



State v Ogoma (Criminal Case E040 of 2024) [2025] KEHC 10279 (KLR) (18 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIIAYA
CRIMINAL CASE E040 OF 2024**

DK KEMEL, J

JULY 18, 2025

BETWEEN

STATE PROSECUTION

AND

JAMES WARAMBO OGOMA ACCUSED

RULING

1. The accused herein James Warambo Ogoma has been charged with two counts of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the first count are that on the night of 20th day of May 2024 at Luri “B” in Nyandiwa Sub-Location Gem Sub County within Siaya County, jointly with others not before court murdered one Charles Orwa Ogoma. The particulars of the second count are that on the night of 20th may 2024 at Luri “B” in Nyandiwa Sub Location, Gem Sub County within Siaya County, jointly with others not before court murdered Marcel Orwa Ogoma.
2. The prosecution called a total of seven (7) witnesses in support of its case.
3. The prosecution’s case is that the first victim Charles Orwa Ogoma who is the last born brother of the accused had a land dispute which was then being litigated in court and that on the material date the said Charles Orwa Ogoma went to work on the land in dispute and was confronted by one of the brothers namely Francis Omondi and that a fight ensued between them where upon the said Charles Orwa Ogoma killed the said Francis Omondi. The accused later arrived at the scene and attacked the second victim Marcel Orwa Ogoma who was then slashing grass within the family compound when the accused herein confronted him and stabbed him with a spear and that his mother alerted her husband of the incident and that they rushed him to hospital but who succumbed on arrival at the hospital. The first victim Charles Orwa Ogoma who is father to the second victim left the hospital for his home only for the accused to attack him with a spear on the stomach leading to his death. The accused later mobilized villagers who burnt down the homes of the deceased. The Area Assistant Chief – Noah Oduor Oluoch (PW4) and police arrived at the scene and managed to cool the irate villagers. The bodies were collected and taken to the mortuary. An autopsy was conducted by Dr. Victor Ochieng



(PW6) who formed the opinion that the cause of death of the 1st victim Charles Orwa Ogoma as cardio pulmonary failure secondary to hemorrhagic shock secondary to spleen injury due to assault. He also formed the opinion that the cause of death of the 2nd victim Marcel Orwa Ogoma as cardio pulmonary shock due to major vessel injury (left femoral vessels) secondary to penetrating injury by a spear secondary to assault. No. [particulars withheld] Sgt Ng'eno Kibet Simon (PW7) investigated the matter and later charged the accused with two offences and also recovered one metal spear which was produced as Exhibit No. 1.

4. At the close of the prosecution's case, this court is called upon to establish whether the prosecution had established a *prima facie* case against the accused so as to warrant him 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 person if no evidence to the contrary is advanced by the accused. See *Bhatt v. R* [1957] EA 132. Hence, the evidence adduced so far must be sufficient to sustain a conviction against the accused were he to elect to remain silent in defence.
5. Upon analyzing the evidence of the seven (7) witnesses lined up by the prosecution, I find that the evidence tendered squarely places the accused at the scene of crime. The evidence of PW1, PW2, PW3, PW4, PW5 and PW7 clearly place the accused at the scene of crime. That being the position, I find that the accused must now offer an explanation as to how the deceased met his death.
6. In the result, it is my finding that the prosecution has made out a *prima facie* case against the accused to warrant him to be called upon to make a defence. Consequently, I find the accused herein James Warambo Ogoma has a case to answer and is now called upon to elect to conduct his defence in accordance with the provisions of Section 306 (2) of the [Criminal Procedure Code](#).

DATED AND DELIVERED THIS 18TH DAY OF JULY 2025.

D. KEMEI

JUDGE

In the presence of:

James Warambo Ogoma Accused

Oduol for Accused

M/s Kerubo for Prosecution

Okumu Court Assistant

