



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odira alias Anginya v Republic (Criminal Appeal E037 of 2024)  
[2024] KEHC 13158 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13158 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL E037 OF 2024  
KW KIARIE, J  
OCTOBER 30, 2024**

**BETWEEN**

**CHARLES OCHIENG ODIRA ALIAS ANGINYA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal Case No. E115 of 2022 of the Principal Magistrate's Court at Ndhiwa by Hon. E.M. Onzere –Principal Magistrate)*

**JUDGMENT**

1. Charles Ochieng Odira alias Anginya, the appellant herein, was convicted of the offence of manslaughter contrary to section 202 (1) of the Penal Code.
2. The particulars of the offence were that on the 14<sup>th</sup> day of November 2021, at Rapedhi village in Ndhiwa District of Homa Bay, unlawfully caused the death of Emmanuel Makokha Bitu.
3. The appellant was sentenced to serve ten years imprisonment. He has appealed against both conviction and sentence.
4. The appellant was in person. He raised grounds of appeal as follows:
  - a. That the trial magistrate erred both in law and fact by not considering that the evidence on record was insufficient to warrant a conviction.
  - b. That the trial magistrate did not consider that key eyewitnesses testified that the complainant was injured on the back and not in the thorax as alluded by the medical report, rendering the conviction to be unsafe as there could have been a deliberate plot to implicate the appellant falsely.
  - c. That the complainant colluded with his children to falsely implicate the appellant.



- d. The trial court did not consider that this could have been a case of mistaken identity.
  - e. That the trial court erred both in law and fact by not appreciating that the key witnesses did not adduce evidence that identified the appellant as the perpetrator.
5. The state opposed the appeal. It was argued it lacked merits.
  6. This is the first appellate court. As expected, I have thoroughly analyzed and evaluated all the evidence in the lower court. I have concluded, considering I did not see or hear any witnesses. I will be guided by the precedent set in the celebrated case of Okeno vs Republic [1972] EA 32
  7. On the 14<sup>th</sup> day of November 2021, the deceased was in the home of Tom Onyango, where he was employed. He was attacked and sustained injuries that resulted in a six-day hospital admission. He was subsequently discharged. According to the prosecution, the injuries he sustained led to his death on the 17<sup>th</sup> day of March 2022.
  8. The appellant claimed that on the night the deceased was attacked, he never left his home. When an accused raises an alibi defense, they do not assume any burden to prove that it is the truth. This principle was stated in the case of Kiarie vs Republic [1984] KLR, where the Court of Appeal held:

An alibi raises a specific defence, and an accused person who puts forward an alibi as an answer to a charge does not, in law, thereby assume any burden of proving that answer, and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.

As I review the evidence, I will keep this in mind.
  9. Martin Nyongesa (PW2) is the deceased's son. According to his testimony, when he and his brother went outside to respond to their father's alarm, they saw the appellant going down the stairs of the house where the deceased was sleeping, carrying a machete. An unfamiliar man accompanied the appellant. Nyongesa mentioned that he could recognize the accused with the help of the security lights. When they found the deceased injured, he told them that one of the attackers was the accused.
  10. The evidence of Zedekiah Ongubo (PW4) was that when he went to record the statement of the deceased, the latter mentioned the appellant as one of the assailants.
  11. Although the appellant pleaded an alibi over the events of the 14<sup>th</sup> day of November 2021, the evidence tendered in court displaced this defence. I, therefore, find that he was one of the attackers of the deceased on the material day.
  12. Dr. Beryl Omany (PW6) testified that she treated the deceased while he was in hospital between November 15<sup>th</sup> and November 19<sup>th</sup>, 2021. Her evidence was that the deceased had deep-cut wounds on the left upper arm; he had no other visible injuries.
  13. The testimony of these two medical witnesses cleared the appellant of responsibility for the death of the deceased following his assault on him on November 14, 2021. Dr. Beryl Omany (PW6), who treated the deceased after the appellant's assault, observed injuries on the left upper arm, but no more. According to Dr. Mchana, these injuries did not cause the death.
  14. It appears that the deceased sustained other injuries, and according to Dr. Mchana's testimony, he died before any medical intervention.
  15. The prosecution failed to prove the case against the appellant, so I quash the conviction and set aside the sentence, allowing the appellant to go free unless lawfully held.

**DELIVERED AND SIGNED AT HOMA BAY THIS 30<sup>TH</sup> DAY OF OCTOBER 2024**



**KIARIE WAWERU KIARIE**  
**JUDGE**

