



**Republic v Paulo (Sexual Offence E048 of 2023)
[2025] KEMC 144 (KLR) (4 June 2025) (Judgment)**

Neutral citation: [2025] KEMC 144 (KLR)

**REPUBLIC OF KENYA
IN THE SIAYA LAW COURTS
SEXUAL OFFENCE E048 OF 2023
JP MKALA, RM
JUNE 4, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMWEL LUCHENDA PAULO ACCUSED

JUDGMENT

1. This is an Inquest into the death of Petro Odhiambo, who was alleged to have committed suicide in a police cell at Umala Police post on 16th February, 2020.

Brief facts

2. The facts are that one Petro Odhiambo (deceased) was arrested by officer from Umala Police Post on 15th February, 2020 on allegations of stealing a phone belonging to a person by the name Brian Otieno. Brian lodged a complainant that the deceased had stolen his phone prompting the officers to arrest and interrogate the deceased.
3. The deceased was booked into the post cell at 1945 hours and spent the night therein until the following morning 16th February, 2020 at around 0500 hours when PC. Rashid Abdhala took over duties and upon opening the cells he was greeted by deceased body hanging from the window.
4. It is alleged that the deceased committed suicide using his t-shirt and another rope which the investigating officer alleged to have been from a strap of a laptop bag while the police allege to be from the deceased trouser.



Summary of the evidence presented

The state called 9 witnesses.

5. IW1 Robert Ouko. He stated that on 15th February, 2020 on Saturday around 0700 hours he was pouring water in a video hall at Umala. He met one Brian whom he had known for about one year since he used to work for his brother. As he was pouring the water, Odhiambo who is his neighbour also arrived.
6. Brian had lost his phone, he had come to inquire whether he (Robert) had seen it. He told him that he had not seen it. Brian said that Odhiambo had stolen his phone, however, Odhiambo denied taking the phone. Brian threatened to go to report to the police station (Umala Police Post). Brian went to report the matter.
7. Petro Odhiambo love sugarcane, so he went to buy sugarcane from the market. PC. Rashid who was washing his clothes at the police post saw him and called him to the police post. He claims that Brian went to report at the police post when he was with Pc. Rashid. Upon arrival, Odhiambo was asked by Pc. Rashid to produce Brian's phone but he denied having taken it. He was arrested by PC. Rashid and placed into the police cell. As at the time of his arrest Odhiambo was walking without any problem. He claims that Odhiambo was arrested in his presence at around 0900 hours.
8. He claims to have temporarily stayed with Rashid after Odhiambo was arrested and later left. That at around 1800 hours, he decided to go check on Odhiambo at the police station. Upon arrival at the police station, one Charles Ombaga Olal arrived, as they were conversing with Charles, Odhiambo who was in the police cell heard them he (Odhiambo)asked him to bring him his sweater since he was feeling cold. He went to Odhiambo's home and brought the sweater.
9. When he brought the sweater, Pc. Rashid opened the door to the cell. He claims that he saw the deceased was in handcuffs, PC. Rashid uncuffed him in order to put on the sweater. After wearing the sweater, Rashid yet again handcuffed him, and locked the door. That he bid Odhiambo bye and left. Charles Olal had come to the station to make report. The following morning, he heard that Odhiambo had died. He claims to have known Rashid for about 8 years. That he had never had any quarrels with PC. Rashid and so the evidence he gave was not being driven by vendetta.

That he did not remember the clothes Petro Odhiambo was wearing that time.

IW2 Charles Ombaka Oluma.

10. He averred that on 15th February, 2020 he visited Umala police post to make a report of his two children, Derrick Omondi Ombaka and Barack Onyango who had disappeared from home. The he knew Petro Odhiambo very well. As he was making his report, Petro who was in police cell heard his voice and called his name. That the police cell and the reporting office are close to each other.
11. Petro shouted and told him that he had been arrested and would be spending the night in the cell. He informed him that his house was not locked so he should go bring for him a sweater. He states that he could not go for the jacket himself, so he sent Robert Ouko. He states that he did not see Petro Odhiambo, he only heard his voice. He states that he sounded worried but he was fine.
12. He claims that he found one officer at the police post who introduced himself as Derrick.



IW3 No. 257073 Pc Rashid Abdhala

13. He stated that during the incident, he received a complaint from one Brian who reported that his phone had been stolen by the deceased. He booked the report and as fate would have it, the deceased passed by the police post. He called him and asked him whether he had taken the phone, the deceased denied.
14. He later arrested the deceased. He called the deceased wife, who brought a phone to the station but Brian said that it was not the phone. He stated that he told him that he would proceed to take his finger prints and charge him before court the following day.
15. He states that he booked him into the police cell at around 1900 hours. By this time, he was with his colleague one PC. Derrick Muriuki. The deceased did not exhibit any kind of illness, he was in good health. He states that he did not handcuff the deceased while placing him in cell. The deceased was wearing a t-shirt and had no shoes. He claims to have locked the door to the cell and handed the keys to officer on duty PC. Derrick Muriuki. That he was not on duty that day and he was only holding brief for PC. Derrick who had stepped out and the case was not minuted to him.
16. When his superior one Benjamin Ekaranon came, he went and told him that he had booked the deceased in the cell. He went back to his house to pray. After prayers, he came out and met one Robert Ouko who told him that he had brought a jacket for the deceased. Robert handed the deceased a jacket through the window, since Derrick had the keys to the cell and he was not present.
17. He states that when a suspect is placed in police cell, it is the duty of every officer to ensure that the suspect stays in the cell. He avers that he went to check on the deceased at around midnight and he found that he was okay and in fact they spoke. That when he assumed duty the following morning at around 0500 hours and opened the door to the cell, he found the deceased hanging from the cell window.
18. The deceased used his t-shirt and a material from his trouser to hang himself. He was shocked, he went and informed the officer in charge. There was no one at the report office. After confirming that the deceased was dead, the in charge informed the OCS Kogelo police station. That the deceased had inscribed

IW4 PC. Benjamin Ekaranon.

19. He testified that on 15/2/2020 he woke up at 0800 hours and travelled to Siaya town. He left PC. Derrick Muriuki on duty. He claims that he came back to the station at around 2000 hours when PC. Rashid told him that he had booked the deceased into the cell and upon inquiring, he instructed him to release the deceased and ask him to come back the following day.
20. He claims that he was not aware that the deceased had not been released until the following day when PC. Rashid went and told him that the deceased had killed himself in the police cell.
21. He states that when he learnt and confirmed that indeed the deceased had killed himself he called OCS Kogelo police station.

IW5 Julius Otieno Odhiambo

22. He claims that he was called on the 12/2/2020 and informed that the deceased had been arrested. He went to the station on 13/2/2020 but he was unable to meet him. he was told the person who had keys to the cell was way on an operation. He left and the following day he went to Siaya police station to inquire and was told that there was no one going by the name of the deceased in their cells.



23. He later received a phone call from the area chief who asked him to meet him at his office. Upon arrival he met demonstrating members of the public. He was informed that the deceased had killed himself. He was taken to the cell, in his opinion, and from the deceased height it was not possible that he killed himself by hanging.
24. He was then taken to the SCRH mortuary where he saw the body, and contrary to the police story that he killed himself with a t-shirt, there was a rope on his neck which looked like a strap from a laptop bag. A post-mortem was conducted on the body.

IW6 Dr. Collins Otieno Oginga

25. He testified on behalf of his colleague Dr. Gabriel Wari Juma who was away on further studies. He had worked with Gabriel for over eight years. He holds a bachelors degree in medicine and surgery. The post-mortem was conducted 25/2/2020. That the deceased was found dead on 16/2/2020 at around 0600 hours at Umala police post.
26. It was alleged that the deceased took his own life using his own t-shirt. The deceased was 38 years old African male, he was 175 centimetres. The body had a rope tied on his neck. Face appeared swollen with engorged facial blood vessels. The mouth was open with protruding tongue with blood clots noted in the mouth. There was bleeding and watery discharge from the left ear.
27. There were blood clots at the bases below both lungs. The lungs were noted to have reduced in size. There was blood below the liver, enlarged blood vessels on the face. Mouth was oozing blood.
28. The cause of death was concluded as suffocation after strangulation by a rope. The second cause of death was circulatory collapse. He stated that the strangulation and circulatory collapse are not related. He claims that suicide by hanging does not cause bleeding, it only causes suffocation. That the liver and lungs were damaged by blunt force trauma. There was a blood clot in the lungs. The blunt force trauma was on the chest and upper abdomen.
29. His opinion was that it seems the deceased was strangled after the blunt force trauma. Death by hanging and the blunt force trauma are not related. The cause of death was severe loss of blood in his internal organs. In his opinion the primary cause of death was not suicide by hanging. He claims the ropes resemble those weaved.

IW7 No. 66783 Corporal Simon Likonyi

30. That he is a crime scene photographer. That on the 16/2/2020 he was called to photograph and process the scene where the deceased had killed himself. That he took nine photographs which he produced as evidence.

IW8 PC Dennis Muriuki

31. He testified that the deceased was arrested by PC Rashid on allegations of stealing a phone. PC Rashid was not on duty. He was the one on duty but since Rashid was the one who arrested the deceased, he was left to conduct the investigation.
32. The deceased was not booked into the cell until 1900 hours. At around midnight, PC. Rashid and himself went and checked on the deceased in the cell who was okay by that time. PC. Rashid went to sleep. He states that he went to check on the deceased again at around 0230 hours, where he found that he was okay. He claims he never went back to check on him till morning. He claims to have left the reporting office at around 0445 hours and went to his house to sleep. Rashid went for the keys to



the cell at around 0500 hours. A few minutes later, Rashid came back and informed him that it looks as if the deceased was killing himself.

33. They rushed to check, upon reaching they found that the deceased was already dead and Benjamin Ekaronon called the OCS Kogelo police station.

IW9 Wilson Obongo

34. A senior investigation officer at IPOA. He stated that on 21/2/2020 he visited the scene at Umala police post. He was guided through by PC Benjamin Ekaronon OCPP. He sketched the scene, identified and interviewed witnesses.
35. During his investigation, he established that one Brian Otieno made a report of stolen phone by the deceased person. The deceased being a legio maria clergy and well known he presented himself to the police station, the I. O. arrested him and was booked into the police cell at around 1945 hours vide OB No. 17/15/02/2020 while appearing normal.
36. The deceased was visited by two members of his family who took him a jacket. Robert was granted access into the police cell and handed the jacket by PC. Rashid. The deceased was in handcuffs. He was released from the handcuffs, he wore the jacket and was handcuffed back. The cell was subsequently locked and the deceased was the only prisoner in it.
37. On 16/02/2020 PC Derrick Muriuki while taking over duties found the deceased dead in the cells suspected to have committed suicide using a piece of his t-shirt. PC Muriuki informed his boss of the incident who visited the scene photographed and processed and the body was taken to SCRH mortuary for preservation and awaiting autopsy.
38. The body was later identified by his family members as that of Peter Odhiambo Omondi and post-mortem was conducted on 25/2/2020. The pathologist confirmed that the deceased died due to suffocation following ligature strangulation with the second cause as being circulatory collapse following intra thoracic bleeding.
39. He stated that the ligature was from a piece of cloth and a handbag handle. The investigation could not establish how the handbag handle got into the cell since it was locked. He established that there were graffiti allegedly by the deceased person.
40. The window which the ligature was tied was about 2 meters high from the floor. The deceased height was 175 centimetres. The investigation could not establish whether the graffiti was inscribed by the deceased bearing in mind that the deceased was in the cell at night without lighting and the writings were not overlapping while he was also in handcuffs.

Questions to be answered

41. This court will endeavour to answer the questions listed hereunder as per the evidence presented before it.
1. The manner and apparent cause of death of Petro Odhiambo.
 2. Whether there is evidence disclosed to support a proposition of criminal culpability by some known person or persons.



Analysis of the evidence and determination

42. In re Makau Musau (Inquest 1 of 2022) [2024] KEMC 25 (KLR) (3 June 2024) (Judgment) it was held that: -
13. The principal purpose of an inquest is two-fold: First, to establish the manner and cause of death. Second, to fashion an opinion whether criminal culpability of any known person(s) has been established and offer recommendations.
 14. The manner of death is the fashion that brought about the cause of death. In this perspective, there are four known possible manners of death as follows: (i) natural causes; (ii) death caused by an accident or injury not intentionally caused by the deceased or by another; (iii) suicidal death which results from the intent by the deceased to terminate his/her own life by any means; (iv) homicide, which results from an accident or injury when the injury was intentionally caused by another person to the deceased; or a person acts in such a willful and wanton (reckless) disregard for life that his/her actions are likely to cause death like manslaughter or driving of a motor vehicle that causes a fatality while under the influence of alcohol or drugs.
 15. However, there are rare circumstances where the manner of death is unestablished or difficult to establish and it is deemed to be undetermined death, which arises if evidence as to the manner of death is unclear and the evidence is not sufficient and conclusive to reach a verdict.
Further in re Public Inquest into the Death of Careen Chepchumba Kili (Inquest 9 of 2012) [2018] KEMC 89 (KLR) (22 May 2018) (Judgment) it was held that: -
 141. The process for an inquest is designed to be inclusive, involving all conceivable parties; to the furthest extent practicable and as appropriate, to contribute to the fact-finding exercise.
 142. In Victoria State, in South-Eastern Australia, a common law jurisdiction, in the case of *Domascewicz v State Coroner*, the court attempted to elucidate the nature of an inquest. The court opined that: -“An inquest is not a proceeding inter partes. It is part of an investigative process which is concerned, inter alia, to set the public mind at rest where there are unanswered questions about a reportable death.”¹²
 143. In its nature, an inquest is inquisitorial. It accordingly and perfectly so, neatly suits the inquisitorial system.
 144. In an adversarial legal system setting, the court finds itself in uncharted territory, playing roles, which ordinarily should be played by investigative agencies, and in particular, the National Police Service Commission as established under Article 243 of *the Constitution*.
 146. The core purpose of an inquest is to establish the manner and cause of death and criminal culpability of any known person(s).
43. My duty is therefore to inquire and establish the manner and cause of death of Petro Odhiambo and determine whether any person is criminally culpable for his death.
- Now moving into the first issue for determination on the manner and cause of death.
44. IW1 Robert Ouko testified that the deceased was arrested by IW3 on allegations that he had stolen Brian’s phone at around 1000 hours on the 15/2/2020. IW3 on the other hand testified that he arrested the deceased around 1500 hours.



45. It is not in doubt that according to the evidence placed before this court that the deceased was arrested on 15/2/2020 and that was found dead in the police cells at Umala on 16/2/2020. What is in doubt in the minds of the ODPP, I.O. and members of the public is whether the deceased killed himself or was killed by known or unknown person(s).
46. IW1 stated that in the evening of 15/2/2020 at around 1800 or thereabout he revisited the police post to check on the deceased who was in custody. As he was conversing outside, the deceased heard his voice and asked him to bring his sweater from his house because he was feeling cold. He states that he went to the deceased's house, took a sweater and brought it to him. upon getting to the station, PC. Rashid Abdhalla (IW3) opened the cell. IW1 states that he saw the deceased was in handcuffs, PC Rashid uncuffed him, he wore the sweater and he was handcuffed back and PC. Rashid locked the door again.
47. IW2 on the other hand testified that he visited the police post to report on his missing children. As he was making the report at the report office to PC. Derick Muriki (IW8), the deceased who was in the cell and who knows the IW2's voice, shouted calling his name and informed him that he had been arrested and he will be spending his night in the cell. He requested him to go bring him a sweater from his house since the house was not locked.
48. IW2 states that since he was still being bothered by the issue of his missing children, he could not go to the deceased house, he sent IW1 to go pick the sweater. The question this court then asks who among IW1 and IW2 did the deceased instruct to go pick the sweater?
49. Even though IW1 states that PC Rashid Opened the cell for IW1 to hand over the sweater to the deceased and that he saw the deceased being handcuffed in the cell and the door being locked, IW3 states that when the IW1 brought the sweater, IW8 who was on duty that day had left with the keys to the cells so he could not open the door, it forced IW1 to hand over the sweater through a window. From the above testimonies it is hard to determine whether or not IW1 handed the sweater through the window or through the door. When this court visited the police post and the cell as it then was it noted that indeed there are two windows on the cell so the possibility that the sweater was hand over through the said window is very high.
50. Further, it is true that PC. Derrick Muriuki was on duty as from 0600 hours on 15/2/2020 to 0600 hours on 16/2/2020. IW8 did not dispute that he had the keys when the sweater was brought. It is common knowledge that once a person is placed into police custody, no handcuffs are supposed to put on him. The allegation that the deceased was handcuffed in the police cell is not backed by any evidence.
51. IW6 stated in his evidence that deceased died due to two causes, one was due to suffocation and the second one was due to intrathoracic circulatory collapse. He stated that as at the time of autopsy, the deceased had a ligature around his neck. The ligature was from a t-shirt and the other part was from woven rope which looked like it was from a laptop bag handle. Further IW5 stated that he went and examined and identified the body on behalf of his family. He states that unlike the police allegation that the deceased killed himself using his t-shirt, there was another rope that looked like it was a strap from a bag. He wondered how that rope found itself into the closed police cells. This is the question carried by the investigating officer too.
52. I have perused the post mortem report dated 25/2/2020. The pathologist opine that the cause of death was suffocation following ligature strangulation and circulatory collapse following severe intrathoracic bleeding. During the hearing, IW6 stated that in his opinion the intrathoracic bleeding is not related to the suffocation. Further, he noted blood at the bases of the right and left lungs.
53. According to the *National institute for health, post-mortem changes*, "the primary mechanism by which ligature strangulation causes death is by obstructing the blood vessels and/or airway in the neck. Most



- notably, it compresses the jugular veins, which are responsible for draining deoxygenated blood from the head and neck back to the heart. When these veins are compressed, blood flow out of the head and neck is impeded, leading to a backup of blood (venous congestion)
54. Further, according to the same article the increased venous pressure can transmit throughout the venous system, including into the large veins that drain into the heart and subsequently the pulmonary circulation.
 55. As blood backs up in the venous system, it can lead to pulmonary congestion, meaning the blood vessels within the lungs become engorged with blood. In more severe or prolonged cases, this increased pressure can force fluid out of the capillaries into the lung tissue and air spaces (alveoli), resulting in pulmonary edema (fluid in the lungs).”
 56. Additionally, in “*National institute for health, strangulation injuries*” it states Ligature strangulation's primary mechanisms of harm are related to cerebral hypoxia (lack of oxygen to the brain) and airway obstruction. While it doesn't directly cause intrathoracic bleeding in the same way a stab wound to the chest would, the immense venous pressure it creates can lead to various hemorrhages, and in extreme or complicated cases, some degree of intrathoracic bleeding could be a rare, secondary finding.’
 57. From the above article it is clear that both causes of death can be attributed to the ligature strangulation. This could be so since from the evidence of the pathologist, there was no physical injuries seen from the deceased body. This rules out any notion that the deceased could have been physically assaulted with blunt force or objects leading to the intrathoracic bleeding. Further, no evidence has been produced by any witness that they witnessed the deceased being assaulted by the police officers or any other person.
 58. The investigating officer asks how did the rope looking like a laptop bag strap found its way into the police cell while it was locked. I have examined IEX-4a&b, it is clear that the t-shirt used as part of the strangulation ligature belonged to the deceased. Further, examination of the alleged strap/rope shows that it is not necessarily from a laptop bag or a handbag, I note that some trouser may have such kind of straps either hanging or fixed to the trouser. What the investigating officer did not tell this court is whether he examined the deceased trouser and concluded that it did not have such a strap. It is therefore difficult to conclude that the said strap originated from outside the cell and was not with the deceased.
 59. Now moving to the issue of the height from the floor to the window visa viz the height of the deceased. The question is, would the deceased die from a distance of 200 centimetres while he was 175 centimetres tall? Witnesses have suggested that that is close to impossible. However, to the contrary, several experts and research papers have held that yes indeed a person of such height can actually die. Death by hanging can occur not necessarily by a long drop, even a short drop may cause death as long as the airway has been blocked or constricted leading to suffocation as a result of lack of oxygen to the brain. This is according to the oxford reference (<https://www.oxfordreference.com/display/10.1093/oi/authority>).
 60. According to the post-mortem report, the blood vessels on the head were engorged, this means that no blood was flowing into the brain leading to death.
 61. The question that how did the deceased access a pen and write the suicide note on the wall, and how did he write in the dark without the words overlapping. When this court visited the scene, it noted that cell had a source of lighting. No evidence that show the deceased was left in the dark without lighting. Further, no examination of the handwriting was conducted to establish that the handwriting did not belong to the deceased or whether it was of one of the officers at the station.
 62. Based on the above analysis it is my finding that the deceased died by suicide.



Whether there is evidence disclosed to support a proposition of criminal culpability by some known person or persons.

63. From the analysis of the evidence placed before this court, no a particular person can be blamed as causing the death of the deceased. The report for stealing was made by Brian Otieno on 15/2/2020 at 1524 hours according to the Ob extract. The deceased was booked to the cell at 1945 hours. Even though PC. Benjamin Ekarnon Ag OCPP informed this court that he directed PC. Rashid to release the deceased on cash bail, no evidence has been placed before this court to substantiate that allegation.
64. According to the police standing orders, the officer in charge of the station is mandated to grant the accused persons cash bails and not junior officers.
65. Further, according to the OB extract, PC. Rashid is said to have visited the accused person in the cell at 0000 hours and reports that the deceased was normal as at that time. PC Derrick Muriuki on the other hand testified that he visited the cell at around 0230 hours and saw the deceased and appeared normal.
66. He left the reporting office at around 0400 hours and went back to his house. He did not hear any commotion. From the evidence on record, the deceased killed himself when no police officer was close to the cell.
67. Even though one may appear physically normal and okay, no one can attest to the deceased mental state. Nobody can say with certainty what the deceased was thinking and what would have led him to make the decision to kill himself and indeed took the steps to hang himself.
68. Even though he was not released on police cash bail and neither did the officer incharge inform Kogelo police station to pick the deceased from their ungazetted holding cell, that does not make the officers culpable for the demise of the deceased.
69. No officer strangled the deceased. No evidence points to any foul play by any individual that led to the demise of the deceased.

conclusion

70. In light of the foregoing analysis of facts and evidence, this honourable court is inclined to make a determination under Section 387(5) of the [Criminal Procedure Code](#) to the effect that the deceased died by suicide and that there is no evidence of foul play.
71. In the upshot, this inquest is closed. It is my hope and prayer that this will give closure to the family, friends and colleagues.

So orders the court.

DATED AND DELIVERED IN OPEN COURT AT SIAYA THIS 4TH DAY OF JUNE, 2025.

J. P. MKALA

RESIDENT MAGISTRATE

Delivered in the presence of:-

Ms. Zakia for state

Accused present

C/A John Okumu

