



Republic v Odira (Criminal Case 22 of 2018) [2025] KEHC 2904 (KLR) (7 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2904 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 22 OF 2018
DO CHEPKWONY, J
MARCH 7, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JARED OOKO ODIRA ACCUSED

RULING

1. The Accused person, Jared Ooko Odira is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.

The particulars of offence is that:-

“On 26th March, 2018 at Sunton Area in Kasarani Sub County within Kiambu County murdered Beatrice Achieng.”

2. The accused was arraigned in court on 12th April, 2018 but since the Judge in Kiambu had been transferred and the incoming Judge has not yet reported, the matter was placed before the Judge at the criminal Division in Milimani High Court, Nairobi for directions. On 13th April, 2018 when the matter was placed before the Criminal Division of the High Court at Milimani, Nairobi, it was established by the Deputy Registrar that although the accused had been assessed by a Psychiatrist and found fit to plead, investigations were complete, the accused had not been assigned legal representation. It was then directed that the file be returned to Kiambu High Court for the deputy Registrar to appoint counsel to represent the accused.
3. On 20th April, 2018, the accused was assigned M/S Kimathi as counsel to represent him and when the charge and information were read and explained to him, he pleaded ‘Not Guilty’ to the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
4. The trial commenced on 6th September, 2018 and the court heard the two witnesses being Lilian Akoth Mito (PW1) and Samson Kasera (PW2) who stated that the deceased person was their niece. PW1



stated that the deceased used to live with her and she later got married to the accused person who she identified in the dock. She stated that on 25th March, 2018, the deceased called and told her that she wanted to discuss her relationship with the accused person as he was assaulting and threatening to kill her so that she could be buried like her mother.

5. Unhappy with this information, PW1 told the deceased that they needed to have a discussion with her husband but said that she could not take a day off from where she was working as a house help at Maji Mazuri as she did not have a phone. They then agreed with the deceased that she comes at 5.00pm on 26th March, 2018 so that they could have the discussion with her husband but she did not show up. At 8.00 p.m. that night, PW1 when she was called by her cousin and informed that the deceased was at the city mortuary and her husband, the accused was police custody. She stated that when they went to the accused's house, his brother stated that the accused had threatened dire consequences because the deceased had spent a night at her (PW1) home. He also called their father and reported the incident. PW1 who was with her brother went to Sunton Police post and recorded a statement there. She confirmed that the deceased had spent two nights at her home and told her that the marriage was difficult.
6. On cross examination, PW1 stated that the deceased used to spend time at the house of the accused and she formally introduced him to them in January, 2018. PW1 told court that she had not visited their residence but she knew that they were cohabiting and that the deceased had told her that the accused was in the habit of assaulting her but no report was made to the police.
7. PW2, Samson Kasera stated that the deceased, was his niece and was living with Jared, the accused person who he only met when he was arrested. He also stated that the accused had been introduced to the family as a fiancé and afterwards they started cohabiting. He further, stated that on 26th March, 2018, he learnt about the death of the deceased and they went to the accused's house at Sunton Maji Mazuri where they met his brother and he informed them that the deceased's body was at Sunton and the accused at the police station. He told court that he identified the body of the deceased for purposes of post mortem which established that the cause of the deceased's death was manual strangulation.
8. On cross examination, he stated that he had not met the accused physically prior to his arrest or where they lived with the deceased. He stated that he knew that the accused had been introduced to the family in December, 2017. He further stated that the accused had claimed that he had found the deceased had committed suicide when he returned home from work.
9. This Ruling is in respect to whether, on the evidence of the two witnesses, the prosecution has established a prima facie case to warrant a finding of whether the accused has a case to answer in defence or not. In this regard, it is important to appreciate what amounts to a prima facie case. A prima facie case was defined by the Court in the case of Republic vs. Abdi Ibrahim Owl [2013] eKLR as follows: -

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with. In Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335, the court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought



sufficient to sustain a conviction.” This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence”. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence...It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

10. Having considered the evidence of the two prosecution witnesses, this Court finds that apart from telling court that the deceased had complained of a difficult marriage between her and the deceased who it was alleged had been emailing her, none of the two witnesses witnessed the deceased being assaulted by the accused person. PW1 told court that the deceased called her on 25th March, 2018, and told her of the accused assaulting and threatening to kill her and indeed on 20th March, 2018, she died and the accused was arrested for causing her death. PW1 and PW2 told court that the accused person’s brother told them that the accused had threatened the deceased with dire consequences because of spending the night at PW1’s house. PW2 told court that he identified the deceased’s body at the doctor for a post mortem examination and the doctor told them that the deceased had died as a result of manual strangulation.

11. It is worth noting that there was no eye-witnesses to the incident that led to the deceased’s death. The brother to the accused was never identified or called to testify and corroborate what PW1 and PW2 told court he told them. The post mortem report was also not produced to confirm the doctor’s findings on the cause of the deceased’s death. Generally the circumstances under which the deceased died were never demonstrated by the evidence of these two witnesses.

12.

(12) As a result, the court finds that their evidence is not sufficient to warrant the accused person being placed on his defence. For those reasons, the court finds that the prosecution has not established a prima facie case to warrant the accused person being placed on defence and proceeds to acquit him under Section 210 of the *Criminal Procedure Code* which provides as follows:-

“If at the close of the evidence in support of the charge, and after hearing such summing up, submission or argument as the prosecutor and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.”

13. Subsequently:-

- a. The accused person has no case to answer for the offence of Murder contrary to Section 203 of the *Penal Code*.
- b. The case against the accused is hereby dismissed and accused is forthwith acquitted of the same.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 7TH DAY OF MARCH , 2025.



D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Ndeda counsel for the State

Mr. Mwaura holding brief for M/S Kimathi for the accused

Court Assistant - Martin

