



**Republic v Dienya (Criminal Case E001 of 2024)
[2025] KEHC 6430 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6430 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E001 OF 2024
WM MUSYOKA, J
MAY 23, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

BENJAMIN ODIPO DIENYA ACCUSED

RULING

1. The accused herein, Benjamin Odipo Dienya, is charged with murder, contrary to section 203, as read with section 204, of the [Penal Code](#), Cap 63, Laws of Kenya. The particulars are that on the 22nd day of January 2024, at Bumina area, Bukani Sub-Location, Bunyala West Location, Bunyala Sub-County, within Busia County, he murdered Catherine Anyango Magombe.
2. 7 witnesses gave evidence in the matter. None of them testified to have had witnessed the accused person assaulting the deceased, or doing something to her which could have caused her death. The case was based on circumstantial evidence.
3. PW1, Zaire Awino Namisi, was a friend of the deceased. They were together on 21st January 2024, a day before she died. She testified that she did not know how the accused was connected to the death of the deceased. PW2, Mary Achieng, was another friend of the deceased. She met the deceased and the accused earlier on that 22nd January 2024 and went to drink with them at the home of PW3, where both left her at 10:00 PM, allegedly to go and drink at the home of the accused. She declined to join them. PW3, Lillian Fatuma Odhiambo, alias Halima, served liquor to the accused, the deceased and PW2, at her home, on 22nd January 2024. According to her, the deceased and the accused left together, at around 10:30 PM, but she did not know where they were headed. After 3 or so days, she established that the deceased had died.
4. PW4, Marystella Night Nyangili, saw the accused and the deceased together, at 5:00 PM, at her home, and they left together, ostensibly to look for PW5, but she did not see them again thereafter. She



mentioned that she did not know why the accused was in court. PW5, Bernard Ogema Wycliffe, was a brother of the accused, and a boyfriend of the deceased. He spent the night of 21st January 2024/22nd January 2024 together with the deceased. They parted on 22nd January 2024, at about 4:00 PM. He did not see her thereafter.

5. Three of the witnesses, out of the five who interacted with the deceased, prior to her turning up dead, put her together with the accused as the last person to be seen with her. It could be that these witnesses never saw the accused do anything harmful to the deceased, but it is a principle of law, that he who was the last person to be seen with the other, who turns up dead thereafter, is bound to offer some explanation, of what happened between them, after they were last seen together, before he is excused of complicity in the death of that person, should the explanation or account sound plausible, or before he is held accountable, should the explanation sound incredible and unbelievable.
6. Consequently, I do hereby find that the prosecution has adduced sufficient evidence, for the accused to be required to offer that account or explanation. The evidential threshold has been reached or attained by the prosecution, by placing the accused person in circumstances which could point to his complicity, if he offers no explanation of what happened between him and the deceased, after they walked out together into the night, around 10:00 PM on 22nd January 2024, and, therefore, the evidential burden has shifted to him.
7. In the circumstances, I find that a prima facie case has been made out against the accused person, to warrant him being placed on his defence, as he has been established to have a case to answer, for the murder of the deceased herein. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA THIS 23RD DAY OF MAY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Otieno, instructed by Masiga Wainaina & Associates, Advocates for the accused person.

