



**Republic v Owino (Criminal Case E016 of 2022)
[2024] KEHC 13082 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13082 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE E016 OF 2022
KW KIARIE, J
OCTOBER 30, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEORGE STANLEY OWINO ACCUSED

JUDGMENT

1. George Stanley Owino is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 10th day of May 2022, at Ndhiwa Township in Ndhiwa Sub County of Homa Bay County, jointly with another not before the court, willfully and unlawfully murdered Collince Otieno Ooro.
3. The deceased, in the company of his friends, was drinking alcohol at Kanyang bar but left for Status bar without settling a bill of Kshs. 400.00. The prosecution contends that the waitress and the accused followed them to demand the money. A disagreement arose, and the accused stabbed the deceased. He succumbed to the injuries.
4. George Stanley Owino, the accused, contended in his defence that a lady asked him to transport her on his motorcycle to a club called the Bridge. She got off the bike on the road. He denied meeting the deceased on the material night or any involvement in the murder of the deceased.
5. The issues for determination are:
 - a. Whether the accused was involved in his death; and
 - b. Whether the offence of murder was proved against any or all the accused.



6. The accused pleaded an alibi. When an accused raises an alibi defence, they do not bear the burden of proving the truth. This 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.

7. In this case, I will analyze the evidence to determine whether the prosecution's evidence disproved the accused's defence.
8. Charles Omondi Onyango's (PW1) evidence was that he was with the deceased and Charles Otieno Onyango to the Status bar when a lady pursued them over an unpaid bill. The girl who was owed the money called the deceased outside. When the deceased took too long to return, they went and found the deceased and the accused fighting. The accused drew a knife and stabbed the deceased. When he intervened, the accused stabbed him in the face.
9. Charles Otieno Onyango (PW2) testified to the same effect. When the accused stabbed him on the flank, he ran away from the scene.
10. The waitress at Kanyang bar identified herself as Christine Aoko Okongo (PW3). She told the court that Stanley, the accused, took her on his boda-boda to the Status bar. She was pursuing customers who had left without settling their bills. Collince started to quarrel with her, saying he had settled the bill.
11. Though Christine Aoko Okongo (PW3) became incoherent about what transpired after the quarrel, together with PW1 and PW2, they placed the accused at the scene of the incident, which displaced the accused's alibi defence.
12. The evidence on record does not only place the accused at the scene of the incident that led to the death of the deceased but also identifies him as the person who inflicted the fatal injuries to the deceased.
13. To convict for the offence of murder, the prosecution must prove the existence of malice aforethought based on the evidence on record. In *Black's Law Dictionary*, 10th Edition, malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following: (1) the intent to kill, (2) the intent to inflict grievous bodily harm, (3) extremely reckless difference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).

14. Section 206 of the Penal Code gives instances when malice aforethought may be proved. It provides:

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.

15. From the evidence on record, it would appear that this offence was spontaneous and not premeditated. I find that the prosecution has not proven the charge of murder. However, the prosecution has established beyond a reasonable doubt the lesser offence of manslaughter. As a result, I am reducing the charge from murder to manslaughter. I acquit the accused of murder. However, I find the accused guilty and convict him of the offence of manslaughter under Section 202, read with Section 205 of the Penal Code.

DELIVERED AND SIGNED AT HOMA BAY THIS 30TH DAY OF OCTOBER 2024

KIARIE WAWERU KIARIE

JUDGE

