



**Republic v Ochieng’abok (Criminal Case E009 of 2022)
[2024] KEHC 15090 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE E009 OF 2022
KW KIARIE, J
NOVEMBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH OCHIENG’ABOK ACCUSED

JUDGMENT

1. Joseph Ochieng’ Abok 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 18th day of March 2022, at Kabongo village in Rachuonyo East Sub County of Homa Bay County, he murdered Johnson Abok Olum.
3. The body of the deceased was found by his family members outside his door. It was severely mutilated. He was still alive but was not in a position to talk. He was pronounced dead on arrival at the Rachuonyo sub-county hospital.
4. Police officers claimed to have been tipped off that the accused may have been involved. He was arrested, and investigations commenced.
5. The issues for determination are:
 - a. Whether the perpetrator of the offence was identified;
 - b. Whether there were any recoveries from the house of the accused;
 - c. Whether the accused was linked to the heinous action by any evidence and
 - d. Whether the offence of murder was proved against the accused.



6. No single eyewitness testified to have witnessed the incident. The evidence adduced against the accused is circumstantial. In the case of *Mohamed & 3 Others vs Republic* [2005]1KLR 722, Osiemo Judge restated what circumstantial evidence is, as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

7. Earlier, in the case of *Republic vs Kipkering arap Koskei & Another* 16 EACA 135, the Court of Appeal held:

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

8. These authorities will guide me in weighing all the evidence against the accused and determining whether it is incompatible with his innocence and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

9. Inspector of the Police Harun Wainaina (PW3) testified that he revisited the scene with other police officers at about 2 p.m. They arrested the accused, who led them to his rental house at Tala Market. They recovered a machete, a blue curtain, a pair of shoes, a pair of khaki trousers and a bed cover. These items looked like blood stains and were therefore taken for analysis. This is what PC Sigei Wesley (PW4) testified to. He added that an inventory of the items was prepared, and the accused and the officers present signed.

10. The accused denied that he was involved in the murder of his father. Like the rest, he said he found him injured.

11. The recovery of the items taken for analysis from the accused's house was not disputed. The government analyst indicated in part:

12. Based on the findings: -

1. The DNA profiles generated from the blood stains on the panga (item "A"), the shoes 'akala' (item "B-1" & "B-2"), and the bedsheet (item "F") are all identical and match the DNA profile generated from the reference blood sample of Johnson Abok Olum (deceased).
2. The DNA profiles generated from the blood stains on the trouser (item "C-1") match the DNA profile generated from the reference buccal swab of Joseph Ochieng Abok (accused).
3. The DNA profiles generated from the blood stains on the mattress cover (item "D") is partial and inconclusive.

13. Without an explanation as to how the blood of the deceased was found on the machete and a bedsheet (referred to as a bedcover by witnesses), the only logical conclusion to make is that the accused was involved in the killing of the deceased.

14. To convict based on the evidence on record, the prosecution must prove the existence of malice aforethought. 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).

1. 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.

16. The deceased sustained severe cuts on his body, to which he succumbed. Although there was no evidence of what may have transpired between the two, I find that the prosecution has proved the offence of murder against the accused. I find him guilty and convict him of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

DELIVERED AND SIGNED AT HOMA BAY THIS 28TH DAY OF NOVEMBER 2024

KIARIE WAWERU KIARIE

JUDGE

