



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Asindi & 6 others (Criminal Case 75 of 2015)
[2023] KEHC 2652 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 75 OF 2015
WM MUSYOKA, J
MARCH 24, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

**MICHAEL ODHIAMBO ASINDI 1ST ACCUSED
ELEMINA WOTO ESHIKULU 2ND ACCUSED
THOMAS MUKOYA ODHIAMBO 3RD ACCUSED
FESTO OPUKA WAKHU 4TH ACCUSED
FRANCIS EPICH ODHIAMBO 5TH ACCUSED
JUSTUS ANGUBA MAKOKHA 6TH ACCUSED
GEOFFREY OMBUMBU KEYA 7TH ACCUSED**

RULING

1. In this case, the deceased was a mental health patient, who had been admitted at Butere District Hospital, on October 19, 2015, and was being cared for at the hospital by his mother, PW1. In the small hours of October 20, 2015, his condition deteriorated, and he escaped from hospital, ostensibly to go home. Somewhere along the way, he was caught by individuals, who thought he was a thief on the prowl, and he was subjected to mob justice, leading to his death.
2. The accused persons herein are said to have been part of the crowd that assaulted the deceased. However, none of the witnesses, presented by the prosecution, were present at the scene where the deceased was beaten to death by the mob, and none of them named any of the accused persons, as having been part of the crowd that meted out the mob violence.



3. PW1 was the mother of the deceased, whom he escaped from, leaving her at the hospital. PW2 was a village elder who was telephoned by her Assistant Chief, and instructed to go to the home of the deceased, to inform the family about the incident, and she was the one who brought the attention of the killing to PW3, the spouse of the deceased, the 2 rushed to the scene, only to find that he had died. PW4 was a brother of the deceased, who was informed of what transpired at 6.30 AM, when he got to the scene, the deceased was already dead. PW5 was a local evangelist, who got the information, rushed to the scene, only to find the deceased dead. None of these witnesses saw the accused assault the deceased or do anything that would have led to his death. They all said that they did not find anyone at the scene. PW6, the last witness, was the pathologist.
4. As there is nothing to link the accused persons to the death, there would be no basis to call upon them to defend themselves. It is my finding and holding, therefore, that the prosecution has not established a *prima facie* case to warrant that the accused persons be put on their defence. I find that they have no case to answer, and I accordingly acquit and discharge them. They shall be set free from remand custody, if they are being so held, unless they are otherwise lawfully held.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24th DAY OF March 2023

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Nandwa, instructed by Nandwa & Company, Advocates for the accused persons.

