



**Republic v Otieno (Criminal Case E010 of 2023)  
[2024] KEHC 5298 (KLR) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5298 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE E010 OF 2023**

**RE ABURILI, J  
MAY 20, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MARGARET ACHIENG OTIENO ..... ACCUSED**

**RULING**

1. The accused person Margaret Achieng is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. Particulars of the information dated 18<sup>th</sup> May 2023 are that on the 7<sup>th</sup> day of May, 2023 at Kisumu Kanyakwar in Kisumu Central District within Kisumu County, she murdered Regan Otiende Otieno.
3. The accused person was mentally examined by Dr. L. Nyamute a Consultant Psychiatrist at JOOTRH on 23<sup>rd</sup> May 2023 and a report filed in court on 25<sup>th</sup> May 2023 to the effect that she was 21 years old and was fit to stand trial.
4. The accused therefore took plea on 25<sup>th</sup> May 2023 represented by Mr. Oregio Advocate. The accused denied the charge of murder as read out to her and a plea of Not guilty was entered.
5. The prosecution has called seven (7) witnesses who have testified in support of its case, and closed the case on 13<sup>th</sup> May 2024.
6. The question now is whether the prosecution has established a prima facie case to warrant the accused to be placed on her defence.
7. The burden of proof lies on the prosecution throughout the trial to prove its case against the accused person beyond reasonable doubt.



8. That burden does not shift to the defence because the accused person carried no duty or obligation to exonerate self from culpability.
9. The accused person enjoys the constitutionally guaranteed right of being presumed innocent until proven guilty to remain silent and not to give self-incriminating evidence, among other rights under Article 50(2) of *the Constitution*.
10. At this stage, however, the prosecution is not expected to have proved the case against the accused person beyond reasonable doubt, but to establish a prima facie case.
11. On the other hand, if the court which has heard the evidence by the prosecution witness is of the view that such prima facie case has been established, then it need not delve deep into the merits of that evidence as that would prejudice the accused person before being accorded an opportunity to be heard in defence.
12. This court cannot at this stage make a definitive finding of guilt or prove beyond reasonable doubt.
13. Having considered the evidence of the 7 prosecution witnesses, I am satisfied that a prima facie case has been established to warrant the accused to be placed on her defence.
14. Accordingly, the accused person herein Margaret Achieng Otieno is found with a case to answer and is placed on her defence to answer to the charge of murder as per Information dated 18<sup>th</sup> May 2023.
15. The provisions of Article 50(2) (i) (k) and (l) of *the Constitution* as read with Section 306(2) of the *Criminal Procedure Code* are read out and explained to the accused person in the presence of her counsel Mr. Orego and she is informed that she will consult her advocate on the mode of defence that she wishes to proffer.
16. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF MAY, 2024**

**R. E. ABURILI**

**JUDGE**

