



**Republic v Adika (Criminal Case E005 of 2021)  
[2023] KEHC 327 (KLR) (23 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 327 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL CASE E005 OF 2021**

**KW KIARIE, J  
JANUARY 23, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**VICTOR OWITI ADIKA ..... ACCUSED**

**JUDGMENT**

1. Victor Owiti Adika 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 January 1, 2021, at Jua Kali area, Oyugis Township in Rachuonyo South Sub County of Homa Bay County, murdered Erick Magak Ogada.
3. The prosecution contended that the accused stabbed the deceased on the chest after alleging that he had lied to him about some theft of his money and phone.
4. In his defence the accused contended that he was not at the scene of the stabbing.
5. The issues for determination are:
  - a. Whether the accused was at the scene where the deceased was stabbed;
  - b. Whether the accused caused the death of the deceased or not; and
  - c. Whether the offence of murder was proved.
6. Elizabeth Awuor Oula (PW3) is the only witness who implicated the accused to the offence of murder. The evidence of a single identifying witness must be examined with a lot of care to ensure that it cannot be true, before a conviction is founded on it. In the case of *Kiilu & Another v Republic [2005] 1 KLR 174* the Court of Appeal held:



Subject to certain well known exceptions, it is trite law that a fact may be proved by testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the probability of error.

7. According to this witness (PW3), the accused and another man went to her house at about 9.30 pm. The accused enquired if she knew the man in his company. When she told him that she did not know him, the other man said he was with a girl who had dyed her hair. He alleged the girl had stolen from him some money and a phone. They then asked her if she knew of a girl who had dyed hair. She advised them to go and sleep and continue with their enquiries the following day. It was at this juncture that the accused removed a knife from his waist and stabbed the man in his company in the chest. She later learnt that the man who was stabbed died.

8. During cross examination she conceded that in her statement to the police she did not record that she saw a knife. She was unable to explain why this was so. This conduct by this witness raised doubts on her credibility. The Court of Appeal in the case of *Ndungu Kimanyi v Republic [1979] KLR 283* (Madan, Miller and Potter JJA) held:

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.

9. The doubts introduced by the evidence of this witness could have been resolved one way or the other had the prosecution called her neighbour, Dan to testify. He is the one who took the deceased to the hospital according to her evidence. The Court of Appeal in the case of *Bukenya v Uganda [1972] EA 549*, (Lutta Ag. Vice President) held:

The prosecution must make available all witnesses necessary to establish the truth even if their evidence may be inconsistent.

Where the evidence called is barely adequate, the court may infer that the evidence of uncalled witnesses would have tended to be adverse to the prosecution.

10. The conclusion from the foregoing analysis of the evidence is that the prosecution has not proved its case against the accused. I accordingly acquit him of the offence of murder and set him free unless if otherwise lawfully held.

**DELIVERED AND SIGNED AT HOMA BAY THIS 23<sup>RD</sup> DAY OF JANUARY, 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

