are:
 - a. How did the incident that led to the death of the deceased occur;
 - b. Whether the accused can be held responsible for the death of the deceased; and



- c. Whether the offence of murder was proved against any or all the accused.
6. Both the prosecution and the defence paint the deceased as the aggressor. The evidence that both parties adduced indicates that when the accused went to smoke from outside after the deceased had complained that the smoke was affecting him, the deceased followed him there. According to the accused, the deceased then started to beat him, and a struggle between the two ensued.
 7. Issa Otieno Owano (PW4), from whose house the accused, the deceased and others were taking chang'aa, said she heard the accused ask the deceased why he was injuring him.
 8. The evidence of William Ouma Agola (PW1) was that after they separated the two, he did not see any physical injury on the deceased.
 9. Dr Odhiambo conducted a post-mortem on the body of the deceased. He reported that no external injuries were noted. He, however, noted cardiac enlargement. He was of the opinion that strenuous activity in a patient with a dysfunctional heart can result in cardiac arrest.
 10. The deceased was the aggressor; although his death is regrettable, it cannot be blamed on the accused at all.
 11. I find that the prosecution has not proved the offence of murder against the accused. I accordingly acquit him and set him free unless, if otherwise, lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 20TH DAY OF MARCH 2024

KIARIE WAWERU KIARIE

JUDGE

