



**Republic v Owaga (Criminal Case 23 of 2020)  
[2024] KEHC 10283 (KLR) (19 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10283 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE 23 OF 2020  
RE ABURILI, J  
AUGUST 19, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MAURICE OWINO OWAGA ALIAS DAKTARI ..... ACCUSED**

**RULING**

1. The accused person herein Maurice Owino Owaga alias Daktari is charged with the offence of murder contrary to section 203 as read with section 204 of the *penal Code*. particulars of the Information dated 18<sup>th</sup> August, 2020 are that on the 31<sup>st</sup> day of July, 2020 at around 1700 hours at Geiyo area of Sidho East II Sublocation, Nyangóma Location in Nyakach Subcounty within Kisumu County, the accused person murdered one, Violet Awuor Owino.
2. The accused person took plea on 9/9/2020 and denied committing the offence as charged. However, the hearing of this case has taken long partly because the key witnesses who are close family members of the deceased and accused.
3. PW1 was Jacinta Achieng who testified that she was a member of a women group wherein the accused's wife and mother to the deceased was a member. She recalled that on 2/8/2020 she learnt of the demise of the deceased victim so she went to her home to condole with the family only to find that the family was preparing to inter the body without a coffin, which body was lying on a mat. She therefore consulted her group members and together they agreed to raise money and rush to buy a coffin in order to send off the deceased decently.
4. She stated that they went to buy a coffin and as they returned, they found police officers in the deceased's homestead. they were informed that there was suspicion of foul play in the death of the deceased hence it was now a police case and that the police were to remove the body to the mortuary



for an autopsy to be carried out to establish the cause of death and for further investigations to be carried out.

5. PW2 was Dr. Felix Nyungi, formerly of Ahero County Hospital testified that on 5/8/2020 he conducted an autopsy on the body of Violet Awuor Owino at Ahero County Hospital. that the body was already decomposing and on examination, externally, he found the following: peeling of the skin on the chest, abdomen and legs, marks suggesting blunt force trauma on the forehead, cheeks, around the eyes and features of bleeding under the skin, bleeding on the right anterior chest wall, right chest was compressed with soft tissue haematoma, bleeding in the skin in the gluteal area and blood collection in the tissues.
6. He stated that the thighs had bled under the skin and that there was deep tissue haematoma. there was also bleeding under the skin on the upper part of the back and scapular area.
7. Internally, in the head, there was in the occipital, blood under the skin. He concluded that the cause of death was sudden unexpected death from epilepsy. The doctor stated that he received the history of the deceased from her family members who told him that the deceased had a history of epilepsy and that she had fallen down, convulsed and died, although he qualified this saying that the physical injuries that he found on the deceased's body were indicative that she was assaulted. he produced the postmortem report dated 5/8/2020 as prosecution exhibit No. 1.
8. PW3 was Bernard Ogada Okoth, the Assistant Chief of Sidho II Sublocation who testified that he received a report of death of the victim in this case from her brother Evans Omondi Owino, who testified as PW4 and who went to report and seek for a burial permit for his sister who had died of epilepsy.
9. That when PW3 asked him of the age of the deceased, PW4 could not tell so PW3 told him to go back and get the particulars of the age of the deceased. PW3 then followed PW4 to his home and thereon he found the deceased lying on a mat and covered in a sheet. He interrogated her parents on the cause of her death but they could not tell and that they looked suspicious so he doubted them and checked on the body of the deceased only for him to find blood oozing from the back of her head so he suspected foul play, after the parents refused to disclose the cause of death. He escorted them to Chemelil DCI who interrogated them and went to remove the body to the morgue pending investigations.
10. PW4 Evans Omondi Owino the son to the accused and the brother to the deceased testified that he was away at work when he received a telephone call from his sister Mercy Achieng who asked him whether he had heard of what had transpired at their home. That she informed him of the demise of their sister violet so he went home and confirmed the death. That upon inquiring from his mother, she informed him that the deceased had fallen down following the illness which she was suffering from and died. PW4 was sent to collect a burial permit from PW3 and that he heard neighbours had told the police that his parents had assaulted the deceased and killed her.
11. In cross examination, he stated that he received information that the deceased and her other sister had vanished from home for a whole week and that it was during the Corona period.
12. The other relevant evidence was that of PW6 CPL Jeremiah Musango who testified that he received the accused on 2/8/2020 in the company of PW4 and PW3 with allegations that the accused was suspected to have killed his daughter. Together, they proceeded to the accused's home and found a shallow grave. From the home, he recovered a spade, 3 drum sticks, the clothes allegedly worn by the deceased at the time that she was being assaulted, those of her sister and jeans trouser allegedly worn by the accused during the alleged assault of the deceased. The scene was processed and the body was removed to the morgue for postmortem.



13. PW6 stated that he was told by the accused person's wife and daughter Sharon Adhiambo that the accused assaulted Sharon and the deceased as punishment for vanishing from home for over one week and that the deceased dies as a result of that assault.
14. PW6 further stated that Sharon was taken to a rescue center and a P3 form issues to her.
15. In cross examination, PW6 stated that it was the wife to the accused person who told him about the clothes that the accused was wearing when he assaulted the deceased to death.
16. PW7 Mr. Godwin Khamala Waliama a Government Analyst from Kisumu Government laboratories testified and produced a Government Analysst report prepared by Mr. Polycarp Lutta Kweyu, his Senior Colleague, who was engaged in another court giving evidence. According to the report produced as PEx 8, the following conclusions were reached:
  - a. The DNA profile generated from the blood on the PX-2 spade suspected murder weapon belonged to single unknown male
  - b. No conclusive DNA profile were generated from PEX3a, b, c sticks suspected to have been used to assault the deceased and her sister.
  - c. The DNA profile generated from PEX-5 clothes worn by the sister during the murder incident and PEX-7 trouser allegedly worn by accused belonged to single unknown female.
17. There was no sample taken from the accused person for comparison with any of the items collected from the scene of alleged murder, for analysis.
18. Further, there was no evidence to corroborate the testimony of PW6, the investigating officer, that Item M, the jeans, were worn by the accused person at the time of alleged assault of the deceased and her sister.
19. There is no reason why the deceased's sister, if at all what PW6 stated was true, that she was taken to a rescue center, she could not be held as a protected witness until she testified since she was a very key witness, even if the accused person's wife was to be found to be a compellable witness.
20. There is also no reason why the prosecution could not lay a basis for production of the statements of witnesses who recorded their statements with the police on what they saw but they vanished when it came to testifying in court against the accused person. There was no evidence that it was the accused person's wife and daughter who could not be traced to testify are the ones who gave information to PW6 that the accused assaulted the deceased and the said Sharon. Nothing else was said on the whereabouts of Mercy, the sister to PW4 who called and informed the latter on what had happened at their home.
21. Nobody testified on how and who inflicted the injuries on the deceased. The cause of death as per the post mortem report was sudden death due to epilepsy.
22. On the basis of the above analysis, and as correctly submitted by Mr. Tawo counsel for the accused person, there was no conclusive evidence as to who inflicted the injuries on the deceased, thereby prompting her sudden death due to the preexisting epileptic condition.
23. As a result, the question is whether a prima facie case has been established against the accused person herein to warrant him to be placed on his defence to answer to the charge of murder.



24. The case of *Ramanlal Bhatt v Republic*, [1937] EA elaborately defined what a prima facie case is as follows:

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.”

25. The Court further stated as follows in the above case:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence..... It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.” (Underlining is mine).

26. From the evidence adduced by the prosecution witnesses, there are so many gaps in that the unknown single male and female whose DNA profile have been generated on the murder clothes alleged to have been worn by the accused at the time of incident and what role they played throughout the incident is not clear.

27. In the end, I find and hold that the prosecution has not established prima facie against the accused person to warrant him to be placed on his defence and that even if the accused was placed on his defence and he opted to remain silent, which is his constitutionally guaranteed right, this court would not find him guilty for murder or even manslaughter.

28. Accordingly, I find and hold that the accused Maurice Owino Owaga alias Daktari has no case to answer and he is hereby acquitted under section 306(1) of the *Criminal procedure Code*.

29. The surety is discharged and his security deposited into court to be returned forthwith upon identification.

30. The defence counsel Mr. Tawo, pauper brief advocate is discharged from these proceedings. His fees to be paid upon filing of the fee note with relevant documents as required.

31. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 19<sup>TH</sup> DAY OF AUGUST, 2024**

**R.E. ABURILI**

**JUDGE**

