



**Republic v Otieno (Criminal Case E022 of 2023)
[2025] KEHC 13433 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E022 OF 2023**

**DK KEMEL, J
SEPTEMBER 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

EDWIN WANDERI OTIENO ACCUSED

RULING

1. The accused herein Edwin Wanderi Otieno faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the night of 24th and 25th August 2022 at Mudindi village, West Uholo Location, in Ugenya Sub-County within Siaya County jointly with others not before court murdered one Beatrice Atieno Sulwe.

2. The prosecution called nine witnesses in support of its case. The prosecution’s case is that on 24/8/2022 at around 8.30 pm the deceased herein was at her residence together with her niece Margaret Akoth Okwanyo (PW1) when hooded strangers stormed the house. That one of the strangers accosted PW1 while at the kitchen and forced her to lead him to the main house from where she was locked in one of the bedrooms and raped repeatedly for the entire night by one of the assailants. Meanwhile the other assailants confronted the deceased in the sitting room where they overpowered her and severely tortured her and were later joined by the assailant who had been raping PW1 and after a while the assailants left the scene. It was then that PW1 managed to contact relatives who rushed to the scene and found the body of the deceased lying on the floor in a pool of blood. The body of the deceased was collected by the police and taken to Ambira Sub-County Hospital where an autopsy was conducted by Dr. Tony Kinja (PW7) on 29/8/2022 who noticed multiple deep cut wounds on the head, shoulder joint and that the left forearm was amputated. He formed the opinion that the cause of death was excessive hemorrhage secondary to assault by a sharp object. He produced the report as Exhibit 5. Several specimens collected at the scene were also forwarded to the Government Chemist Kisumu and which were analyzed by Polycarp Lutta (PW4) and who also obtained a buccal swab from the



accused herein. The said analyst established that male DNA profile generated from seminal stains on a mattress cover (item A) matched with the DNA profile of Edwin Otieno Wanderi (accused herein) and further that the male DNA profile from the vaginal swabs (Bas-1, Bas -2, MAo-1 and MAo-2) was a mixed DNA profile of Edwin Otieno Wanderi (accused) and other unknown male persons. The report was produced as Exhibit 4(b). Eric Nyambeda (PW2) testified that the deceased had earlier in the year 2020 reported a case of house breaking and stealing against her domestic worker and that she had claimed that the said domestic worker had threatened to kill her upon release by the court. Kennedy Ouma Okanda (PW5) testified that he examined one complainant named Margaret Akoth Okwayo (PW1) and noted bruises on the vaginal wall and blood stains on the genital area and that he confirmed that rape had taken place and that he produced the P3 form, treatment notes and post rape care form as Exhibit 2a, 2b and 2c respectively. No. 112661 Pc Winston Obare (PW7) testified that he was present in court during the trial of the accused herein over the charge of burglary and stealing at Ukwala Law Courts vide Criminal Case No. E089 of 2020 where the deceased herein was the complainant and that the then complainant was threatened by the accused herein to the effect that he would kill her after release from jail. That he advised her to report the matter at Ukwala Police Station. No. 66783 Cpl Simon Likonyi was the scenes of crime officer who visited the scene and took photographs which he produced as exhibit 1 – 11 while the report was produced as Exhibit 9. No. 261068 Pc Nicholas Kimanzi (PW9) investigated the matter and recovered underpants belonging to the deceased and Margaret Akoth OKwayo (PW1) and that he also obtained vaginal swabs from both victims and further recovered a green bedsheet. That he escorted the exhibits to the Government Chemist in Kisumu for analysis. That he also secured a court order from Ukwala Law Courts and escorted the accused herein to the Government Chemist where buccal swabs were recovered from him. That he later charged the accused herein with the present offence.

3. At the close of the prosecution's case, both learned counsels tendered oral submissions on the issue of whether the prosecution has made out a prima facie case against the accused so as to warrant him to be called upon to make a defence.
4. I have given due consideration to the evidence adduced, at this stage of the proceedings as well as the submissions of both learned counsels. The issue for determination is whether the prosecution has established a prima facie case against the accused to warrant him to make a defence. A prima facie case is where a reasonable tribunal directing its mind to the law and evidence presented before it can convict an accused based on the evidence adduced by the prosecution without any evidence from the defence to the contrary. In a nutshell, what this means is that the evidence so far tendered at this stage of proceedings should be sufficient to sustain a conviction against the accused without the accused presenting his evidence to the contrary. See *Bhatt Vs. Republic* [1957] EA 332.
5. An analysis of the entire evidence presented at this stage clearly place the accused at the scene of crime and thus he must now offer an explanation as to how the deceased met her death. It is instructive that at this stage of the proceedings, the court ought not to venture into the reasons substantively as this would prejudice the defence. The court is only required to establish whether a prima facie case has been established to require an accused to tender his/her defence evidence in response to the evidence tendered by the prosecution which could either cast doubt or shake the same and thereafter require the court to either give such accused the benefit of doubt or convict him or her.
6. In the result, it is my finding that a prima facie case has been made out by the prosecution to warrant the accused be called upon to make a defence. Consequently, I find that the accused herein Edwin Wanderi Otieno 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 AND DELIVERED AT SIAYA THIS 30TH DAY OF SEPTEMBER 2025.



D. KEMEI

JUDGE

In the presence of

Edwin Wanderi Otieno.....Accused

Dick Osala.....for Accused

M/s Mumu.....for Prosecution

Okumu.....Court Assistant

