Republic v Adipo (Criminal Case E023 of 2024)
[2025] KEHC 12866 (KLR) (19 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12866 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

CRIMINAL CASE E023 OF 2024

DK KEMEI, J

SEPTEMBER 19, 2025

BETWEEN

REPUBLIC ..... PROSECUTION

AND

DANIEL OUMA ADIPO ..... ACCUSED

JUDGMENT

1. The accused herein Daniel Ouma Adipo 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 24th day of April, 2024 at Simenya village, Rangala location within Ugunja Sub-County in Siaya County, he murdered Nereah Auma Arony,

2. The prosecution called four (4) witnesses in support of its case. Its case is that the family of the accused and the deceased had been involved in a land dispute that had raged for a long period and that the family of the accused had earlier in the day forcefully carried out survey on the land and planted boundary features. That on the material date, the deceased was walking home in the company of her sister Rosemary Adhiambo Arony (PW1) when the accused herein crept from behind them and suddenly hit the deceased on the back killing her suddenly. That the accused attempted to turn the same weapon on PW1 who recognized him which forced him to drop the weapon and fled from the scene. That PW1 then raised alarm and later alerted her brother, Lawi Ochieng Aron (PW2) and also alerted neighbours. Police officers later visited the scene and collected the body. It was the evidence of No. 113773 Pc Samuel Yonah (PW3) that he visited the scene and organized for the removal of the body and later witnessed the autopsy which was conducted by Dr Bruno Okal (PW4). That he later arrested the accused and charged him with this offence. That he produced the recovered weapon namely a piece of wood with one end burnt. It was the evidence of the said pathologist that the cause of death was severe brain injury secondary to blunt trauma to the head.

3. At the close of the prosecution's case, this court ruled that a prima facie case had been made out by the prosecution to warrant the accused to make a defence and the court duly proceeded to place the accused on his defence. He opted to tender a sworn testimony and called one witness.

4. Daniel Ouma Adipo (DW1) testified that he was at all times working at his bakery shop when his father alerted him that his cousin had been killed by unknown people but that the deceased's sister Rosemary was alleging that he was the one who had killed the decased. That he rushed home only to find that the body of the deceased had been collected by police. That the police arrested him the following day. That he maintains that he has been charged because of a family land dispute between his father and his elder brother Lawi Ochieng.

   On cross examination, he stated inter alia; that he was at Simenya trading centre when the alleged incident took place; that he did not have anything to back up his alibi; that he agrees with the evidence of Rosemary Adhiambo that there were no other persons at the time of the incident.

5. Martin Ochieng Owiny (DW2) testified that he was at home around 8.00 PM when he and other family members heard screams from the direction of the deceased's home and that they heard the name of Daniel Ouma Adipo being mentioned yet he was not home at the time. They were instructed by their grandfather, Michael Adipo, to go to Simenya Trading Centre and join the accused herein, who was at his bakery.

   On cross examination, he stated that they heard the name of Daniel Ouma Adipo being mentioned at the scene. That he was not with the accused as from 8.00PM to 8.30 PM as he had left at 8.00 PM for Simenya trading centre.

6. After the close of the defence case, learned counsels were directed to file and exchange submissions. However, it is only the defence that complied.

7. Vide submissions dated 16/6/2025 Ms Achieng, learned counsel for the defence, submitted that it is not in dispute that murder is among the most serious offences in our criminal justice system and that the consequences of a conviction are grave, including a potential sentence of death and life imprisonment. That given the severity of such a charge and the irreversible impact it would have on the life and liberty of the accused, the law imposes a strict burden on the prosecution to prove the case beyond reasonable doubt which burden never shifts to the accused person and that there is the golden thread that runs through the web of criminal law namely that the prosecution must prove the guilt of the accused person. That the role of the court is to scrutinize the evidence presented with utmost care and caution, to ensure that no innocent person is punished based on unsubstantiated suspicion and incomplete investigations.

8. It was submitted that the prosecution in this case has fallen short of this high threshold. That the case against the accused person is riddled with contradictions, material omissions and lacks evidentiary support sufficient to sustain a conviction in that at the root of this case lies a bitter land dispute between the accused person's father and pw2, a key prosecution witness. That this underlying tension permeates the evidence, raises a legitimate concern about possible bias and vendetta, and must not be overlooked in evaluating the credibility of the witnesses and the motivation behind the allegations. It was urged that the evidence adduced by the prosecution is at best speculative. That the alleged eye witness did not see the accused committing the offence and that the investigating officer failed to conduct a conclusive investigation and further the post-mortem was conducted without the accused person's knowledge or presence, all of which point to a fatally flawed prosecution's case.

9. Learned counsel urged the court to analyse the evidence carefully, apply the applicable legal standards and find that the prosecution has not proved its case beyond reasonable doubt. Accordingly, the

accused should be acquitted under section 215 of the criminal procedure code. It was further submitted that the witnesses' testimonies reveals fundamental weaknesses, contradictions and procedural gaps that fatally weaken the case.

10. Learned counsel for the defence assailed the purported eye witness (PW1) who claimed that she was walking home with the deceased and that all of a sudden there was silence, and upon looking back, she saw her sister lying down while the accused person was allegedly lifting a log in an attempt to strike her and that she screamed which forced the accused to flee from the scene. It was submitted that the said witness did not witness the accused person striking the deceased since by her own admission, the deceased was already lying down when she turned and that what she saw was the accused raising the log wanting to hit her and not the accused delivering a blow on the deceased person. That there was no scream or reaction from the deceased, whom PW1 claimed was right behind her and was talking to her all along. That It is highly not probable that an adult could be struck fatally by a heavy log in total silence and that this raises serious questions about whether the deceased was really hit by the log as claimed.

11. It was finally submitted that there was no verbal exchange between the accused and PW1 and that there was no forensic evidence and no independent witness to corroborate PW1's claim. That PW1 also admitted on cross-examination that there was a land dispute between her brother (pw2) and the accused's father and also admitted that the deceased was not involved in the land dispute and therefore the accused stood to gain nothing from her death. That the possibility of bias and malicious implication cannot be ruled out in this case. When asked whether she could be fixing the accused as a revenge for the land dispute involving her family and the accused person's father, she denied it but this denial cannot cure the inherent conflict of interest. It was also pointed out that PW1's testimony is not only unsubstantiated but also logically inconsistent with natural human responses and therefore unreliable as a basis of a murder conviction. Her evidence therefore amounts to speculation and assumption, and it cannot by itself sustain a conviction for murder, especially where no forensic evidence or corroboration exists. It was further submitted that the accused was not availed during the autopsy so as to give him an opportunity to challenge the exercise. It was further contended that the investigating officer did not dust the recovered weapon so as to see if the accused was linked to the crime.

12. It was also submitted that the accused raised an alibi defence early enough and recorded and served upon the prosecution statements of three witnesses, two of whom failed to attend court. That the accused person has no burden to prove his alibi as the burden remains with the prosecution to disprove it but which was never investigated or rebutted by the prosecution as no evidence was presented to that effect. Reliance was placed in the case of Wesonga v Republic (Criminal Appeal 179 of 2020) [2023] KECA 1302 (KLR) (27 October 2023) where the court held that:

> " With respect, we think that the prosecution did not entirely discharge its duty of dislodging the appellant's defence of alibi. This is especially so because the appellant's alibi seemed plausible. We think the prosecution should have called the two witnesses who supported the alibi to testify so that it could test the corroborative effect of the statements that they had given. Having failed to do so, a reasonable doubt has been cast in our minds as to whether the person identified at the scene of crime on the material night was actually the appellant. In this respect we are persuaded by the reasoning of this court in Erick Otieno Meda v Republic [2019] eKLR;"18.In an alibi defence based on witness testimony, the credibility of the witness can strengthen or weaken the defence dramatically. A successful alibi defence entirely rules out the accused as the perpetrator of the offence. There is no burden of proof on the accused to prove an alibi. If there is a reasonable possibility that the accused's alibi could be true, then the prosecution has failed to discharge its burden of proof and the

accused must be given the benefit of the doubt. In the case of Kiarie – v- Republic [1984] KLR, this court stated:'An alibi raises a specific defence and an accused person who puts forward an alibi as an answer to a charge does not in law thereby assume any burden of proving that answer and its sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable '"

We further concur with the sentiments of the High Court in Republic Vs SSM [2020] eKLR where Odunga, J. (as he then was) stated thus;"34.It therefore follows that the mere fact that the prosecution's case is believable does not amount to a rejection of the alibi defense. The South African case of Ricky Ganda v The State, [2012] ZAFSHC 59, Free State High Court, Bloemfontein provides useful guidance. In the said case it was held: -"The acceptance of the evidence on behalf of the state cannot by itself be sufficient basis for rejecting the alibi evidence. Something more is required. The evidence must be considered in its totality. In order to convict there must be no reasonable doubt that the evidence implicating him is true...the correct approach is to consider the alibi in light of the totality of the evidence in the case and the courts impression of the witnesses...it is acceptable in totality in evaluating the evidence to consider the inherent probabilities...The proper approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done so, to decide whether the balance weigh so heavily in favour of the state as to exclude any reasonable doubt about the accused's guilt.""

For the case at bar, the appellant mounted a plausible and reasonable narrative at the earliest opportunity that he was in far- away Belgut and even mentioned two witnesses who recorded statements. The prosecutions' failure to call the said witnesses can only lead to an inference that their evidence would have been adverse to its case. What possible doubts or questions there might be in that alibi defence do not operate to strengthen the prosecutions' case. An accused person who raises an alibi assumes no burden to prove it but the law imposes a duty on the prosecution to wholly disprove it. We are not persuaded that the prosecution herein discharged that onus. That failure leaves the alibi as possibly true which in turn injects the prosecution case with the destructive germ of reasonable doubt. We are thus left with no option but to resolve that doubt in the appellant's favour. No amount of suspicion no matter how strong can justify a conviction where a reasonable doubt of guilt lingers."

13. It was finally submitted that the totality of the evidence presented by the prosecution did not meet the threshold of proof and that the accused should be acquitted of the offence. Learned counsel contended that the accused was not placed at the scene of crime and that even suspicion alone cannot sustain a conviction against the accused. Reliance was placed in the case of Republic v Ndala & Another [2025] eKLR where the court held thus:

> " This Court is not, hence, persuaded that the prevailing circumstances in this matter taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. This is a case where the accused were charged on the basis of suspicion. However, as was held by the Court of Appeal in Sawe –vs- Rep [2003] KLR 364: -Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.
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> In Mary Wanjiku Gichira s. Republic, Criminal Appeal No 17 of 1998, the same Court held that: -... suspicion however strong, cannot provide a basis for inferring guilt which must be

proved by evidence. Before a court of law can convict an accused person of an offence, it ought to be satisfied that the evidence against him is overwhelming and points to his guilt. This is because a conviction has the effect of taking away the accused's freedom and at times life.

A similar view was expressed by the Tanzania Court of Appeal in R v Ally (Criminal Appeal No. 73 of 2002) [2006] TZCA 71 where it was held that: -Suspicion, however grave, is not a basis for a conviction in a criminal trial. The appellant ought to have been given the benefit of doubt and acquitted.

Therefore, whereas there may be some suspicion that any of the accused may have been involved in the death of the accused, that suspicion alone, however, strong cannot form a basis of conviction in a criminal case. It remains the cardinal duty of the prosecution to prove every element of the offence.

The prosecution, therefore, failed to prove that the accused were responsible for the death of the deceased in any way whatsoever."

14. I have considered the evidence of 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 any reasonable doubt.

15. It is noted that the accused has been charged under section 203 as read with 204 of the Penal Code which provide as follows: -

Section 203- Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

Section 204- Any person convicted of murder shall be sentenced to death.

16. 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 v DPP [1935] AC 462 which laid down the guiding principle regarding the issue of burden of proof which is placed on the shoulders of the prosecution to discharge and that the standard is one of beyond any reasonable doubt. The court stated in the aforesaid case as follows:

> " Throughout the web of the English criminal law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt, subject to the qualification involving the defence of insanity and to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt created by by the evidence given either by the prosecution or the prisoner as to whether the offence was committed by him, the prosecution has not made out a case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

17. In order to sustain 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 by unlawful acts or omissions; that there was malice aforethought; that the accused was the perpetrator of the crime.

18. As regards the aspect of death, the autopsy was conducted by Dr Bruno Okal (PW4) who observed a bruise on the forehead and supra-occipital hematoma. He formed the opinion that the cause of death was severe brain injury secondary to blunt trauma to the head. He produced the autopsy report dated

3/5/2024 as Exhibit 2. I find the issue of the fact of the death of the deceased was thus proved by the prosecution beyond any reasonable doubt.

19. As regards the unlawfulness of the death, it is trite law that all homicides are unlawful unless circumstances exist to render it excusable or justifiable as was established in the case of R Vs Guzambizi s/o Wesonga[1948] 15 EACA 65. I find no such circumstances have been demonstrated in this case. The evidence tendered revealed that the deceased herein was a vibrant young woman who was in good health and looked to more years in her life. The injuries sustained and confirmed by the pathologist left no doubt that the assailant desired the said injuries would lead to her death. The evidence tendered was that the deceased sustained a single blow to the back of the head and thus an indication that the assailant desired the same to lead to her demise. Hence, I find the ingredient was proved beyond any reasonable doubt by the prosecution.

20. On whether there was malice aforethought, section 206 of the Penal Code provides the appropriate explanation on what constitutes the same as the intention or knowledge of causing death or grievous harm and can be inferred from circumstances inter alia; the intention to cause death of any person; an intention to cause grievous bodily harm which leads to the death of such a person; reckless disregard of life where a perpetrator is aware of the possibility that their actions could lead to death of such a person; intentional commission of a criminal act where death is a natural consequence of that act; evidence of prior planning or premeditation . Under section 203 of the Penal Code, murder is described as the unlawful killing of a person with malice aforethought and that the perpetrator had the intention, knowledge, or recklessness which indicates his awareness that his/her actions are likely to result in death or serious harm. It transpired from the evidence that the deceased was walking together with her sister (PW1) when the accused herein crept from behind them and struck the deceased on the head with a piece of wood whereupon the deceased fell down and that PW1 confronted the accused who attempted to hit her as well but dropped the weapon and fled from the scene upon PW1 recognizing him and raising alarm by shouting out his name three times. In the case of R Vs Tubere s/o Ochen [1945]n12 EACA 63 the court gave some guidelines on how malicious intent can be inferred as follows:

> " The weapon used i.e whether it was a lethal weapon or not;
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> The part of the body that was targeted i.e whether it was a vulnerable part or not;
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> The manner in which the weapon was used i.e whether repeatedly or not, or number of injuries inflicted, and;
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> The conduct of the accused before, during and after the incident i.e whether there was impunity."
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> The chronology of the events as narrated by PW1 left no doubt that the assailant really wanted the deceased to die since the single blow to the head snuffed out the life of the deceased. There was thus malice aforethought on the part of the assailant. The assault weapon was a piece of stick (club) with one end burnt and with a heavy force, the deceased stood no chance at survival. It is therefore clear that the injuries sustained and the use of such a weapon left no doubt that the assailant desired the death of the deceased to occur. It is clear that the accused had carefully planned to eliminate the deceased and her family members as a result of a land feud. I find that this ingredient was proved beyond any reasonable doubt.

21. On whether the accused herein was the assailant, it is noted that the incident took place at about 8.00 PM. It was the evidence of PW1 who is a sister to the decased that on the fateful day, she was walking home in company of the decased when the accused herein crept from behind them and struck the deceased on the head with a club (rungu). It was further her evidence that on confronting the accused,

he aimed the weapon at her but that she raised alarm and shouted out his name thrice whereupon he dropped the weapon and fled. She identified the recovered weapon which was produced as Exhibit one. The witness further stated that there was moonlight at the time which enabled her to recognize the accused. She further added that she had known the accused quite well as they are cousins and that the accused runs a bakery at Simenya market. Indeed, the accused did not deny the issue of a family relationship between his family and that of the deceased. PW2 upon hearing screams from PW1, rushed to the scene where he was informed by PW1 that it was the accused herein who had hit the deceased with a club. The said PW2 stated that he had a longstanding land dispute with the family of the accused who were out to dispossess him of his family land.

22. As the incident occurred at night, the key issue for determination is whether the identity of the eye witness (PW1) was free from the possibility of error. The court is conscious of the danger of convicting an accused on the evidence of a single witness without corroboration. In the case of R. v Turnbull & Others [1976] 3ALL.ER 549 Lord Widgery CJ held as follows:

> " First, whether the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defense alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identification. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not to use any particular form of words.
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> Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made.
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> How long did the witness have the accused under observation? At what distance? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? was there any material discrepancy between the description of the deceased given to the police by the witness when first seen by them and his actual appearance? In any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy, they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases, if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence. Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. All these matters go to the quality of the identification evidence. If the quality isgood and remains good at the close of the accused's case, the danger. In our judgment, when the quality is good, as for example when the identification is made after a long period of observation, or in satisfactory condition by a relative, a neighbor, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it; that provided always, however, that an adequate warning has been given about the special need for caution.

In evaluating identification evidence, particularly when it emanates from a single witness, the court must exercise great caution. In the case of Wamunga Vs R [1989] KLR 424, the court held that where the only evidence against a defendant is evidence of identification, the court must examine such evidence carefully and be satisfied that the circumstances of identification were favourable and free from the possibility of error. The court went on to state as follows:

''It is trite law that where the only evidence against a defendant is evidence on identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction.''

23. In the case of Maitanyi Vs Republic [1986] KLR 198 the court held as follows:

> " 1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.
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> 2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light available conditions and whether the witness was able to make a true impression and description.
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> 3. The court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making a decision. It must do so when the evidence is being considered and before the decision is made."

23. The evidence of PW1 was identification by recognition. It transpired from the evidence that the accused and PW1 as well as the deceased were cousins. In the case of Wamunga Vs Republic (supra), the Court of Appeal held that the identification by recognition is more assuring and more believable than the identification of a stranger since the witness has more information and details about the perpetrator. It transpired that PW1 had been walking with the deceased who was her sister and had moved some paces ahead when the deceased was hit and that the accused also attempted to hit her when she screamed out his name thrice forcing him to drop the weapon and flee. I have also taken caution as guided by the Court of Appeal for Eastern Africa in the case of Abdallah Bin Wendo & Another Vs R [1953] 20 EACA 166 where it was held:

> "Subject to certain well-known exceptions, it is trite law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is known that the conditions favouring correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct pointing to guilt from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness can safely be accepted as free from the possibility of error."

The accused herein in his defence has brought forth a defence of alibi. He maintained that he was not at the scene of the alleged crime as he was then busy baking doughnuts at his bakery in Simenya trading centre and was only alerted of the incident by his family members. In

the English decision of Republic Vs Johnson 46 CR APP. R 55 [1961] 3 ALL ER 969 the defence of alibi was described as follows:

"Though an alibi is commonly called a defence, it is to be distinguished from a statutory defence such as insanity or diminished responsibility and is analogous to a defence such as self defence or provocation. A prisoner who has put forward an alibi as an answer to a charge does not assume any burden of proving that answer and it is a misdirection to refer to any burden as resting on the prisoner in such a case."

Again, in the case of Uganda v Sebyala & Others [1969] EA 204 the learned Judge quoted a statement by his Lordship the Chief Justice of Tanzania in Criminal Appeal No. 12D 68 of 1969 where his lordship observed: "The accused does not have to establish that his alibi is reasonably true. All he has to do is to create doubt as to the strength of the case for the prosecution. When the prosecution case is thin, an alibi which is not particularly strong may very well raise doubts."

The accused's witness (DW2) testified that he was at home with family members at 8.00 PM when he heard screams from the direction of the deceased's home and that they heard the name of the accused herein being mentioned as the assailant and that they were advised to rush to Simenya trading centre to alert the accused about the incident and to require him to come home. The said witness stated on cross-examination that the accused had left for Simenya at 8.00 PM. This appears to contradict the evidence of the accused who stated that he had left for Simenya trading centre at 6.00 PM. Iam convinced by the evidence of DW2 that the accused had left for Simenya trading centre at 8.00 PM. This time thus placed the accused at the scene of crime and which was confirmed by the evidence of the eye witness (PW1) who stated that the incident took place around 8.00 PM. This therefore dislodges the accused's alibi that he was at Simenya when the incident took place. It was possible for the accused to lay in wait for the deceased and her sister and then strike and then dash to his place of work at Simenya trading centre and continue baking doughnuts as if nothing had happened. It is clear that the accused and his family were aware of what was to befall the deceased and her sister and that as soon as the attack had taken place, the accused decided to rush to Simenya and pretend that he had been there as from 6.00 PM and that his family members then went to alert him about it. It is instructive that the accused claimed that he was with some friends at Simenya trading centre at 7.00 PM who could vouch for his alibi. However, it is noted that the accused did not give the prosecution the requisite early warning so as to enable the prosecution to investigate and interrogate the alibi in time before the defence hearing commenced. The accused's alibi defence must be weighed against the evidence tendered by the prosecution so as to establish whether or not he was placed at the scene of crime.

24. Learned counsel for the defence has submitted that there was no direct evidence as the evidence of PW1 was not credible and that even circumstantial evidence cannot link the accused to the crime. I find that even if the case entirely rests on circumstantial evidence, the test to be considered is the one laid down in the case of Sawe v Republic [2003] KLR 364 where the Court of Appeal 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 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."

Looking at the entire evidence, it is my considered view that there was no other co-existing circumstances weakening the chain of events and leaves no doubt about the accused's involvement in the crime and his guilt. I further find that the accused's alibi did not pass muster or weaken the overwhelming evidence by the prosecution which squarely placed the accused at the scene of crime.

25. After carefully analyzing the entire evidence, iam convinced by the evidence of the prosecution that the accused herein was placed at the scene of crime. He was recognized by PW1 who was his cousin and sister to the deceased. PW1 stated that there was moonlight which enabled her to recognize the accused who was her cousin. Indeed, the accused in his evidence admitted on cross-examination that he and the deceased as well as PW1 were cousins. It was the evidence of PW1 that on recognizing the accused as the assailant and who attempted to injure her as well, raised alarm by shouting his name thrice whereupon the accused dropped the weapon at the scene and fled. The accused has claimed that the case is about a land dispute involving his family and that of the deceased. It was the evidence of the defence witness (DW2) that he and his family heard the name of the accused being mentioned at the scene and that their father advised them to rush to Simenya trading centre to alert him of the matter and that they all rushed to the scene. However, I find that it is highly unlikely that the family of the deceased could organize for the demise of their loved one so as to frame it upon the accused and his family in a bid to settle differences over the longstanding land dispute. It was the evidence of PW2 that the family of the accused wanted them out of the land which they intended to snatch by force and hence the hatred which led to the killing of the deceased. Iam satisfied that the prosecution has managed to prove its case within the threshold of proof which is beyond any reasonable doubt. The defence evidence has not shaken that of the prosecution in any way.

26. In the result, it is my finding that the prosecution has proved its case against the accused herein beyond any reasonable doubt. I find the accused herein Daniel Ouma Odipo guilty of the charge of murder and is convicted accordingly.

DATED AND DELIVERED AT SIAYA THIS 19TH DAY OF SEPTEMBER 2025.

D. KEMEI

JUDGE

In the presence of

Daniel Ouma Odipo..... Accused.

M/s Achieng.....for Accused

M/s Mumu.....for Prosecution

Okumu.....Court Assistant