



**Republic v Oduor (Criminal Case E039 of 2023)
[2025] KEHC 4221 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E039 OF 2023**

**DK KEMEL, J
APRIL 4, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

KEVIN ODUOR ACCUSED

JUDGMENT

1. The accused herein Kevin Oduor has 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 2nd day of November 2023 at Muhoho village, Yala Township Location within Gem Sub location within Siaya County murdered Julia Onyiera Odera.
2. The prosecution called six witnesses in support of its case.
3. Francis Adero Owuor (PW1) testified that the deceased who was his mother disappeared from her house and that she was found the following day in a pit that had been dug sometime back but had not been built and that the same had remained uncovered for about two years. That the deceased had built some rental units within her compound and that she had disagreements with the tenants over issues to do with absence of another toilet in the plot as the one in use was filled up. That she was found still breathing and was rushed to hospital. That the deceased had a cut wound on the head and stab wounds on the hands and neck. That the deceased died while undergoing treatment. That the accused herein had been one of the tenants and who escaped from the plot following the death of the deceased and that members of public caught up with him and apprehended him. That the accused implicated the female tenants who were who were also placed in custody. That the police took a jacket which was found at the door of a room the accused occupied within the plot as it had some bloodstains.

On cross examination, he stated inter alia; that Seline Awino is her sister in law who lodged the report with the police regarding the disappearance of the deceased; that the tenants constructed a toilet for their use and that the cost thereof would be recovered from the rents; that there were bloodstains



leading from the deceased's door to the pit and that no blood stains were spotted at the house of the accused which was then open; that the recovered jacket was placed in the police vehicle which carried the deceased.

On re-examination, he stated that he handed over the jacket to the police and which had bloodstains.

4. Florence Anyango Otieno (PW2) testified that she was a tenant at the plot owned by the deceased and that a disagreement arose between the deceased and a plumber over the completion of a toilet as the previous one had been filled. That the accused herein was the plumber and the one who had dug the new pit latrine and that after the disagreement he later pelted the roof with stones and threatened the deceased. That she enquired from the accused as to why he was threatening the landlady but he did not respond but locked his door and went away. That the following day, the deceased was found having been stabbed severally. That the accused upon learning of the death of the deceased, locked his door and went away but was later apprehended by boda boda operators who frog matched him to the scene.

On cross examination, she stated inter alia; that he was arrested as one of the suspects; that he saw the accused locking his door; that he did not report to the police about what the accused had uttered; that she did not see one Paul assaulting the deceased with a stone; that they had not refused to pay rent to the deceased; that the tenants had demanded for a big toilet; that she did not see the accused assaulting the deceased; that nothing was recovered from the house of the accused.

5. Godwin Khamala Waliama (PW3) a Government Analyst at Kisumu, testified that he received three exhibits from one Benson Mutune of Gem DCI which comprised finger nail cuttings of Julia Onyiera Odera (deceased) in a clear plastic container marked "A", a torn green jacket in a brown envelope marked "B" and buccal swab of Kevin Oduor (accused) who was physically presented to the laboratory. That he conducted the DNA analysis and came up with conclusions inter alia; that the jacket ("B") was moderately stained with blood of human being; that the DNA profile generated from the blood stains on the jacket ("B") matched with the DNA profile generated from the finger nail clippings of the deceased Julia Onyiera Odera ("A"). He produced the analyst report as exhibit one.

On cross examination he stated that he did not know where the jacket came from.

6. Dr. Victor Ochieng (PW4) testified on behalf of Dr. Bruno Okal, whose handwriting and signature he was familiar with and that the autopsy was conducted on 9/11/2024. That the body of the deceased had multiple cut wounds on the parietal region of the head and jugular region and that the jugular vein was ruptured. That there was cerebral fracture on the head. That the cause of death was multiple organ failure secondary to severe brain injury secondary to deep cut wound on the head coupled with hemorrhagic shock. That specimens were collected for DNA analysis. He produced the autopsy report as exhibit two.

On cross examination, he stated inter alia; that the injuries were multiple cut wounds; that the injuries could be inflicted by several factors; that both sharp and blunt objects could cause those cuts depending on the force on the skin.

7. Peris Atieno Odhiambo (PW5) testified that she arrived home on 30/10/2023 and found the deceased had not woken up and that the following day she learnt that she could not be traced. That the deceased was later found in a pit and rushed to hospital but she died. That she knew the accused herein whose door was locked for two days and that people had to trace him from his home.

On cross examination, she stated inter alia; that she lived with the deceased for two and half years; that accused's house was locked from outside; that they did not break accused's house; that other people broke into accused's house; that there were no blood stains on the accused's door; that it was one Ouma who entered the accused's house and removed a jacket; that she does not know who killed the deceased.



8. PW1 was recalled and stated that a mob entered accused's house and came out with a blood-stained jacket which was marked for identification (MFI – 3). That the jacket was handed over to the police at Yala Police Station.

On cross examination, she stated inter alia; that she found the accused's door ajar; that the deceased was already in hospital; that they took the deceased to hospital before the recovery of the jacket; that they did not carry the deceased alongside the jacket; that the jacket was removed from accused's house around 10.45 AM; that they handed over the jacket to the police; that the accused was arrested around 1.00 pm.

On re-examination, he stated that the accused was not in his room when they rushed the deceased to hospital; that the accused was not present when the jacket was recovered from his house.

9. No. 109571 Pc Benson Mutune (PW6) testified that on 31/10/2023 a report was made of a missing person named Julia Onyiera. That later on 2/11/2023, another report was made that the victim had been found in a pit and had been rushed to hospital but died while undergoing treatment. That he commenced investigations and received a blood-stained jacket from Francis Adero who claimed that it had been recovered from accused's house and who had disappeared after the incident. That he later rescued the accused and two ladies from mob injustice and took them to the police cells. That he later organized for an autopsy and then escorted the accused and exhibits to the Government Analyst at Kisumu. He produced the recovered jacket and Exhibits Memo form as exhibit 3 and 4 respectively.

On cross examination, he stated inter alia; that he is not aware of any threats made to the deceased; that there was no evidence connecting Peris to the charge of murder; that the OB extract indicates that three people were recommended to be charged with murder; that a person can slide into a pit and get injured as it was during the rainy season; that the pit was about ten metres from deceased's house; that he did not see blood stains in accused's house and that none of the deceased's missing items were found in the accused's house; that the jacket was brought by PW1 during the day; that he did not follow up on the chain of custody regarding the recovery of the jacket; that he is not aware if PW1 escorted deceased to the hospital; that the jacket was not with the deceased; that the jacket links the accused to the crime; that he released the other suspects as no evidence was available to link them with the crime.

10. This court later established that a prima facie case had been made out by the prosecution against the accused who was subsequently placed on his defence. He opted to tender a sworn testimony.

11. Kevin Oduor Okongo (DW1) testified that he is a mason by profession and that he was arrested on 2/11/2023 while at his home by a large group of boda boda operators who assaulted him and then tied him up with a rope and escorted him to a certain plot where he had rented a room. That he learnt that the landlady had died yet she was actually there at the plot and that he confronted her to show him evidence of non-payment of rent. That he was assaulted by members of public and that the chief arrived and intervened by confronting the landlady (Jane) as to why she had not taken the suspect to his office as earlier directed by him. That the police arrived and handcuffed him together with one Peris (PW2) and escorted to the police station. That he had locked his rental house and that he does not know of the demise of the landlord. That he had been hired to dig a pit latrine. That he denies owning a brown jacket and that the one produced as an exhibit does not belong to him. That he had not known the deceased.

On cross-examination, he stated inter alia; that he heard in court about the name of deceased as Julia; that he was in his rental room on 30/10/2023 and that his landlord is one Jane but he will not call her as his witness; that he made a report of his assault to the police but does not have the OB; that he paid his rent in cash to Jane; that he denies the version given by PW1; that he did not make threats as alleged by PW2; that he had dug the bore hole; that he believes that the deceased slipped and fell into the pit



latrine; that he does not have a green jacket as he had a black coat at the time; that he has no knowledge about the DNA which was conducted.

On re-examination, he stated that the jacket produced in court does not belong to him. That the witnesses talked of blood on the jacket. That he was not shown how the deceased died.

That marked the close of the defence case.

12. Parties were directed to file and exchange final submissions. However, it is only counsel for the defence who has complied.
13. I have considered the evidence presented by the prosecution and defence as well as the submissions filed. I find the issue for determination is whether the prosecution proved its case against the accused beyond reasonable doubt.
14. The burden of proof in all criminal cases is always upon the prosecution to discharge and that the standard is one of beyond any reasonable doubt. See *Woolmington Vs. DPP [1935] AC 462*.
15. In a charge of murder, the prosecution is under obligation to prove certain essential ingredients inter alia; that there was death of the deceased; that the death was caused unlawfully; that there was malice aforethought; that the accused was the perpetrator of the crime.
16. As regards the aspect of death, the pathologist (PW4) stated that the deceased sustained multiple cut wounds on the parietal region as well as the jugular region. He also noticed that there was a cerebral fracture on the head and that the jugular vein was ruptured. He formed the opinion that the cause of death was multiple organ failure secondary to severe brain injury secondary to deep cut wound on the head coupled with hemorrhagic shock. I find that the prosecution proved this ingredient beyond any reasonable doubt.
17. As regards the unlawfulness of the death, it is trite law that all homicides are unlawful unless authorized by law. The deceased herein was an octogenarian and landlady of a plot of land within Yala Township where she had constructed some rental rooms and that she also lived within the same compound. There is no evidence that she had been in ill health prior to her demise and hence she is deemed to have been in good health and looked forward to more years in her life. The injuries indicated by the pathologist left no doubt that the assailant desired the said injuries would lead to her death. Hence, I find that the death of the deceased was unlawful. I find this ingredient was proved beyond any reasonable doubt.
18. On whether there was malice aforethought, it transpired from the evidence that the deceased had longstanding differences with her tenants over non payment of rent as well as provision of toilet facilities and water in her rental premises. The evidence revealed that some of the tenants including the accused issued threats to the deceased and that at one time in the night the iron roof was pelted with stones. It also transpired that a report had been lodged at Yala Police Station regarding one of the incidents. Looking at the injuries inflicted on the deceased, it is clear that the injuries were not accidental. It was the work of a person who had planned to eliminate her and thus waited until nightfall when he/she struck as the deceased lived alone in her house. I am satisfied that there was malice aforethought on the part of the assailant and that the prosecution proved the same beyond any reasonable doubt.
19. On whether the accused was the assailant, it is noted from the accused's defence that he was not at the rental plot when the alleged incident took place since he had locked his door and went to his home once the issue of the missing landlady arose. He also maintained that the jacket allegedly recovered from his house does not belong to him since he used to wear a black coat. He further stated that he was not shown the place where the deceased died and that he did not even know her since his landlady was one



Jane. He also denied issuing threats to the deceased. As far as the accused is concerned, it is somebody else who is responsible for the death of the deceased herein.

20. The prosecution has hinged its evidence on three witnesses namely PW1, PW2, PW3 and PW5 to place the accused at the scene of crime. PW2 stated that there was a disagreement between the accused and deceased prior to the incident and in which the accused threatened the deceased. It was the evidence of PW1, PW2, and PW5 that the accused locked his door at the rental plot and went to his home where he was apprehended by members of public. It was also their evidence that a jacket was recovered from accused's room and which was handed over to the police. The DNA profile on the bloodstains on the said jacket matched with the DNA sample obtained from the deceased. Learned counsel for the defence has submitted that there were contradictions in the evidence of PW1, PW2 and PW5 regarding whether the accused's door was broken into and whether that the recovered jacket was carried together with deceased or handed to the police afterwards. Whereas there were some contradictions as suggested by defence counsel, I find that the same were not material as they did not affect substantially the prosecution's evidence. I find that despite those contradictions, it is not in dispute that the accused had been a tenant at the deceased's plot and further that members of public gained access into he accused's room and seized the jacket which was later handed over to the police and which was subsequently found to have been stained with blood of the deceased. Looking at the evidence as a whole, I find that it is highly unlikely that family members of the deceased and members of public had used a certain jacket and had it stained with the deceased's blood so as to implicate the accused herein. It is instructive that the accused had volunteered to dig a pit latrine to be used by the tenants as the one in use then was already filled up and that he later got into an altercation with the deceased and thereafter threatened her. Indeed, there was no eyewitness to the incident and hence the court will have to consider the circumstantial evidence available so as to find out if the prosecution has proved its case against the accused beyond any reasonable doubt. As the prosecution's case is entirely based on circumstantial evidence, the test to be considered is the one laid down in the case of SAWE VS. R [2003] KLR 364. The Court of Appeal in that case held as follows:

“In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the Chain of circumstances relied upon. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence remain with the prosecution. It is a burden which never shifts to the party accused.”

Again, in the case of PON VS. R, [2019] eKLR, the court held that to have a conviction entirely or substantially upon circumstantial evidence, it is necessary that the guilt of the suspect should not only be rational inference but also it should be the only inference that could be drawn from the circumstances and that if there is any reasonable possibility consistent with innocence, it is the duty of the court to find the suspect not guilty.

21. The conduct of the accused prior and after the death of the deceased left no doubt that he was the one behind the demise of the deceased. The evidence adduced herein by the prosecution clearly indicated that the accused had dug a new pit to be used by the tenants at the plot owned by the deceased since the one then in use was already filled up. There was an altercation between the deceased and accused whereupon he threatened her. This was followed by an incident where the roof were pelted with stones at night.



22. The accused is reported to have locked his door and left for his home when the issue of the deceased's disappearance was raised. He is the only tenant who left the plot while the rest of the tenants teamed up in searching for the deceased. Finally, the recovery of a blood-stained jacket from his room put paid to the accused's claim of innocence as the analyst (PW3) established that the blood stains aforesaid matched with the DNA profile of the deceased. All the witnesses confirmed that the bloodstained jacket was recovered from the accused's room. Even though the accused has denied owning such a jacket, I am satisfied that it was indeed his jacket as it was recovered from his room. The accused's defence evidence that his landlord was one Jane is preposterous since all the tenants knew the deceased to be the landlady. The accused went further in his evidence to state that even after the recovery of the deceased from the pit, his landlord one Jane was present at the plot and that he engaged her in a conversation over rent payment. It is instructive that none of the tenants talked about an alleged landlord by the name Jane. This was a creation of the accused. The accused confirmed on cross examination that indeed he owned a green jacket and this therefore leaves no doubt that the green jacket recovered from his room belonged to him. I am satisfied that the accused was placed at the scene of crime. I find the accused had the requisite motive to eliminate the deceased with whom he had had a protected disagreement over the setting up of a new pit latrine in her rental plot. The evidence revealed that the altercation between the deceased and the accused was so intense to the point that the deceased told the accused in no uncertain terms that she was the owner of the plot and should have the right to decide for herself on what was to be done in her plot. The defence evidence has not shaken or cast doubt against the evidence of the prosecution which is quite overwhelming against him.
23. In view of the foregoing observation, it is my finding that the prosecution proved its case against the accused herein Kevin Oduor beyond any reasonable doubt. I find the accused guilty of the charge of murder and is convicted accordingly.

DATED AND DELIVERED AT SIAYA THIS 4TH DAY OF APRIL, 2025.

D. KEMEI

JUDGE

In the presence of:

Kevin Oduor..... Accused

Odhiambo..... for Accused

Mwangi for M/s Mumu..... for Prosecution

Okumu..... Court Assistant

