



**Republic v Odongo (Criminal Case E033 of 2023)
[2025] KEHC 13991 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13991 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E033 OF 2023**

DK KEMEL, J

OCTOBER 7, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

MARY ODONGO ACCUSED

RULING

1. The accused herein Mary Odongo has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on 30th day of September 2023 at around 2130 hours Siger Sub-Location, in Rarieda Sub-County within Siaya County murdered one Tobias Odongo.
2. The prosecution called a total of seven witnesses in support of its case.
3. The prosecution’s case is that on the material date, the deceased herein who is husband to the accused herein arrived home while drunk and demanded to be served food. A disagreement arose between him and the accused and the two fought. It transpired that the two had been fighting each other frequently. Relatives rushed to the scene upon hearing screams and tried to intervene and established that the fight had been as result of food in which the accused had refused to give it to her husband. The accused later decided to go and spent the night at the house of her mother in law. The deceased was later rushed to hospital but he later died while undergoing treatment. A post mortem was later conducted by Dr. Ombok Lucy (PW6) who noted that blood oozed from the ears and that there was a skull fracture leading to massive bleeding inside the brain. She formed the opinion that the cause of death was severe head injury as a result of blunt force. She produced the autopsy report dated 9/10/2023 as exhibit No. 1. Investigations were conducted by No. 240663 IP Delison Mwamobe Abuga (PW7) and who had the accused arrested when she presented herself at the police station to lodge a report and who was later charged with the offence herein.



4. At the close of the prosecution's case, learned counsels for the parties opted not to tender submissions on a case to answer and relied on the evidence already presented.
5. At this stage of the proceedings, the prosecution is under a duty to establish a prima facie case against the accused person so as to warrant her make a defence. A prima facie case is one in which a reasonable tribunal directing its mind to the law and evidence can convict an accused if no evidence is tendered by the defence to the contrary. What this means is that the evidence that has been presented should be sufficient to sustain a conviction against the accused person were he to elect to remain silent in defence. See Bhatt Vs. Republic (1957) EA 332.
6. After analyzing the evidence of the prosecution's witnesses, it is clear that the evidence of PW2, PW3 and PW4 placed the accused persons at the scene of crime. The Accused had been living with the deceased as wife and husband and that it transpired that the two lived a troublesome marriage papered with frequent fights and assaults brought about by the deceased's alcoholism and the accused's refusal to accept him as her husband. It is instructive that on the material date and as confirmed by family members who rushed to the scene that the accused declined to give her husband food which led to the fight. The investigating officer (PW7) stated that on interrogating the accused, he established that the accused had pushed the deceased who is said to have fallen on a metal box. The accused being the last person to have been with the deceased and having been placed at the scene of crime, she must now offer an explanation as to how the deceased met his death.
7. In view of the foregoing observations, it is my finding that the prosecution has established a prima facie case against the accused herein to warrant him to be called upon to make a defence. Consequently, I find Mary Odongo has a case to answer. She is now called upon to elect to conduct her defence in accordance with the provisions of Section 306 (2) of the Criminal Procedure Code.

DATED AND DELIVERED AT SIAYA THIS 7TH DAY OF OCTOBER 2025.

D. KEMEI

JUDGE

In the presence of:

Mary Odongo.....Accused

Ooro F.....for Accused

Soita.....for Prosecution

Kimaiyo/Moureen.....Court Assistant

