



State v Odhiambo (Criminal Case E041 of 2023) [2025] KEHC 9762 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9762 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E041 OF 2023**

DK KEMEL, J

JULY 4, 2025

BETWEEN

STATE PROSECUTION

AND

FELIX OTIENO ODHIAMBO ACCUSED

RULING

1. The accused herein Felix Otieno Odhiambo has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence are that on the night of 27th – 28th October 2023 at unknown hours within Mur Ng’iya Sub Location in Siaya sub County, within Siaya County jointly with others not before court unlawfully killed one Allan Atieno Oduor.
2. The prosecution called a total of ten (10) witnesses in support of its case.
3. The prosecution’s case is that on the material date the deceased had attended a funeral within the neighbourhood in company of a relative one Byron. While at the venue, the two joined other mourners to dance to music being played as is common within the community. That the deceased and his friend were later ordered to leave the venue by force by another group of young men and as they left, they were pursued by the same group which was armed with pangas and clubs. That the pursuers managed to catch up with them and attacked them viciously. That the deceased was overpowered, beaten and left for dead. The deceased companion managed to escape with injuries. The deceased was rushed to Siaya County Referral Hospital but died the following day while undergoing treatment. Autopsy was conducted by Dr. George Tadeus Masawa (PW6) on 1/11/2023 wherein he formed the opinion that the cause of death was severe head injury due to blunt force trauma and who produced the autopsy report as Exhibit No.1. The investigations were conducted by No. 2XXXXXX PC Clifford Gikundi (PW10) who later preferred charges against the accused herein.



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 twelve (12) witnesses lined up by the prosecution, I find that the evidence tendered squarely places the accused at the scene of crime. The evidence of PW2, PW3, PW4, PW5 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 Felix Otieno Odhiambo 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 4TH DAY OF JULY 2025.

D. KEMEI

JUDGE.

In the presence of:

Felix Otieno Odhiambo Accused

Ooro F for Accused

M/s Kauma for Prosecution

Otieno watching brief for the family of the deceased

Okumu Court Assistant

