



Republic v Otieno alias Brayo & another (Criminal Case 38 of 2019) [2024] KEHC 6580 (KLR) (31 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 38 OF 2019
MS SHARIFF, J
MAY 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

BRIGHTON ODIGA OTIENO ALIAS BRAYO 1ST ACCUSED

FIDEL CASTROL OLOO ALIAS JUNIOR 2ND ACCUSED

RULING

1. The accused persons herein Brighton Odiga Otieno alias Brayo and one Fidel Castrol Oloo alias Junior were 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 1st day of September 2019 at Janam Lakeside Grill in Kisumu Central within Kisumu County, jointly with others not before court murdered one Samson Otieno Nyambok.
3. During the trial, the prosecution called 14 witnesses to support the charge of murder that the two accused persons face.

a.Issue for Determination.

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

4. PW1 stated that he was on duty on 31/08/2024 when he was informed by one of the security guards at Jalam Lounge that there was an incident that had taken place involving two people on the 2nd floor of the said bar. The security guard reported that one of the clients had complained that his phone had been stolen. He went to check the CCTV Camera to ascertain what had actually transpired and when,



when the CCTV footage was played the deceased herein denied having taken the phone from the other client and even refused to look at the CCTV footage. Later on PW1 was informed by one Brighton who was the assistant head security that the deceased had confessed to have stolen the phone from the other client, and that the phone was in a car parked outside the bar.

5. PW2 Amon Somoh stated that on 31/08/2019 stated that he was on duty on the material day when he met PW1 who informed him that there was a customer who had been accused of stealing another customers phone. When PW2 went to check on who had been accused of stealing the phone, he found him sitting with the 1st Accused. Later he saw some policemen who came to pick the person who had stolen the phone.
6. PW4 stated that he was doing marketing at Jalam when on the material day when he spotted some men drinking and dancing. One of the boys looked at him directly on the eye while the others could not allow him to pass. When Pw4 went back to the table where they were doing their promotions, he found his phone missing. PW4 went to the toilet and met the boy who was looking at him on the eye and suspected him to have stolen from him the phone. He informed the authority and a CCTV footage was played and the young man denied that he had stolen the phone. He was then advised to report the matter of the stolen phone to the police and he reported the incident at Kisumu Central Police Station.
7. PW5 No 54819 Corporal Gerald Njuguna of Kisumu Central Police Station stated that on 31/08/2019 he reported to work at 7.29pm together with corporal Mwaura and were on standby. The following morning while they were at the Central Business District, they received a report from the reporting office that about 5.00am and they thus returned to the station whereat they found one Ismail Saidi who had reported that his phone was stolen at Jalam Bar and that a suspect had been detained. PW5 stated they proceeded to Jalam in the company of Corporal Mwaura and the complainant and they found the suspect, interrogated him and rearrested him and took him to the Police station. PW5 went on and stated that the suspect narrated that he had been beaten but when asked if he could be taken to the Hospital and maintained that he was fine. The deceased suspect was then booked into the cells and the following day, PW5 was informed that the suspect had collapsed, and had been to the hospital whereat he was pronounced dead.
8. PW8 Dr. Ombok Lucy stated that she did a postmortem and confirmed that the cause of death was as a result of internal bleeding direct to spleen and liver secondary to blunt force transmission to the abdomen.
9. It is common place from the evidence of PW5, PW9 and Pw10 that the deceased was arrested at Jalam Bar and while looking weak, tiered and drunk and was booked in the police cells. The accused were the security personnel at Jalam Club save for that fact no one has led any evidence to identify the assailants of the deceased save for the circumstantial evidence that the deceased had been placed under a citizen arrest. The evidence of Dr. Ombok reveals that the deceased had died duet to internal bleeding due to lacerations to the spleen and liver secondary to blunt trauma.
10. Whereas the deceased person suffered injuries and no one could tell who was responsible of the same. I therefore find that the prosecution has failed to establish a prima facie case to warrant putting the accused persons on their defence and I hereby acquit them accordingly under Section 306 of the [Criminal Procedure Code](#) and discharge the two accused persons of the charge of murder unless otherwise lawfully held.
11. It is hereby so ordered.

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

M. S.SHARIFF



JUDGE

