



**State v Omondi & another (Criminal Case E033 of 2021)
[2022] KEHC 14403 (KLR) (24 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E033 OF 2021
RE ABURILI, J
OCTOBER 24, 2022**

BETWEEN

STATE PROSECUTION

AND

PAUL PIUS OMONDI 1ST ACCUSED

JACKSON OKONG'O OKOTH 2ND ACCUSED

RULING

1. The accused persons are Paul Pius Omondi and Jackson Okong'o Okoth. They are jointly charged with the offence of murder contrary to section as read with section 204 of the *Penal Code*. Particulars of the information dated November 10, 2021 are that on the October 30, 2021 at Nyabera sub location, West Uyoma location in Rarieda Sub county within Siaya County, they murdered Dino Odhiambo Obuya.
2. The accused pleaded not guilty to the charge after mental assessment reports showed that they were fit to plead and stand trial.
3. The prosecution has called a total of 9 witnesses who have testified and the case for the prosecution is closed.
4. The question now is whether the evidence as adduced by the 9 prosecution witnesses establish a *prima facie* case to warrant the 2 accused persons being placed on their respective defences.
5. The burden of proof lies on the prosecution throughout the trial, to prove its case against the accused persons beyond reasonable doubt.
6. That burden does not shift to the accused persons who may elect, and it is in his constitutional right to do so, to remain silent and not to give any self-incriminating evidence.



7. However, at this stage, the prosecution is only expected to establish a *prima facie* case which case need not necessarily be that the accused is guilty but that based on the evidence tendered, the accused person should be given the opportunity to tender his defence because, it is evidence that strongly points to the accused person as the person or persons who committed the offence.
8. This does mean that the accused are proven guilty of the offence as there are elements of the offence that must be proved beyond reasonable doubt and that finding can only be reached by the court after closure of the defence case whether the accused testifies or not and the court embarks on an indepth analysis of the evidence as adduced by each of the prosecution witnesses.
9. In the instant case, the evidence adduced, including forensic evidence establish a *prima facie* case against the two accused persons to warrant them being placed on their defence to answer to the charge of murder of the deceased Dino Odhiambo Obuya.
10. Accordingly, I hereby find that the 2 accused persons Paul Pius Omondi and Jackson Okong'o Okoth have a case to answer and are hereby placed on their defence.
11. The provisions of section 306(2) of the [Criminal Procedure Code](#) and the rights of the accused persons under article 50(2) (i)(j)(k) of the [Constitution](#) are hereby explained to each of the 2 accused persons in the dholuo and english language respectively.
12. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA, THIS 24TH DAY OF OCTOBER 2022

R E ABURILI

JUDGE

