



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Awiko (Criminal Case E031 of 2022)  
[2024] KEHC 16141 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16141 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E031 OF 2022**

**DK KEMEL, J**

**DECEMBER 20, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**WYCLIFFE OTIENO ONANI ALIAS AWIKO ..... ACCUSED**

**JUDGMENT**

1. The accused herein Wycliffe Otieno Onani Alias Awiko is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal code. The particulars are that on diverse dates between 1<sup>st</sup> December 2022 and 2<sup>nd</sup> December 2022 at Pithdero ‘C’ village, Kagwa Sub-Location in West Uyoma location within Rarieda Sub County in Siaya County murdered Vincent Oluoch Ngado.
2. The accused denied the charges and that prosecution called a total of 8 witnesses in support of its case.
3. PW1 Edmond Okwe Dimba testified that he is a resident of Kagwa sub location and a business man. That the deceased Vincent Oluoch Ngado was a son to his cousin while the accused herein is a nephew to the deceased. That on Thursday 01-12-2022 at around mid-day he saw the accused and the deceased walking together passing his home. That later on at around 4.00pm, he saw the deceased going to the accused’s home to deliver fish. That at about 6.00pm he saw the accused coming alone to their home on a motor cycle and left alone. That he didn’t see them again that day.

That on 02/12/2022 at about 5.10 Am he got a call from the Assistant chief Reuben Okoth that Vincent had been found dead. That he informed the father of the deceased, mother of the accused and other relatives and they assembled and went to Amoyo police station where they were told that the body of the deceased had been collected by the police and that the accused person had also been escorted to Bondo police station.



That on arrival at Bondo police station, they found the accused in the cells while the deceased had been taken to the mortuary. That at the station, they were shown a stone that had been used to kill the deceased. That they then went to the mortuary where they found the body of the deceased.

He further testified that the body was swollen on the face and left eye. That cotton wool was put on the back of the head as it was bleeding heavily. That thereafter they went to the scene of the incident. The scene looked undisturbed save for blood where the body had been lying. That at Aram police station they, were shown pictures of the body of the deceased. That besides the body was a stone, the same stone that they had been shown at the police station. He saw blood stains on the stone. That the clothes the deceased body was wearing were the same as the ones he was wearing when he saw him the previous day.

That photograph 6 was a picture of the accused, with blood stains on his shirt and trouser, the same clothes he was wearing at Aram police station. He identified the bundle of 6 photographs marked as MFI- 1. That he recorded his statement on 4/12/2022. That on 5/12/2022 he went to identify the body for post mortem. That he and one Maxwell saw the post mortem report which was marked as MF1- 2. He further stated that he saw the cracked skull on the head of the deceased.

On cross examination, he testified that he had no differences with the accused. That the deceased and the accused shared a grandfather and that they were drinking friends. That he would not know if any differences arose between them, and when he last saw them together he did not see anything out of the normal. That when Vincent (deceased) brought fish to the home of the accused he was alone, then later the accused also came alone on a motor cycle.

That the accused and deceased stayed 200 metres apart at Kamarinda beach. That he was called and informed about the death while he was still asleep and that he did not witness Wycliffe assaulting Vincent.

4. PW 2, Reuben Okoth, testified that he is the assistant chief of West Uyoma Location. That on the morning of 02/12/2022 at 5.00 Am, he received a call from a police officer from Amaya police station that someone was lying dead on the road along Kamarinda-Amoyo road. That he arrived at the scene 30 minutes later and found police officers. That the body had already been loaded onto the police van. That he was shown the body and was of someone well known to him as Vincent Oluoch. That the police also showed him where the body had been found. That he called Edmond to inform the family, they then proceeded to the police station where he recorded his statement.

On cross examination, he stated that he had known Vincent the deceased for over 20 years. That he knew both the deceased and accused to be good friends and that they both took alcohol and that he did not see them on 01/12/2022. That as the administrator, he established that they had been together, worked together and shared some money. That the accused had informed him that they had been drinking together at Nya Kandawa. That it was upon reaching the police station that he saw the stone in the police van.

5. PW3 Doris Akinyi Ongayo testified that on 01/12/2022 she went to a funeral at Mbita. That she came back on 02/12/2022 and was informed that Vincent Oluoch had been found dead on the road headed to the lake. That she is the owner of Nyakandawa bar.

On cross examination, she stated that she had operated the said bar for six years but that on the fateful night she was not around and that she did not serve the accused and the deceased that night. That she did not leave anybody running her business while she was away. That she doesn't know whether the deceased and accused were at her bar or whether the accused assaulted the deceased.



6. PW 4 Sylvanus Ngado stated that he is a brother to the accused and that the deceased was his brother's son. He recalled that on 01/12/2022 the accused and the deceased had been walking together. That on 02/12/2022 he received a call that Vincent was dead. That they went to Bondo police station where they found Wycliffe. That he asked him what happened and the accused informed him that as they walked from Nyakandawa, a motorcycle came from behind and knocked him.

On cross examination, he stated that he had seen Vincent and Wycliff walk together at about 9.00 Am on 01/12/2022. That that was the last time he saw them together. That he didn't see Wycliffe assaulting Vincent.

7. PW5 Polycarp Lutta Kweyu testified that he has worked as a principal chemist at Kisumu Government analyst for 11 years. That he holds a Masters degree in Chemist (JKUAT)(2008) and a Bachelors degree from (JKUAT-2004). He testified further that on 6/12/2022 PC Jackson Mogaka submitted to them 8 items as follows:

A stone marked 'A', loose soil in brown envelop marked 'B', finger nails and loose hair from Vincent Oluoch marked 'C', multicolored short sleeved T-shirt marked 'D', a faded blue trouser with a black belt marked 'E', a navy blue long trouser in an envelope marked 'H', a long sleeved purple shirt marked 'G', a swab from Wycliff Otieno Onani marked 'T' .

That it was requested of them to carry out DNA analysis to determine the presence and origin of biological evidential materials between these items. That he was able to do the analysis and came up with the following findings by comparing the DNA profiles: That the DNA profiles generated from the blood stains on the stone 'A', soil 'B', t-shirt 'D', trouser 'E', trouser 'H' and shirt 'G' were identical and matched the DNA profile of Vincent Oluoch Ngado-the deceased.

That the DNA profile of Wycliffe Otieno Onani (suspect) did not match any of the DNA profiles generated from the above listed items. The DNA report was produced as Exhibit 10 a) and the Memo form as Exhibit 10 b).

8. PW6 PC Edwin Odik stated that on 02/12/2022 at around 0200hrs he was at Amoyo patrol base when they got a distress call from Wycliffe Otieno Onani who reported that his brother Vincent had died at a around Amoyo- Kamarinda murrum road at a place called Pith Dero. That the accused informed him that he together with the deceased were headed to Kamarinda beach after coming from a changaa den in the area. That the deceased was staggering as he walked and so the accused walked past him, then the accused saw a motorcycle driven towards Amoyo general direction. That he then heard a loud sound behind him only to find the deceased had been knocked down by the motorcycle. That he tried helping the deceased then he rushed to report to the police. That when he reported, the accused's cloths were stained with blood. That he had a blue trouser –MFI -4 and a purple shirt- MFI- 3. That they proceeded to the scene where they found the lifeless body of a male adult lying on the ground. That the body was oozing blood from the ears and there was a fracture at the back of the head. That at the scene he recovered a stone that had blood stains and two plastic cups. Stone with blood clots – MFI 6, plastic cups – MFI 5a) and b), a pair of plastic sandals MFI 7 also found at the scene. That the deceased was wearing a stripped t-shirt-MFI 8, a blue jeans trouser –MFI 9a) and a belt MFI 9b). That the accused had reported a case of hit and run but upon checking the scene they did not find any sign of an accident such as the debris of the motor cycle. Thus they placed the accused under custody.

On cross examination, he stated that he has worked for 5 years as a police officer and has been at Amoyo patrol base for 2 years. That it is the accused who went to report and that he interrogated him when he went to report at about 0200 hours. That he put the accused under arrest in cells because the accused was not certain about the cause of death and that they did not find any sign of an accident at the scene as alleged by the accused.



9. PW 7 PC Jackson Mogaka he testified that on 02/12/2022 he had gone for exams security. That upon his return, Chief Inspector James Ouna instructed him to take up a murder case of one Vincent Oluoch Ngado. That by then one suspect Wycliffe Otieno Onani was in custody at Aram police station. That the suspect was wearing a blue trouser and a purple shirt both stained with blood. That he kept the said clothes, a stone and 2 plastic cups collected from the scene as exhibits. That on 03/12/2022 he visited the scene and took soil that had blood stains. That on 5/12/2022 he attended the post mortem of the deceased at Bondo hospital together with the deceased's family members who identified the body. That on 06/12/2022 the accused was taken for mental assessment at Jaramogi Oginga Odinga hospital and exhibits taken to government analyst in Kisumu. He produced the purple shirt as exhibit 3 and blue trouser as exhibit 4. Two plastic cups exhibit 5a) and b), stone exhibit 6, pair of plastic sandals exhibit 7, stripped t-shirt exhibit 8, pair of blue jeans exhibit 9a), belt exhibit 9b).

On cross examination, he stated that he was the investigating officer and that the incident happened between 01/12/2022 and 02/12/2022. That he visited the scene on 03/12/2022 at 1400 hrs but he did not find people at the scene. That the officer who acted on the report secured the scene before leaving. That the accused talked of a motorcycle accident but there was nothing at the scene to indicate the occurrence of a motor cycle accident thus he did not believe the accused. That he cannot tell whether the stone produced was the murder weapon.

10. PW 8 Dr. Daniel Wanjovu Juma testified that he did the autopsy of the deceased Vincent Oluoch Ngado at Bondo Sub county hospital on 05.12/2022. That on external examination, the body had blood stains on the face, bilateral ears, nose, fingers and lower limbs. There was a small wound at the back of the head with a depression of 8 cm by 8cm, scratch marks on the back.

That on internal examination, there was hematoma collection below the skull with massive fragmented and depressed skull fracture from midline surgical plane, about 14 cm joining occipital plane approximately 14 cm and about 10 cm left side of the head. There was nervous system and depressed brain matter with hematoma collection below the cover of the brain. He formed the opinion that the cause of death was due to severe head injury secondary to massive fragmental scalp fracture secondary to high energy trauma. He produced the post mortem report as Exhibit 2.

On cross examination, the doctor ruled out that kind of injury as emanating from falling on the stone –exhibit 6 or hit by a motor cycle. He however stated that that kind of injury can emanate from one holding the stone exhibit 6 high and throwing it hard.

11. PW 9 Corporal Simon Likoni of DCI Crime scenes Siaya testified that he is from DCI Crime scenes gazetted under No. 10284 of 15/12/2006. That on 07/12/2022 while at his office, he received a CD in a khaki envelop from PC Jackson Mogaka of Rarieda. That it contained pictures allegedly taken at a scene of murder between 01/12/2022 and 02/12/2022 at Pith dero area in Rarieda, Siaya County where the deceased male Luo adult was assaulted and later succumbed to injuries. That the officer had photographed the scenes and also took an exhibit memo which had been signed by the officer requesting him to print and certify the same to be used as exhibits in court. That the photographs were processed under his supervision and were intact and that they have not been tampered with. He produced the photographs which were seven in number and certified at the back plus, his certificate dated 11/01/2022.

On cross examination, he stated that he testified as a scenes of crime officer. That to be a scenes of crime officer one must be specifically appointed and trained. That his role is to visit a crime scene, process it and document it by photography etc. and collection of all exhibits. That he did not take any of these photographs and that the one who took them is not a gazzeted scenes of crime officer. That he did not personally visit the scene of crime and that he cannot tell whether or not it was tampered with.



12. That marked the close of the prosecution's case.
13. At the close of the prosecution's case this court ruled that the prosecution had established a prima facie case against the accused who was subsequently found to have a case to answer and was duly placed on his defense.
14. DW 1 Wycliffe Otieno Onani, testified on oath that on 01/12/2022 they were together with the deceased on the major part of the day. That sometime in the day, he lent ksh 500/- to the deceased which he later refunded him. That they later went to Nyakandawa changaa bar to drink alcohol where they were served by one Vin who is a son of the proprietor. That at about 10.00 pm the bar attendant indicated to them that it was late and wanted to close. They however had not finished their drink and so they were allowed to leave with the plastic glasses as they were good customer of that bar.

That he led the way as they left since the deceased was very drunk. He added that the deceased staggered slowly with his glass of changaa in his hands. That as they walked on, he heard a sound of a motorcycle behind them. That he heard as though it knocked something but he did not go back to see. That later he reached his house and waited for the deceased. That time passed and the deceased didn't show up. That he started worrying as they were supposed to go fishing that night and that the spades were in the deceased's house. That he started following the road and that he found the slippers then a body on the marram road. It was the deceased. That he tried to lift him and called out his name but he did not respond and that he was bleeding from the head. That he ran to the nearby Amoyo police station and reported. That together they used a motorbike to go to the scene where the body was. That the police assaulted him in order to tell them what had happened. That the police came to collect the body and took pictures. That the police called for a police van and asked him to carry the body to the van and that is why his trousers and shirt were soiled with the blood of the deceased.

That they took the body to Bondo hospital mortuary. That he was taken to Bondo police station then police from Rarieda came and took him back to Rarieda.

On cross examination, he confirmed that they were together with the deceased on the night he died but they parted ways at 10.00pm as he went to the lake. That he just heard a loud bang sound of a motorcycle. That he could not tell how far apart they were with the deceased who was behind him. That they had been drinking at Amoyo quite far from the lake. That they left the bar as the deceased followed him from behind both carrying their changaa glasses with chang'aa inside. That when he went back to where the deceased's body lay, there was no motorcycle nor any broken pieces of motorcycle. That he did not see any broken glasses there. That the police at the station assaulted him and injured him and that he has never been taken to hospital.

On re-examination, he testified that he did not tell the court that the police assaulted him in order to admit having killed the deceased. That he was drunk that night so he could not tell how far behind the deceased was, as they walked but he was behind all the time. That he could not say how the deceased managed to hold his glass with chang'aa inside.

15. Learned counsels herein filed and exchanged submissions. Vide submissions dated 18/11/2024, learned counsel for the prosecution submitted that the charge of murder is premised on the provisions of section 203 as read with section 204 of the Penal Code. Section 203 reads that any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. Section 204 reads that any person who is convicted of murder shall be sentenced to death. It was submitted that to prove their case, the prosecution ought to prove the following elements beyond reasonable doubt:
  - a. Proof of death,



- b. whether the death was unlawful,
- c. proof that the death was due to unlawful act or omission of the suspect;
- d. The unlawful killing was with malice aforethought.

On the proof of death, it was submitted that PW 8 who conducted the autopsy confirmed the death of the deceased and formed the opinion that the cause of death was severe head injury secondary to massive fragmental scalp fracture secondary to high energy trauma. On the unlawfulness of the death, the prosecution submitted on the right to life under Article 26 of *the Constitution* that every death is unlawful unless authorized by law. On the issue of whether it was the accused who caused the unlawful death of the deceased, it submitted that it is the accused who was last seen with the deceased. It relied on the ‘last seen principle’ as stated in the Nigerian case of *Stephen Haruna vs. The Attorney general of the Federation* (2010) 1 I law/ca/a/86/c/2009 where the court opined that:

“The doctrine of ‘last seen’ means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus where an accused is the person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal. It is the duty of the appellant to explain how the deceased met his death in such circumstances. In the absence of a satisfactory explanation, a trial court and an appellate court will be justified in drawing the inference that the accused person killed the deceased.”

16. Lastly, the prosecution relied on the provisions of section 206 of the Penal Code that defines malice aforethought as follows:

‘Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony;
- d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony

17. The prosecution also relied on the Court of Appeal case of *Joseph Kimani Njau vs. Republic* (2014)eKLR concluding that they had sufficiently proved their case beyond reasonable doubt against the accused.

18. On the part of the defence, reliance was placed on the case of *Republic vs. Andrew Omwenga* (2009) eKLR submitted that there are three ingredients that the prosecution ought to prove against the accused. They submitted on the death and the cause of death of the deceased that from the autopsy report by PW 8, the cause of death of the deceased was severe head injury secondary to massive fragmented skull fracture secondary to blunt head trauma. It was therefore submitted that the fact of death was proved.

19. Learned counsel for the defence submitted that the prosecution totally failed to link the accused person to the death of the deceased as well as malice aforethought thereof. That this is because none of the



nine (9) witnesses lined up the prosecution saw or even heard that it was the accused person who killed or caused the death of the deceased. The defence relied on several authorities including Republic vs. DWK [2020] eKLR where the court relied on the last seen doctrine in the Nigerian case of Moses Jua vs. State [2007](PELR-CA/11 42/2006; that the last person seen with the deceased person is assumed to have either : caused the death of the deceased person, or has knowledge of what may have caused the death of the deceased person.

That the above assumptions can only be displaced upon the accused person giving proper believable explanation as to what may have caused the death of the deceased. It was submitted that that is what the accused has done and none of the prosecution witnesses controverted the accused's explanation.

20. The defence also relied on the case of Republic vs. Richard Itweka Wahiti [2020] eKLR and submitted that the conduct of the accused ought to be considered in making a determination; it is usually a very critical element in establishing motive for commission of the offence. It was submitted that the accused in the instant case properly explained how his clothes were stained with the blood of the deceased and the explanation was not controverted. In conclusion, the defence submitted that the accused is young and with a promising future. That his conduct after realizing that his friend had died should be able to satisfy this court as to his innocence. The defence thus prays that the accused should be acquitted under section 306(1) of the Criminal Procedure Code.
21. I have considered the evidence adduced by both prosecution and defence witnesses plus the respective submissions by the learned counsels and find that the issue for determination is whether the prosecution proved its case against the accused herein beyond reasonable doubt as by law required.
22. The essential ingredients of the offence of murder are inter alia; proof and cause of death; that the death was unlawfully caused; that there was malice aforethought on the part of the perpetrator.
23. As regards the issue of proof of death, the evidence of the pathologist (PW8) is quite clear. The said doctor upon conducting the autopsy on the body of the deceased formed the opinion that the cause of death was severe head injury secondary to massive fragmental scalp fracture secondary to high energy trauma. I find the prosecution proved this ingredient beyond any reasonable doubt.
24. On whether the death was unlawful, by dint of Article 26 of *the Constitution*, every person is entitled to enjoy the right to life. Hence, it is trite that all homicides are deemed unlawful unless authorized by law. The deceased herein was indicated by the witnesses to have had no problems regarding his health and that he led a normal life eking his living from fishing in the nearby lake. He did not deserve to die in the manner that he did. I am satisfied that the prosecution has proved this ingredient beyond any reasonable doubt.
25. On the aspect as to whether the accused caused the unlawful death of the deceased, there is no direct evidence to point the accused as the perpetrator of the crime. There is no doubt that the accused and deceased had been great buddies and that they used to enjoy each other's company and drank alcohol together and that on the material date the two were together drinking changaa at Nyakandawa bar and left together at around 10.00 Pm. However, the circumstantial evidence on record points at the accused as the person last seen with the deceased. Indeed, the principle of last seen has been applied on many occasions by courts and that the same is also captured in sections 111 and 119 of the *Evidence Act* which provide as follows:

“111(1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge such person is upon him:



Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist:

Provided further that the accused person shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.”

“119. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

Flowing from the foregoing provisions, an accused person who has been placed at a scene of crime is under obligation to render an explanation as to how the deceased met his/her death. The last seen doctrine therefore gives an accused an opportunity to render an explanation and thereby extricate himself/herself from culpability in the crime and that it is up to the court to consider whether or not such explanation is plausible. The court in *Ndurya v Republic* [2008] eKLR stated that circumstantial evidence should however be very closely examined before basing a conviction on it. The explanation tendered by the accused vide his defence evidence appears to cast doubt about the issue of his involvement in the murder of the deceased.

26. The doctrine of ‘last seen’ was also dealt with in the Nigerian case of *Stephen Haruna vs. The Attorney general of the Federation* (2010) 1 I law/ca/a/86/c/2009 where the court opined that:

“The doctrine of ‘last seen’ means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus where an accused is the person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal. It is the duty of the appellant to explain how the deceased met his death in such circumstances. In the absence of a satisfactory explanation, a trial court and an appellate court will be justified in drawing the inference that the accused person killed the deceased.”

27. In the Indian case of *Ramreddy Rajeshkhanna Reddy & Another vs State of Andhra Pradesh*, JT 2006 (4) SC 16 the court held that:

“Even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small, the possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.”

28. The above assumptions can only be displaced upon the accused person giving proper and believable explanation as to what may have caused the death of the deceased. In the case of *Republic vs. Richard Itweka Wahiti* [2020] eKLR the court stated that the conduct of the accused is usually a very critical element in establishing motive for commission of the offence. In the instant case, when the accused arrived at the lake and waited for his friend who was taking quite long to arrive, he took a step to go back looking for him. Unfortunately, he found his lifeless body. Upon finding the body of his brother and friend he ran to the nearest police station and reported. It was also the accused person’s testimony that he participated in putting the body in the police van and that is how his clothes were stained with the blood of the deceased. The testimony of the accused is not controverted by any of the nine prosecution witnesses. I find that the accused did render a credible, consistent, accountable and plausible explanation surrounding the death of the deceased. Indeed, the accused is the first person to report the matter at the nearest police station immediately he found the deceased had died. This



kind of action is not synonymous with a person who had something to hide. The accused did not go underground at all and that he cooperated with the police all the way until his arraignment in court. In my view, I find the explanation by the accused to be believable. It is instructive that the Government analyst (PW9) conducted the requisite DNA analysis and did not find anything linking the accused to the alleged crime since none of the exhibits which included clothes worn by the accused had any traces of DNA tallying with that of the deceased. It emerged from the evidence that the accused was only suspected yet it is trite law that suspicion alone is not sufficient to found a conviction. The prosecution's duty is to prove the guilt of the accused beyond any reasonable doubt. Courts have held countlessly that the onus of proving an accused's guilt is always on the prosecution and never shifts to the accused. It is not for the accused to prove his innocence. It also transpired from the evidence that there was no grudge or strife between the accused and the deceased so as to suggest that he would seek to eliminate his bosom friend. The circumstances of the incident are such that it does not rule out other persons who could have been involved in the murder of the deceased. It is possible that as the deceased lagged behind while the accused increased his pace towards his house, somebody else could have had an opportunity to commit the murder and melt away in the darkness. I am satisfied that the prosecution has made the accused the fall guy without any tangible evidence over the murder of the deceased. The evidence tendered and the circumstances of the case as well as the explanation given by the accused leads me to come to the conclusion that there is doubt in the prosecution's case. Such doubt must be resolved in favour of the accused in any event

29. In view of the foregoing observations, it is my finding that the prosecution has not proved its case against the accused beyond reasonable doubt. Consequently, I find the accused herein Wycliffe Otieno Onani not guilty and is hereby acquitted of the charge of murder. He is ordered to be set at liberty forthwith unless otherwise lawfully held.

Orders accordingly.

**DATED AND DELIVERED AT SIIYA THIS 20<sup>TH</sup> DAY OF DECEMBER, 2024.**

**D. KEMEI**

**JUDGE**

In the presence of :

Wycliff Otieno Onani.....Accused

Okanda.....for Accused

Mocha.....for Prosecution

Ogendo.....Court Assistant

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