



**Republic v Owino & another (Criminal Case E029 of 2022)
[2025] KEHC 3404 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E029 OF 2022**

**DK KEMEL, J
MARCH 21, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMMY OBONYO OWINO 1ST ACCUSED

NANCY AKINYI OBONYO 2ND ACCUSED

RULING

1. Both accused herein Sammy Obonyo Owino and Nancy Akinyi Obonyo have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 28th day of October 2022 at Yualuanda village, Pap Oriang Sub-Location in Siaya County jointly with others not before court murdered Clinton Odhiambo.
2. The prosecution called eleven (11) witnesses in support of its case.
3. I have considered the evidence adduced at this stage of the proceedings together with submissions by defence counsel. At this stage of the proceedings, the prosecution is under a duty to establish a prima facie case against both accused persons so as to require them to be called upon to make a defence. A prima facie case is one in which a reasonable tribunal directing its mind to the law and evidence placed before it can convict an accused in the absence of evidence to the contrary by the defence. In a nutshell, the evidence so far tendered by the prosecution at this stage of the proceedings should be sufficient to convict both accused were they to elect to remain silent in defence. See *Bhatt v R* [1957] EA 334.
4. It is trite that a trial court while making a determination on whether an accused person has a case to answer is expected to be circumspect so as to ensure that it does not prejudice the defence. In the present case, it was the evidence of PW1, PW2 and PW5 that both accused herein were at the scene of the crime and that the 2nd accused had suspected the deceased of stealing her mobile phone and Kshs 600/= and that she led members of public in interrogating and assaulting him while the 1st accused is said to have



arrived and proceeded to have used a red hot panga on the deceased and inflicted several burns on him. The two accused having been placed at the scene of crime, they must now offer an explanation as to how the deceased met his death.

5. In the result, it is my finding that the prosecution has established a prima facie case against both accused herein to require them to make a defence. Consequently, I find Sammy Obonyo Owino and Nancy Akinyi Obonyo have a case to answer. They are now called upon to elect to conduct their defence in accordance with the provisions of section 306 (2) of the *Criminal Procedure Code*.

DATED AND DELIVERED AT SIAYA THIS 21ST DAY OF MARCH, 2025.

D. KEMEI

JUDGE

In the presence of:

Sammy Obonyo Owino.....1st Accused

Nancy Akinyi Obonyo.....2nd Accused

Oduol.....for both Accused

Soita.....for Prosecution

Mboya.....Court Assistant

