



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Otieno (Criminal Case E021 of 2022)
[2024] KEHC 15555 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E021 OF 2022**

DK KEMEL, J

DECEMBER 6, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN OKINYO OTIENO ACCUSED

RULING

1. The accused herein John Okinyo Otieno has been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge are that on the night of 12th and 13th of July, 2022 at Usigu Sub Location, in Bondo Sub- County, within Siaya County, he murdered Florence Odhiambo Okinyo.
2. The prosecution called four witnesses in support of their case which was as follows:
3. PW1 Dr. Rita Opondo, a Medical Officer testified that on the 21/07/2022 at Bondo Sub County hospital, she conducted an autopsy on the body of Florence Adhiambo Okinyo. She testified that externally there was multiple facial bruises, 4 x4cm around the chin and forehead. On the head, there was hemorrhagic congestion of the skull on the left frontal parietal zone, a sign of trauma as well as the right temporal occipital zone. No skull fracture was noted. On the nervous system, there was mild hemorrhage within the subdural space on the left lobe of the brain. She formed the opinion that the cause of death was head injury secondary to blunt trauma. She produced the autopsy report as exhibit 1.
On cross examination by the defence counsel, she reiterated that the cause of death was head injury due to trauma by a blunt object causing internal bleeding.
4. PW2 was Brighton Otieno, a 14 year old boy in class 8. He testified that on 12/07/2022 he came back from school at 5.00 PM and found his siblings Cate and Mackenzie and asked them on the whereabouts of their mother and who informed him that she had left. He went ahead to prepare dinner. At 9.00 pm their father John Okinyo arrived. He asked them about the whereabouts of their mother and that



he informed that he didn't find her when he came back from school. That their father then left while locking the main door from outside and who came back at 11.00 pm. That when the door was opened, he saw his mother lying on the door. That his father requested him to help him carry his mother to bed. That his father then asked him for water and sponge and which he used to wipe out the blood that was in her mouth and face. That he went to sleep but that he could hear his mother crying in low tones. That the following day, his father informed him that their mother was dead.

On cross examination, he testified that he heard his father say that his mother would see the following day.

5. PW3 Absolom Ligodi Oketch a jua kali worker from Ndori testified that on 21/07/2022 he was called by Bondo police to go and witness the post mortem on the body of the deceased who had been his cousin. That he was with other close family members and that he identified the body. That the doctor informed them that she had been hit by a blunt object that led to her death.
6. PW4 Corporal Nelson Ariba testified that on 13/07/2024 a case was reported at Usenge police station vide 07/13/2022 by the assistant chief Joakim Mnjuria of Got Kaswani village, Usigu sub location. He had received information that one Florence Odhiambo had passed on and that her body was lying at her matrimonial home. That in the company of his colleagues, they visited the scene and found the body lying on the floor covered with a bedsheet. That on further investigations, the investigation officers learnt that the previous night the accused and the deceased were involved in a scuffle. The accused's brother one Sylvester witnessed it. That the accused beat the deceased with sticks (produced as exhibits). That on visiting the scene of the fight, the investigating officer recovered rubber shoes belonging to the deceased. That one could see signs of a struggle at the scene. Relatives and neighbours informed the officer that the two used to fight a lot. That the accused fled the scene but later presented himself at Siaya police station where he was arrested.

On cross-examination, he stated inter alia; that the accused's relative Sylvester witnessed the incident; that he recovered deceased's shoes; that the accused interfered with the scene since the body of deceased had been moved from the bed and that it had been washed; that the scene had not been secured and that one could see signs of a struggle.

7. At the close of the prosecution case, both the prosecution and the defence counsels filed submissions on the issue of whether the prosecution had made out a prima facie case against the accused herein.
8. I have given due consideration to the evidence adduced at this stage of the proceedings as well as the submissions presented. I find the only issue for determination at this stage is whether the prosecution has made out a prima facie case so as to warrant the accused to be placed on his defence.
9. It is trite law that in criminal trials the burden of proof is always on the prosecution to discharge. A trial court is therefore enjoined by law to determine whether at the conclusion of the prosecution's case there exists a case discharging that burden of proof. Indeed, the prosecution has an obligation to establish the guilt of the accused for the offence charged beyond reasonable doubt. See *Woolmington -vs DPP* (1935) AC 462. The burden of proof is also expounded in section 107 of the [Evidence Act](#) which provides that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
10. The tests and procedure for a trial Judge to decide if there is no case to answer is attributed in section 306 of the *Criminal Procedure Code* which provides as follows.

“ At the end of the Prosecution's evidence on either submissions by the prosecutor or defence or on the court's own initiative, may make a finding on whether there is sufficient evidence to prove the elements of the offence. If the prosecution evidence is capable of establishing the



case for an independent tribunal to conduct it, it may call upon the accused person to take his or her defence in rebuttal. Whereas on the other hand if the evidence is insufficient for any independent and reasonable tribunal directing its mind to the facts may reach a verdict of not guilty and acquit the accused”.

11. The prosecution was under duty to prove the essential elements of the offence as provided for under section 203 as read with section 204 of the Penal Code. The elements are inter alia; that the deceased is dead; that the death was caused unlawfully; that there was malice aforethought and that the accused directly or indirectly participated in the commission of the alleged offence. Hence, the prosecution while discharging the burden of proof, must establish at this stage that the evidence so far tendered should be sufficient to sustain a conviction against the accused herein were he to elect to remain silent in defence. See *Bhatt -vs Republic* (1957) EA 332.
12. In the instant case, the evidence of the pathologist (PW1) was that the deceased died out of head injury secondary to blunt trauma. As to the question of whether the death was unlawful, it goes without saying that all homicides are deemed unlawful unless authorized by the law. The death of the deceased herein was obviously unlawful. On the aspect of whether the accused was involved and whether there was malice aforethought, it was the evidence of PW2 and PW4 that the accused and the deceased used to live together as a couple and that the two had frequent fights. Further, PW4 who is the investigating officer is that he found the body of the deceased lying on the floor at her matrimonial home. That on visiting the scene of the incident, there were signs of a struggle and that he recovered sticks that had been used by the accused to beat the deceased as well as rubber shoes belonging to the deceased and which were produced as exhibits. It is instructive that the body of the deceased was found inside her matrimonial home which she shared with the accused herein who was her husband.
13. I find the totality of the evidence presented placed the accused at the scene of the crime as a perpetrator of the crime either personally or through proxies. It is my finding that the evidence availed at this stage of the proceedings have established a prima facie case against the accused to warrant him to make a defence. The evidence is sufficient to sustain a conviction against him were he to elect to remain silent in defence. Having been placed at the scene of crime, the accused must now offer an explanation as to how the deceased met her death.
14. In light of the foregoing observations, it is my finding that the prosecution has established a prima facie case against the accused herein John Okinyo Otieno. I find that he 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, SIGNED AND DELIVERED ON THE 6TH DAY OF DECEMBER, 2024.

D.KEMEI

JUDGE

In the presence of:

John Okinyo Otieno....Accused

Oorofor Accused

Kofafor Prosecution

OgendoCourt Assistant

