



**Republic v Otieno alias Aboi (Criminal Case E013 of 2022)
[2024] KEHC 6565 (KLR) (31 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6565 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E013 OF 2022
MS SHARIFF, J
MAY 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

BASIL OMONDI OTIENO ALIAS ABOI ACCUSED

RULING

1. The accused person herein Basil Omondi Otieno alias Aboi was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63 Laws of Kenya.
2. The particulars of the offence are that on the 5th day of May 2022 at Kombedu village, Kanyamedha Location in Kisumu West Sub County within Kisumu County murdered one Ismael Salle Asman.
3. During the trial, the prosecution called 8 witnesses to support their case.

Analysis and determination.

Whether or not a prima facie case has been established to warrant the accused person to be put on his defense or not.

4. PW1 stated that on 05/05/2021, she was at home towards 9.00 pm while she was cooking, when a certain girl called her out and when she asked who the girl was and the girl replied that she was Anyango sister to Otieno. Anyango narrated that Ismael had been killed. She said that Ismael had been killed by Aboi. PW1 then accompanied Anyango to the scene and on their way they encountered a young man who was running and he informed them that Ismael had been killed and that the body was lying at Kisumu East Hospital. It was the testimony of PW1 that while at Kisumu East District Hospital, they met a gateman who informed them that the man who was brought in with wounds on the body had been referred to Jaramogi Oginga Odinga Teaching and Referral Hospital. At 9.00 pm PW1 together with Billy, Eddy and Emmanuel arrived at Jaramogi casualty department and found Ishmael being



- attended to by the doctors. When PW1 asked Ismael what had happened, Ismael said that Aboi had stabbed him with a knife severally. He later passed on 06/05/2021.
5. PW2 Jashon Odhiambo Okumu stated that he was a student at Riat undertaking Diploma in Engineering. On 05/05/2021 he was working as a sales person at Waziri Wines and Spirit near NITA College next to Kisumu International Airport. He stated that at 1.30pm while on duty, Aboi came and ordered some liquor and before he could serve him, Aboi was joined by three other people namely, Nico, Brian and Ismael. While drinking another man came by the name Mteso who ordered for Bond 7 and he was served. Mteso then went out to an M-pesa shop and when he came back, he inquired whether he had left his phone on the counter or on the table where he was seated while taking his liquor. PW2 directed Mteso to trace the footsteps to M-pesa and find out if he could have dropped the phone on his way. Mteso returned and said that he suspected Ismael for the loss of his phone. Ismael had been standing next to him. Mteso later on left given that young men also left at around 8pm in the evening but before he exited he stated that anyone who had stolen his handset will not live to utilize the proceeds of sale of that handset. It was the testimony of PW2 that on his way, he found Ismael bleeding and shading tears. He also found Brian and Nico together with a chemist man attending to Ismael.
 6. 3 Dr. Robert Omondi stated that he conducted a postmortem on 6/5/2021 of one Ismael Saleh Asman and came out with the following findings.
 - i. Chest stab wounds
 - ii. Abdomen stab wounds with blood stains on the body on the external parts of the body.
 - iii. Penetrating injury on the left interior chest wall into the left lung and heart with severe hemorrhage about 17cm.
 - iv. Suprapubic penetrating stab wound which is about 6cm in length.
 7. PW3 concluded that the cause of death was due to severe hemorrhage over penetration injury to lung and heart due to the assault.
 8. PW4 Nicodemus Oyoo stated that on 5/05/2021, at about 7.30pm he met Ismael, Brian came and they both went to drink, Aboi was also in the company. Aboi bought Kibao quarter and they started drinking. Another man by the name Mteso came, he had a phone in his sweat short. Ismael got his hand into Mteso's sweat short, took the phone and gave it to Aboi, Mteso left but came back immediately and demanded for his phone. Mteso said that whoever took his phone will not eat. It was the testimony of PW4 that Aboi and Ismael started arguing on who to have the phone, Aboi then said they should sell the phone and share the money. PW4 testified that he heard Ismael shout that "Aboi you are knifing me over a phone" Aboi then took the phone and ran away.
 9. PW5 Polycarp Lutta Kweya a Principal Government Chemist took blood samples of Ismael Salleh Asman the deceased and soil sample to carry out a DNA analysis. He found that the DNA profile generated from blood status on soil marched the DNA of Ismael Saleh Asman the deceased. He prepared the report and signed it on 17/07/2023.
 10. PW6 Brian Derick Omondi stated that he is a Tuk Tuk driver and that on 05/05/2021 at 8PM he was with the deceased seated a near container where wine and spirits are sold. He stated that Basil Omondi came with his wife and bought wine at the container. There was Mteso who also came, the deceased was standing next to Mteso, he picked the phone and handed it over to Basil who put the handset in his pocket. It was his testimony that the deceased and Basil started arguing on who was to take possession of the handset. PW6 stated that an argument ensued and Basil drew out a knife and he saw Basil stab Ismael on the left side of the abdomen.



11. PW7 No. 241244 Inspector of Police Paul Masika Kureba stated that he was assigned the case of murder by his boss DCI Mr. Kavoo. The report was made at Kogony Police Post vide OB 11/6/5/2021, the incident occurred at Kombudu market Centre at Kanyametha Location. He stated that at 11AM they went to the scene and collected soil samples soaked with blood, they interrogated few people and they were informed that a suspect known as Aboi and the deceased were friends and were known notorious gang who used to walk welding knives and stealing from people within Kombudu market. PW7 found that on 5/05/2021, the deceased and Basil had stolen a handset, they then disagreed and a fight ensued. The accused stabbed Ismael the deceased on the left side of the abdomen and the chest. PW7 started tracing the accused. One year later the accused was arrested at Gem Akala and he was booked at Akala Police Station. The accused was then taken to Maseno Police Station, he was later on charged in court with the offence of murder.
12. An analysis of the above evidence clearly reveals that the accused person stabbed the deceased to death due to their difference over the possession of a handset stolen by the deceased from Mteso.
14. On the balance I find that a prima facie case has been established to warrant putting the accused person on his defense as is established under Section 306 (2) of the *Criminal Procedure Code*.

SIGNED, DATED AND DELIVERED THIS 31ST DAY OF MAY, 2024

M. S. SHARIFF

JUDGE

