



**Republic v Oyosa & another (Criminal Case E002 of 2022)  
[2023] KEHC 21235 (KLR) (28 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21235 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL CASE E002 OF 2022  
WM MUSYOKA, J  
JULY 28, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SABINA ODHIAMBO OYOSA ..... 1<sup>ST</sup> ACCUSED**

**GEOFFREY OUMA OYOSA ..... 2<sup>ND</sup> ACCUSED**

**JUDGMENT**

1. The accused herein, Sabina Odhiambo Oyosa and Geoffrey Ouma Oyosa, are charged with murder, contrary to section 203, as read with section 204, of the [Penal Code](#), Cap 63, Laws of Kenya, the particulars being that on January 13, 2022, at Bukati Sub-Location, Marachi Location, Butula Sub-County, within Busia County, they jointly and unlawfully murdered Collins Owino Oyosa.
2. 5 witnesses testified. PW1, Jennifer Akoth Were, was informed of commotion at her home, she could not get there immediately, but when she did, she found her son, the deceased herein, lying down outside, with injuries on his legs and head. He was dead. He lived alone. She raised alarm, and help came. Police later arrived and collected the body, and removed it from the scene. She said she knew her son to be violent, and a habitual thief. PW2, Jesse Ochieng Osundwa, joined a search party, comprised of the accused persons and others, as they sought for the deceased, who was alleged to have had stolen a bicycle, belonging to a child of the 1<sup>st</sup> accused. They found him at his house, within the family compound. He woke up, and opened the door. The accused immediately attacked him, and assaulted him with a panga and a stick. He was hit on the legs and the head. Although there were other people at the scene, himself included, only the 2 accused persons assaulted the deceased. The following morning he heard screams from the house of the deceased. He rushed there and found that he had died of the beatings. . PW3, Rosemary Omwenje Oluoch, was the neighbour who alerted PW1 to the commotion at her homestead. She went to the home, the following day, and found that the deceased had been died. The body had injuries on the head and legs. He did not witness the killing, or the assaults, for she only heard



- screams from the home, but she did not venture there. PW4, Dr. Dylan Nabuya, conducted post-mortem on the body of the deceased. He opined that the cause of death was severe head injury, due to sharp force trauma. PW5, No. 78588 Police Constable Andrew Kirui, conducted the investigations.
3. The accused were found, by Karanjah J, to have a case to answer, and were put on their defence, in a ruling delivered on February 13, 2023. They opted to give sworn statements. The defence hearing happened on March 21, 2023, before me.
  4. The 1<sup>st</sup> accused testified as DW1. She stated that on the day the killing allegedly happened, she had taken her child to hospital, and she was admitted, and was discharged on January 13, 2022. She was with the child in hospital, and it was while there that PW1 telephoned to inform her of the killing of the deceased. She went home, but was not allowed to see the body. She was later arrested. She produced a book with treatment notes. The 2<sup>nd</sup> accused testified as DW2. He said that he was away in Nakuru when the killing happened. PW1 called him, while he was at Nakuru, on January 13, 2022, to inform him of the death. He then travelled home of January 14, 2022. He produced a bus ticket .
  5. DW3 was Nuru Okude, the husband of the 1<sup>st</sup> accused. He testified that his child was admitted in hospital on January 11, 2022, and the 1<sup>st</sup> accused stayed with the child in hospital. They were discharged on January 14, 2022. The police came looking for the 1<sup>st</sup> accused at home on the night of 13/14<sup>th</sup> January 2022, and he informed them that she was in hospital with the child. He said that he was arrested on January 15, 2022, and then again said the arrest was on January 14, 2022. During cross-examination, he stated that the child was discharged on January 13, 2022, and that the 1<sup>st</sup> accused was arrested on January 14, 2022. DW4, Protus Orambo, said that he was the landlord of the 2<sup>nd</sup> accused, and that the 2<sup>nd</sup> accused was not within the area when the killing allegedly happened, for he had travelled to Nakuru on January 10, 2022, and came back on January 14, 2022. DW5, Sarah Jerutich, was a clinical officer, who produced a discharge summary, as proof that the child of the 1<sup>st</sup> accused had been admitted at their facility, and was discharged on January 13, 2022. She did not attend to the child, she was not present when the child was attended to, and she did not fill the discharge summary, and she did not know where the clinician who filled it was transferred to. She could not tell who had accompanied the baby to hospital.
  6. The parties submitted in writing.
  7. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, it was with malice aforethought.
  8. On whether the deceased died, I have the evidence of PW1, PW2 and PW3. PW4 conducted autopsy on the body of the deceased, and produced the post-mortem report. The cause of death was said to be severe head injury, due to sharp force trauma. The injuries on the deceased were alleged to have been caused by the accused persons. They deny the same. The contest, therefore, is on who caused the injury, and whether he or they had malice aforethought.
  9. So, who did it? PW2 testified that the accused persons were looking for the deceased, as they suspected him of stealing a bicycle. He joined them, and others. They went to the home where the deceased was. The deceased came out of his house, and was attacked by the 2 accused persons. He said that the 1<sup>st</sup> accused had a panga and the 2<sup>nd</sup> accused a stick. The 2 set upon the deceased with those weapons. He was insistent that, although there were about 8 of them in that compound, only the 2 accused persons assaulted the deceased. The 2 accused persons denied all that. They claimed to have been nowhere near the scene. For the 1<sup>st</sup> accused was at hospital with a sick child admitted there, while the 2<sup>nd</sup> accused had travelled to Nakuru.



10. I have these 2 conflicting stories, which one should I believe? PW2 testified in a fairly straightforward manner and did not waver in cross-examination. The 1<sup>st</sup> accused produced a treatment notebook, essentially for the purposes of delivery, post-natal care and child health monitoring. The entries I see in it are of February 4, 2021, April 7, 2021, April 29, 2021 and April 30, 2021. I see no entry for the material time, January 11, 2022 and January 13, 2022, when the 1<sup>st</sup> accused said she was in hospital with the child. The other document that the 1<sup>st</sup> accused relies on is the discharge summary, produced by DW5. DW5 was not the maker of the document, she did not treat the child, and she did not see the 1<sup>st</sup> accused person at the hospital at the material time. She explained that her colleague, who had made the document, had been transferred to another medical facility, but she said that she did not know the facility. Should I rely on the alleged discharge summary? DW5 was not the maker of the discharge summary that she produced. I find it curious that she did not know where her colleague, the maker of the document, was transferred to. The document was allegedly made on January 13, 2022, surely DW5 should have been able to know where the person was transferred to just 1 year down the line. I am not persuaded that the discharge summary was a true document, as no supporting material, by way of registers, were produced as evidence, to support the entries in the discharge summary. The 2<sup>nd</sup> accused produced a bus ticket as proof that he was away in Nakuru. The document appears to have been exposed to excess moisture, by either being rained on or put in water. What is curious is that the handwriting on it is fresh, in terms of having been written on the paper after the exposure to moisture, as whereas the fabric of the ticket was affected by the moisture, the writing by ballpoint pen was not. I am not persuaded that the alleged ticket is a genuine record.
11. Both accused brought in witnesses. The 1<sup>st</sup> accused had her spouse, DW3, to confirm that their child had been admitted, and she was with the child in hospital. The testimony by DW3 was shifty. It was inconsistent. During examination-in-chief, he repeatedly stated that the discharge happened on January 14, 2014, contradicting the narrative by the 1<sup>st</sup> accused, and it was only at cross-examination that he talked of a discharge on January 13, 2022. So, when was it? January 13, 2022 or January 14, 2022? DW4 was presented by the 2<sup>nd</sup> accused, to confirm that he had travelled on the material day. They were not members of the same household. Their relationship was that of a tenant-landlord.
12. My conclusion is that the alleged alibi evidence does not displace the testimony by PW2, that he was with the accused persons, when they attacked the deceased with a panga and a stick. The findings in the autopsy report are consistent with assaults with a sharp object, like a panga.
13. Did the accused have malice aforethought? A person who attacks another in the manner that the deceased was, can only have intended to cause his death, or to cause him grievous harm, or the person knew or ought to have known that such an injury or injuries could cause death or grievous harm, but proceeded to inflict the same nevertheless. According to the post-mortem report, the body had multiple fractures on both upper and lower limbs: an open compound fracture of the right leg, an open tibiofibular fracture with the tibia and fibula visible, and multiple lacerations on the head inflicted by a sharp object. Soft tissue swellings were noted on most parts of the body. An internal examination of the body revealed bleeding below the skull, a skull fracture on the right parietal region, and 2 deep lacerations on the head with bleeding below the scalp. There was, therefore, malice aforethought.
14. According to PW4, the decisive injuries were on the head, caused by a sharp object. PW2 identified the 1<sup>st</sup> accused as the person who was armed with a panga. By deduction, she must have been the cause of those fatal injuries. However, there were other multiple injuries on the limbs and other parts of the body, which must have been caused by the other party involved, the 2<sup>nd</sup> accused, with a stick. PW2 was firm that only the 2 were involved. The others, including himself, were onlookers. There could be



credence to that, as the matter appeared to be within the family, for the deceased was a blood brother of the 1<sup>st</sup> accused, and an in-law of the 2<sup>nd</sup> accused.

15. In view of everything stated above, I do hereby, find the accused persons herein, Sabina Odhiambo Oyosa and Geoffrey Ouma Oyosa, guilty of the offence of the murder of Collins Owino Oyosa, contrary to section 203 of the *Penal Code*, as read with section 204 thereof, and I convict him accordingly, under section 322 of the *Criminal Procedure Code*, cap. 75, Laws of Kenya.
16. For the purposes of sentencing, I direct the Busia County Director of Probation and Aftercare Services to look into the antecedents of the accused persons, interview the family of the victim and the community, and file a report thereafter, within 30 days. The matter shall be mentioned thereafter, for compliance.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 28<sup>TH</sup> DAY OF JULY 2023**

**WM MUSYOKA**

**JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Appearances**

**Mr. Mayaba, Instructed By The Director Of Public Prosecutions, For The Republic.**

**Mr. Ouma, Advocate for the accused persons.**

