



**Republic v Okong’o (Criminal Case E002 of 2024)
[2025] KEHC 6147 (KLR) (16 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E002 OF 2024**

DK KEMEL, J

MAY 16, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

MAURICE OTIENO OKONG’O ACCUSED

JUDGMENT

1. The accused herein, Maurice Otieno Okong’o, 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 the 5th October 2023, at Kodiaga village, North Gem location, in Gem Sub County within Siaya County murdered Maryann Otieno Malesi.
2. The prosecution’s case is that on that material date, the accused attacked the deceased who is his wife following some domestic squabbles. That the deceased sustained serious injuries and that she was rushed to Yala Sub County Hospital where she succumbed to the injuries. A post mortem was later conducted by Dr. Bruno Okal (PW3) who formed an opinion that the cause of death was severe head injury due to intracerebral hemorrhage secondary to blunt head trauma.
3. Investigations were commenced by Sgt Ng’eno Kibet Simon (PW6) who recorded witness statements and subsequently organized for the arrest of the accused and his arraignment in court.
4. Upon an analysis of the entire evidence as presented by the prosecution at this stage of the proceedings, it is not in dispute that the deceased was the wife to the accused person herein. It is also not in dispute that the duo had had a tumultuous marriage which was marred with squabbles and frequent fights. It is not in dispute that the deceased had opted to go to her parents’ home, where she stayed for about a year before the accused called her back to join him. It is not in dispute that the accused was the last person to be with the deceased before her demise and it is he that reportedly took her to the hospital and lodged a report about her demise to the police.



5. Based on the above, the court ruled that a prima facie case had been established and that the accused was put on his defense.
6. In his defense, the accused averred that his wife (deceased) was not home for several days. That upon inquiring from her in-laws and neighbors, nobody knew her whereabouts. That on 5th October 2023 at about noon, the deceased arrived home with injuries. That she found her husband (accused) and his friend Hillary (PW1). That immediately after her arrival, her son Emmanuel Odhiambo (DW2) came from school and found his father(the accused) and his friend Hillary (PW1) helping his mother to go to her bedroom. That the accused then called their aunt to come and help give the deceased some first aid. It was the testimony of DW2 that his father (accused) and his aunt, Joan gave first aid to his mother (deceased).
7. It was DW2's testimony that the deceased did not sleep at home on the night of 4th October 2023. That when he came back from school, he found the accused, his friend (PW1) and the deceased at home, seated outside. That he had come home to collect a machete that his teacher one Mr. Odera had requested. DW2 testified to have heard the deceased saying that she had been injured /assaulted by people at a chang'aa den. As far as he was concerned, the relationship between his parents was good.
8. Jeremiah Ouma Otieno (DW3) testified that the deceased was his mother and that when he came back from school he learnt that his mother had arrived and learnt that his mother had arrived home but already injured and that she had been taken to hospital by his father. He stated that his father had been quarrelling his mother over her frequent use of alcohol.
9. Stephen Oluoch Nyagol (DW4) testified that he is the court administrator at Kakamega law courts and confirmed that the parents of the deceased had filed a case (Kakamega Cmcc No. E231 of 2023) and sought an order to bury her remains.
10. No. 218833 Sgt James Mogaka (DW5) testified that he had been sent by the OCS Yala police station to give evidence and produce some OB (D Exhibits 1 and 2) entries that had been made at Mutumbu police post
11. Having considered all the evidence on record I find the issue for determination is whether the prosecution proved the charges against the accused beyond any reasonable doubt.
12. For one to be convicted of the offence of murder, the prosecution must prove beyond reasonable doubt certain ingredients inter alia; the fact of the death of the deceased; the cause of that death and that the death was occasioned by an unlawful act or omission; that it is the accused person and no one else that caused the unlawful death of the deceased.
13. On the element of death and cause of death, there is no doubt that the death of the deceased is a matter of fact. The testimony of PW4, PW5 and DW1 confirm that they all identified the body of the deceased at Yala Sub County Hospital mortuary. Dr. Bruno Okal (PW3) testified that from his examination of the body of the deceased, he established that the cause of death was severe brain injury as a result of intracerebral hemorrhage secondary to blunt head trauma. The defense did not contest the fact of the death of the deceased nor the cause of death. This element was sufficiently proved.
14. The other element is whether the deceased died of an unlawful act or omission. The supreme law of this country under Article 26(1) guarantees every person the right to life. This therefore means that every homicide is unlawful. The autopsy report prepared by PW3 and produced as prosecution Exhibit 1 showed that the body of the deceased had multiple injuries which included bruised upper eyelid, bruises on the left and right thigh. On the head, there was a fractured right parietal bone extending into the cerebral matter. The cause of death was found to be severe brain injury as a result of intracerebral



hemorrhage secondary to blunt head trauma. The above do not disclose any lawful basis for the cause of death. The same was therefore unlawful.

15. The last ingredient is in regard to the identity of the perpetrator. It must be shown and proved beyond reasonable doubt that the accused herein caused the death of the deceased. It is not in dispute that the accused and deceased had been a couple and had been blessed with children. It is also not in dispute that the duo had had a tumultuous marriage full of squabbles and frequent fights owing to the deceased's alcoholism. It is also not in dispute that the deceased had earlier left for her parents' home and stayed there for about one year before rejoining the accused. It is not in dispute that the accused was the last person to be with the deceased before she passed on. It is not in dispute that the parents of the deceased had earlier sought to intervene in the frequent squabbles involving the accused and deceased to no avail. It is also not in dispute that the deceased had arrived home on 5/10/2023 during the day already drunk and staggering and with some injuries which she claimed to have been sustained at a changaa den. The investigating officer herein Sergeant Ngeno Kibet Simon (PW6) testified that on 11th October 2023 at 6.12 Pm, a case of murder was recorded at Yala Police station to the effect that a certain woman by the name of Mary Anne Malesi had been killed by unknown persons. The report was made by the brother of the deceased one Emanuel Musonye. That on 17th October 2023, he went to the house of the accused and recorded the statements of witnesses. He talked to the neighbours but did not find any neighbor with information concerning the case. The neighbours neither heard nor saw the murder of the deceased. On 23rd October 2023, he wrote a letter to Yala Sub County Hospital seeking copies of the treatment notes in a bid to understand and unravel the condition in which the deceased was before she arrived at the hospital. That there was no eye witness to the murder of the deceased and that no murder weapon was found. It was his evidence that the accused was cooperative with the police during the investigations.
16. It was the testimony of PW6 on cross examination that he requested for an inquest because he did not get enough evidence to charge the accused. However, the inquest was not conducted. He further stated that there was no new evidence secured after the recommendation for the inquest. PW6 also testified that when the ODPP made the decision to charge the accused, the accused willingly presented himself to the DCI office in Yala upon being summoned to do so.
17. In the case of SC Vs. Republic [2018] KLR as quoted by the defence, the court held that:

“An investigating officer is the person who forms an opinion that a crime had been committed. He is the person to interlink the evidence of the witnesses and explain why the defence offered by an accused is not plausible. The role of the investigating officer in a criminal trial is crucial”
18. Hillary Otieno (PW1), testified that on 5th October 2023 at around 8.30 am he visited the accused person at his house. That the accused informed him that his wife had been missing and that he had reported to the police. That at about twelve noon, while still at the accused's home, the deceased arrived while staggering. That he offered her his seat but she struggled to sit but did not make it. That he did not pay much attention to the deceased and that he left in less than ten minutes after the arrival of the deceased.
19. PW2 Joash Onyango Osomba stated that he was called by the accused herein and who informed him that the deceased had spent the night away from home and had come back home injured. That he went to see the deceased and noticed an injury above the eye. That while still there with the accused, they got a taxi and took the deceased to Yala Sub county Hospital for treatment. That at the hospital during consultation with the doctor, the deceased was put on a wheel chair as she could not walk. That the



- deceased was then placed on a bed as he went for medicine. PW2 testified that as he went to get the medicine, the doctor went to attend to other patients and that upon returning with the medicine, the doctor examined the deceased and established that she had died. He stated that the deceased was alive when they took her to the hospital.
20. Dr. Bruno Okal (PW3), testified that he conducted the autopsy on the body of the deceased. On cross examination, he stated that the injuries the deceased had on the thighs and biceps could indeed change one's gait and walking style and that could explain the observation by PW1 that the deceased walked homed staggering and had difficulties trying to sit down.
 21. Angeline Mmbaka Musonye (PW4) testified that the deceased was her daughter who had been married by the accused herein and that they had children together. That sometimes in 2020, the accused informed her that he was having problems with the deceased and that she had advised him to persevere as that was common in marriages. That later on, the accused called her to go and pick her daughter or else he would kill her. That she went and took her home where she stayed with her for about one year before the accused lured her to go and join him. That she was later called and informed that her daughter had been killed. That she went to Yala Sub County Hospital where she found the body of the deceased which had injuries all over.
 22. Kennedy Musonye (PW5) testified that the deceased was his daughter and that on learning of the incident, he sent his wife to go and follow up on the matter.
20. Maurice Okong'o (DW1), the accused herein, averred that his wife (the deceased) did not sleep at home on 4/10/2023. That upon inquiring from her in-laws and neighbors, nobody knew her whereabouts. That on 5th October 2023 at 8.30AM his friend Hillary Otieno (PW1) visited him and that he briefed him about the issue. That PW1 advised him to report the matter to the police. Later, the same day at about 12.00 noon as the accused was still seated at his home with PW1, the deceased arrived home with injuries and was then struggling to walk. That immediately after her arrival, her son Emmanuel Odhiambo (DW2) came from school and found his father (the accused) and his friend Hillary (PW1) helping his mother to go to her bedroom. The accused then called their aunt to come help give the deceased some first aid. It was the testimony of DW2 that his father (accused) and his aunt, Joan gave first aid to his mother (deceased).
23. It was DW2's testimony that the deceased did not sleep at home on the night of 4th October 2023. That when he came back, he found the accused, his friend (PW1), and the deceased at home, seated outside. That he had come home to collect a machete that his teacher one Mr. Odera had requested. DW2 testified to have heard the deceased saying that she had been injured /assaulted by people at the chang'aa den. As far as he was concerned, the relationship between his parents (the accused and the deceased) was good.
 24. From the totality of the evidence presented by both prosecution and defence, what emerges is that there is some doubt created as to the question whether the accused is the one who had injured the deceased leading to her death. It is instructive from the evidence of PW1, DW2 and DW3 that the deceased arrived home on the 5/10/2023 already drunk and with injuries and that it was PW1 and PW2 who teamed up with the accused to rush the deceased to hospital. It was the accused who called the father to the deceased (PW5) and informed him about the turn of events. The effort the accused made to try and call for help from people in order to get help for his wife and further the cooperation he accorded the investigation officers left no doubt that he had plans to kill his wife. Even though the accused was the last person to be with the deceased, I find the circumstances obtaining at the time do not warrant this court to resort to the "last seen principle" as he has given an account of himself and the efforts he took to take the deceased to hospital. Indeed, the deceased's children (DW2 and DW3) gave evidence



exonerating their father (accused) and that the intense cross examination by the prosecutor did not shake their evidence that their mother had arrived home while drunk and injured. It is thus highly likely that the injuries sustained by the deceased while at the changaa drinking den might have led to her death. The investigating officer (PW6) stated that he tried to get witnesses in vain and that none of the villagers was willing to come forward and give evidence and that is why he recommended for an inquest but which was rejected by the ODPP. It would appear to me that the prosecution's evidence rests entirely on suspicion as to whether the accused killed his wife. I find that there is nothing to connect the accused with the death of his wife except mere suspicion. The said suspicion might be strong but that is all the prosecution's case is hinged on. It is trite law that suspicion alone cannot sustain a conviction. In the case of *Mary Wanjiku Gichira Vs R* (Criminal Appeal No.17 of 1998) (unreported), the Court of Appeal held that suspicion however strong cannot provide a basis for inferring guilt which must be proved by evidence. Again in the case of *R. V. Kipkering Arap Koske and Another* [1949] EACA 135 it was held that in order to justify 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. It is quite clear that there is doubt over accused's involvement in the death of his beloved wife. I find that the benefit of such doubt should be resolved in favour of the accused in any event.

25. In view of the foregoing observations, it is my finding that the prosecution did not prove the guilt of the accused herein beyond any reasonable doubt. I find the accused Maurice Otieno Okong'o not guilty and is hereby acquitted of the offence of murder. He is hereby ordered to be set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

DATED AND DELIVERED AT SIAYA THIS 16TH DAY OF MAY 2025.

D. KEMEI

JUDGE

In the presence of:

Maurice Otieno Okong'o...Accused

Odhiambo.....for accused

Mocha.....for Prosecution

Okumu.....Court Assistants

