



Republic v Owino (Criminal Case E029 of 2020)
[2025] KEHC 15170 (KLR) (Crim) (28 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15170 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E029 OF 2020
K KIMONDO, J
OCTOBER 28, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

ROBERT OTIENO OWINO ACCUSED

RULING

1. The accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code.
2. The Director of Public Prosecutions informed the High Court that on 15th August 2020 at Kisumu Ndogo area, Starehe Sub-County, within Nairobi County he murdered Bernard Omondi Oduor (hereafter the deceased).
3. The prosecution managed to call six witnesses. Four of them appeared before my predecessor, Ogembo J. Upon explanation of the rights under section 200 (3) of the Criminal Procedure Code, the accused elected to proceed from where the matter had reached.
4. Learned counsel for the defence, Mr. Kariuki, filed submissions dated 30th September 2025. The Republic equally lodged submissions dated 24th September 2025 under the hand of Ms. Kigira, Principal Prosecution Counsel.
5. The accused's case is that the essential elements of the charge of murder have not been proved to the required standard. In particular, the accused was not positively identified as the perpetrator of the crime, and there is no eye-witness account or reliable evidence to connect him with the death of the deceased. He submitted that the circumstantial evidence was too weak and merely bordered on suspicions.



6. But according to learned counsel for the Republic, the evidence of the deceased's father (PW1) and the pathologist establish the cause of death and that it was unlawful and that the assailant was of malice aforethought. She submitted that the accused was identified by a witness known as Stephen Maloba (D1) and Michael Maloba saw the accused stabbing the deceased. I must point out at the earliest that those two witnesses were not called to the stand. The prosecution argued that the combined evidence of PW2, PW3, PW4 and PW6 showed the accused was at the locus in quo.
7. In order to answer the question whether the evidence is sufficient to place the accused on his defence, I have kept in mind that there was no eye witness and that the prosecution's case revolves largely on circumstantial evidence. I must restate that circumstantial evidence is still good evidence.
8. PW1 was Stephen Oduor, the father of the deceased. On 15th August 2020, he was informed by his daughter that the deceased had been stabbed and taken to Mama Lucy Hospital. When he reached there, he was informed that the deceased had died. The body had a stab wound on the chest. He spoke to a good Samaritan(s) who had ferried the deceased to the hospital who told him he was unaware of the circumstances leading to the stabbing but the deceased had a stab wound and in great pain. The witness could not recall the name of the good Samaritan(s).
9. PW1 reported the matter to PC Marcus Wameyo (PW3) of Kariobangi Police Station. The witness also took statements from witnesses including one Michael Okinda who had witnessed the stabbing along Daniel Komboni Street.
10. According to Police Constable Isiah Kioko (PW2), he and his colleague, Felix Orifa (PW4) were on patrol duties on 18th August 2020. Prior to that date, a complainant known as Kevin Wambugu had reported a case of theft at Korogocho Police Post under OB No. 21/17/8/2020. On 18th August 2020, he told them that he had spotted the suspect. They went to Grogon B, Korogocho, Daniel Komboni area. The complainant pointed out the accused and they arrested him.
11. A few metres to the police they met another person known as Michael Maloba. He claimed the person they had arrested had stabbed another man with a knife and killed him and the matter reported at Kariobangi Police Station. PW2 informed his counterparts at Kariobangi who came to the post and re-arrested the accused for the offence of murder.
12. That version of evidence was confirmed by the investigating officer, PC Robert Ndung'u (PW6). He also visited the scene and recorded statements from PW2, PW4 and an "eye witnesses" including one Michael Maloba. He later escorted the accused to Mathari Hospital for mental assessment on two occasions. He was finally found fit to plead (exhibits 2 & 3).
13. There is then the evidence of the pathologist Dr. Charles Muturi (PW5). He found a deep penetrating stab wound measuring 2 x 0.5cms on the left upper side of the anterior chest. It had gone through the ribs and heart and caused serious bleeding. He formed the opinion that the cause of death was "exsanguination due to single penetrating stab-wound to the chest". He produced the postmortem form (exhibit 1).
14. My finding is as follows. Section 203 of the Penal Code provides that any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
15. There are three key ingredients that must be present in the offence of murder: first, the prosecution must prove beyond reasonable doubt the death of the deceased and the cause of that death; secondly, that the accused committed the unlawful act that led to the death; and, thirdly, that the accused was of malice aforethought. Malice aforethought is the mens rea or the intention to kill another person.



16. There is absolutely no doubt about the death of the deceased. The body was positively identified by his father (PW1). Doubt is completely erased by the post mortem report (exhibit 1) produced by PW5. The pathologist concluded that the cause of death was “exsanguination due to single penetrating stab-wound to the chest”.
17. I thus readily find that the death was unlawful. However, none of the eye witnesses referred to by PW1, PW2, PW3, PW4 and PW6 were called to testify. To be clear, I issued summons to appear to Michael Maloba on 22nd January 2025. When he failed to appear I followed it with warrants of arrest on 26th March 2025. By 1st April 2025, the arrest had not been effected and I was constrained to grant a last adjournment to the prosecution. On 23rd July 2025, Learned Prosecution Counsel informed the court that the witness could not be found.
18. Granted those circumstances, the entire case for the prosecution is thus built atop circumstantial evidence. In *R v Kipkering arap Koske & another* 16 EACA 135 (1949) the court held-
- In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
19. The incriminating evidence in this case is from the unnamed good Samaritans who spoke with PW1 at Mama Lucy Hospital. PW3 said that PW1 brought an eye witness to the station the following day who recorded a statement. I think this must be the witness, Michael Maloba, who never took to the stand for the reasons captured above. In his absence, the testimony by PW1, PW3, PW4 and PW6 is unreliable and cannot by itself sustain a conviction for murder.
20. I say so because the accused was first arrested for an unrelated offence of theft reported at Korogocho by Kevin Wambugu and who led PW2 and PW4 to arrest the accused on 18th August 2020. As the police escorted the accused to the police post they met Michael Maloba who told them the person they had arrested had stabbed the deceased with a knife and killed him and that the matter was reported to Kariobangi Police Station. That evidence is now classic hearsay.
21. In a criminal trial, the standard of proof is beyond any reasonable doubt. As things now stand, there is no concrete evidence proving that the accused killed the deceased or establishing the circumstances under which he was stabbed. Paraphrased, the Republic has failed to prove both the *actus reus* and *malice aforethought*.
22. It may well be that the accused was the primary suspect. But the point to be made is that there is no evidence to convict if he now opts to keep silent.
23. The law on that subject was succinctly captured in *Bhatt v Republic* [1957] E.A. 332 at 334-
- “It may not be easy to define what is meant by a ‘prima facie case’, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”[underlining added]
25. From my analysis of the evidence and the legal authorities, I am not persuaded that the Republic has proved a *prima facie* case against the accused sufficient to place him on his defence.
26. Accordingly, under the provisions of section 306 (1) of the Criminal Procedure Code, I enter a finding of not guilty. The accused is hereby acquitted.
- It is so ordered.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER 2025.

KANYI KIMONDO

JUDGE.

Ruling read virtually on *Microsoft Teams* in the presence of-

Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Kariuki for the accused instructed by Kariuki Karanja & Company Advocates.

Mr. E. Ombuna, Court Assistant.

