



**Republic v Ogola & another (Criminal Case E005 of 2022)  
[2024] KEHC 15639 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15639 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E005 OF 2022  
DK KEMEL, J  
DECEMBER 9, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**EDWIN ODHIAMBO OGOLA ..... 1<sup>ST</sup> ACCUSED**

**LUCAS OMONDI OGOLA ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The two accused herein Edwin Odhiambo Ogola and Lucas Omondi Ogola have been charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code. The particulars are that on the 24<sup>th</sup> day of January 2022 at Hawagaya village in East Oholo Location, Ugunja Sub-county, within Siaya County murdered one Chrispin Opondo.
2. The prosecution called ten witnesses in support of its case.
3. The prosecution’s case is that on the material date at around 8.00 pm the deceased and his siblings were at their home when the iron sheet roof was pelted with stones. They went out to check on the matter and as they reached their gate, they met the two accused herein and another who is still at large. The deceased and his brother (PW1) enquired as to what the matter was only for one of the assailants named Peter who is still at large to cut PW1 on the face with a panga. That PW1 fell down and managed to rush home. Apparently, the deceased did not manage to reach home as it turned out that he was killed and his body dumped in a nearby river. The following day, a search for the deceased was mounted. The body was later recovered. An autopsy was conducted on it by Doctor Tonny Kinja (PW6) who formed the opinion that the cause of death was excessive haemorrhage from severed jugular vein. He produced the autopsy report as an exhibit. Investigations were conducted by Sgt James Ochola (PW9) and that the 2<sup>nd</sup> accused led him and other officers to the river where the body of the deceased was recovered. He later produced several exhibits recovered and also organized for the post mortem examination



on the body of the deceased. He finally arranged to have some DNA specimens collected from the accused herein which he handed over to the Government Chemist for analysis. The government analyst Polycarp Lutta Kweyu (PW10) produced the DNA report as an exhibit.

4. At the close of the prosecution's case, learned counsels filed and exchanged written submissions on the issue of whether the prosecution has established a prima facie case against the accused persons so as to require them to be called upon to make a defence.
5. I have considered the evidence presented at this stage of the proceedings as well as the submissions presented. I find the only issue for determination is whether a prima facie case has been made out by the prosecution to warrant the accused to make a defence.
6. A prima facie case is one where a reasonable tribunal directing its mind to the law and evidence placed before it can convict an accused if no evidence is offered by the defence to the contrary. In a nutshell, what this means is that the evidence so far tendered at this stage of the proceedings should be sufficient to sustain a conviction against the accused person were they to elect to remain silence in defence. (See *Bhatt Vs. R* (1957) EA 332.
7. Upon an analysis of the entire evidence and more specifically that of PW1, PW2, PW7 and PW9, I find that the two accused herein were placed at the scene of crime and must now offer an explanation as to how the deceased met his death.
8. In the result, it is my finding that the prosecution has established a prima facie case against both accused herein to require them to make a defence. Consequently, I find each of the accused herein Edwin Odhiambo Ogola and Lucas Omondi Ogola has a case to answer and are now called upon to elect to conduct their defence in line with the provision of Section 306 (2) of the Criminal Procedure Code.

**DATED AND DELIVERED AT SIAYA ON THIS 9<sup>TH</sup> DAY OF DECEMBER, 2024.**

**D. KEMEI**

**JUDGE**

In the presence of

Edwin Odhiambo Ogola .....1<sup>st</sup> Accused

Lucas Omondi Ogola.....2<sup>nd</sup> Accused

Oduor .....for accused

M/s Mumu .....for Prosecution

Ogendo .....Court Assistant

