



**Republic v Owama & 2 others (Criminal Case E019 of 2023)
[2025] KEHC 15047 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E019 OF 2023
DK KEMEL, J
OCTOBER 24, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN OCHIENG OWAMA 1ST ACCUSED

FLORENCE ACHIENG OWAMA 2ND ACCUSED

BRIAN ONYANGO OCHIENG 3RD ACCUSED

JUDGMENT

1. The three accused persons herein John Ochieng Owama, Florence Achieng Owama and Brian Onyango Ochieng have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 18th June 2023 at an unknown time together with others not before court in Gongo village of Keyeye Sub Location, Central Alego Location Siaya Sub County within Siaya Contrary unlawfully killed one Daniel Odhiambo Odongo.
2. The prosecution called eight witnesses in support of its case which was follows:
3. Roseline Akinyi Odhiambo (PW1) is the wife of the deceased herein. She stated that she had stepped out and later came back to find that the 1st and 2nd accused had placed one of their dead sheep on her bed and who claimed that the deceased herein had killed it earlier while the sheep was grazing at the farm. That she decided to take her children to a neighbour’s home. That the 1st and 3rd accused later removed the dead sheep and threatened to kill the deceased. That later when her husband arrived, the three accused persons in company of other villagers descended her home and viciously attacked the deceased until he died. That there was a solar lamp which enabled her to recognize the accused persons who are her neighbours.



4. Vitalis Oduor Ojuanga (PW2) testified that he visited the house of the deceased and saw a dead sheep on a bed and found the three accused persons who claimed that the deceased had strangled it. That the clan elder arrived and proposed that he would address the matter the following day. That he then advised the 3rd accused to take away the dead sheep and come with it the following morning but that they threatened that they would finish with the deceased by the next morning. That later at 3.00 AM he heard screams from the deceased's home and that he rushed there and saw the three accused herein together with others viciously assaulting the deceased using pangas and clubs. He identified two sticks which were later produced as exhibits 2(a) and (b). That the deceased later died of the injuries while still in his house. That he was able to see the assailants as there were security lights from his uncle's home nearby.
5. Brighton Ochieng (PW3) a minor testified that the accused persons brought a dead sheep and placed it on the bed of the deceased. That he later saw them assaulting the deceased.
6. Pius Ombidhi Ndere (PW4) testified that he is a village elder and that he received a report from the 3rd accused that the deceased had strangled his sheep which he had tethered and then hid it inside a maize plantation. That the deceased also visited him and that he advised them to wait until the following day when he would solve the matter. That he visited the deceased's house the following morning at 6.00 AM only to find him seriously injured and who implicated the three accused persons. That he confronted the accused persons who told him off and claimed that they had killed a thief.
7. Everline Aketch (PW5) testified that she witnessed the autopsy conducted on the body of the deceased on 27/6/2023.
8. Dr. Eric Okongo (PW6) testified that he conducted the autopsy on the body of the deceased on 27/6/2023 and established a deep cut wound on the forehead and several wounds on the forearm, left shoulder, right knee, middle third tibia medial aspect as well as a fracture of right ankle joint. That there was a small subdural hematoma on left parietal region. That he formed the opinion that the cause of death was cardio- respiratory failure secondary to tension hemothorax. He produced the autopsy report as exhibit -3.
9. No. 66783 Cpl Simon Likonyi (PW7) testified that he is stationed at DCI Crime Scene Siaya. That he has photos he took while in company of other officers on 18/6/2023 at a crime scene in Agulu village, Koyoyo Sub-Location, Central Alego. That he was shown a semi-permanent house where upon entering, there was a male adult lying on the bed in the bedroom and upon examination, there were several blood stains on the beddings and that the deceased was facing upwards and dressed in a red track suit. That the deceased had several bruises and injuries on the back, legs and a deep cut on the forehead. That a few metres from the house, there was a dead sheep with a rope tied around the neck as well as the legs. That he recovered two wooden batons suspected to have been used on the deceased. That there were 14 photographs in total which were produced as Exhibit 1(a) and certificate as Exhibit 1(b).
10. No. 254222 Pc Clifford Gikundi (PW8) testified that he rushed to the scene and found the body of the deceased lying on a bed and that he organized for it to be taken to Siaya County Referral Hospital mortuary. That he established that the 3rd accused herein had claimed that the deceased had killed their sheep and that the dispute had been taken to the clan elder who advised the parties to wait until the following morning. That the 3rd accused however was not satisfied by the direction of the clan elder and who mobilized the villagers including his parents who are the 1st and 2nd accused herein and then assaulted the deceased. That he recovered two clubs (batons) which were produced as exhibits 2 (a) and (b).



11. At the close of the prosecution's case, this court ruled that the prosecution had established a prima facie case against the accused persons who were subsequently placed on their defence. They opted to tender sworn testimonies and called two witnesses.
12. John Ochieng Owama (DW1) is the 1st accused herein. He stated he was informed by his wife (2nd accused) that the 3rd accused had earlier in the day lost his sheep and which he later found it in a maize plantation already strangled by the deceased. That he tried to contact the deceased on phone in vain. That later in the night at around 3.00 AM, he was alerted of the incident at the home of the deceased and that he rushed there with his wife (2nd accused) and found the deceased who informed him that he had been assaulted by some young men. That he left for his house and did not know what transpired thereafter.
13. Florence Achieng Owama (DW2) is the 2nd accused herein. She stated that the 3rd accused herein who is their son had informed her that his sheep had been strangled and who led her to where the dead sheep lay. That she learnt from the 3rd accused that he had caught the deceased red handed strangling the sheep. That she advised the 3rd accused to report the matter to the village elder. That later at 3.00 AM, there were screams and that she accompanied her husband (1st accused) to the scene where she found a large crowd of villagers and saw the deceased lying by the roadside already injured. That the following day they took the dead sheep to the home of the deceased as directed by the clan elder. That it was later discovered that the deceased had died while in his house. That she did not see anybody assaulting the deceased.
14. Brian Onyango Ochieng (DW3) testified that he is the 3rd accused herein. He stated that on 17/6/2023 he was preparing to go to the river to bath when he saw one of their family sheep had challenges with its tether and learnt later that one of the sheep was missing. That he suddenly saw the deceased handling one of the missing sheep inside a maize plantation and had already strangled it and who ran away on seeing him. That he rushed home and alerted his mother (2nd accused) about the incident and who advised him to report to the clan elder and who directed him to keep the dead sheep at home until the following morning when he would visit and resolve the matter. That the following day the clan elder came and that they took the dead sheep to the home of the deceased only to find that he had died. That prior to that and in the night villagers had stormed the home of the deceased and that he had ventured out while armed with a stick and saw a group of villagers who included his parents (1st and 2nd accused). That he did not take part in the killing and does not know the persons who assaulted the deceased.
15. Parties were to file and exchange final submissions. It is only the defence counsel who complied.
16. Mr Oduol, learned counsel for the defence, raised one issue for determination namely whether the prosecution has proved its case beyond any reasonable doubt. He kicked off his submissions by pointing out that from the onset that the charge is that the the accused persons' actions and or omissions led to the death of the deceased person herein. That the nearest to how the three accused persons killed the deceased jointly with others not before court going by the witnesses presented in court was for the reason that he had strangled the lamb belonging to Brian Onyango, the 3rd accused herein. It was submitted that no witness including the key eye witnesses, PW1 and PW2 told the court how they saw, to wit that each of the accused persons candidly and visibly attack and assault the deceased leading to the injuries he sustained as per the postmortem report. It was submitted that the prosecution appears to rely partly on direct and on circumstantial evidence. Counsel placed reliance in the case of Republic Vs W.O.O [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017)



where the elements of murder were explained, as guided by the Court of Appeal in the case of Anthony Ndegwa Ngari Vs Republic [2014] eKLR, as follows:

“For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought.”

It was submitted that the prosecution failed to establish all the elements of murder as stated above. Again, circumstantial evidence is said to be the best evidence. This is what the court stated in Neema Mwandoro Ndunya vs. Republic CRA 466 of 2007 where the Court of Appeal cited with approval the case of R vs. Taylor Weaver and Donovan (1928) 21 CRC 20 where the court held: - “Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics”.

Circumstantial evidence, though the best evidence, must be taken with utmost caution where the court relies on it entirely. In Teper vs. R (1952) AC at page 489 the Court held as follows:-

“Circumstantial evidence must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of accused’s guilt from circumstantial evidence, to be sure that there are no coexisting circumstances which could weaken or destroy the inference.”

It was also submitted that for the court to rely on circumstantial evidence to found a conviction, the evidence must satisfy several conditions which have been articulated in several decisions. In Ahamad Abolfathi Mohammed and Another [2019] eKLR the court stated as follows:

“Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the accused person, and to no other person, as the perpetrator of the offence. In Abang’a alias Onyango v. R CR. App. No 32 of 1990, this court set out the principles guiding the courts in matters of circumstantial evidence:- “It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

Learned counsel thus urged this court to find that the prosecution never made out a case to the required standard of proof. It was further submitted that the prosecution’s case is largely on suspicion and thus to clear any doubt, it must satisfy the court that indeed no other person(s) other than the accused persons attacked and injured the deceased.

17. I have considered the evidence of the prosecution and defence as well as the submissions filed. I find the issue for determination is whether the prosecution proved its case against the accused persons beyond any reasonable doubt.
18. The burden of proof in all criminal cases is always upon the prosecution to discharge and that the standard is one of beyond any reasonable doubt. See Woolmington Vs. DPP [1935] AC 462.



19. It is noted that the accused persons herein have been charged with an offence of murder. The offence is defined by section 203 of the Penal Code as follows:

“Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”

In a charge of murder, the prosecution is under obligation to prove certain essential ingredients inter alia; that there was death of the deceased; that the death was caused unlawfully; that there was malice aforethought; that the accused was the perpetrator of the crime. The Court of Appeal in the case of Anthony Ndegwa Ngari vs Republic [2014] eKLR, held as follows:

“For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought.”

20. As regards the aspect of death, the pathologist Dr. Eric Okongo (PW6) testified that the body had a deep cut wound on the forehead as well as a bruise on the forearm, left shoulder, right knee, middle 3rd of the tibia medial aspect. He also established a fracture and dislocation of the right ankle joint. He also established that there was a collapsed lung on the right side. He formed the opinion that the cause of death was cardio-respiratory failure secondary to tension hematoma. He produced the autopsy report dated 27/6/2023 as exhibit 3. I find that the prosecution has proved this ingredient beyond any reasonable doubt.
21. As regards the unlawfulness of the death, it is trite law that all homicides are unlawful unless authorized by law. The deceased was relatively a young man then aged thirty eight (38) years and in good health. The injuries noted by the pathologist left no doubt that the assailant desired that the same would lead to the death. It is instructive that the deceased was descended upon by several assailants while he was peacefully sleeping in his house in the dead of the night and viciously attacked and left for dead. His body was found the following morning. Hence, I find that the death was unlawful and that this ingredient was proved by the prosecution beyond any reasonable doubt.
22. As regards the aspect of malice aforethought, the Court of Appeal in the case of Nzioka Vs R [1993] KLR 171 held that before an act can be murder, it must be aimed at someone and in addition it must be an act committed with the following intentions, the test of which is always subjective to the actual accused and is inter alia; intention to cause death; intention to cause grievous bodily harm; where the accused knows that there is a risk that death or grievous bodily harm will ensue from his acts and commits them without lawful excuse.
23. The foregoing authority is a replica of the conditions to be considered whether the ingredient of malice aforethought under Section 206 of the Penal Code has been established. It transpired from the evidence of both prosecution and defence that the 3rd accused had earlier lodged a complaint with the clan elder over the death of one of his sheep that was allegedly strangled and that he later involved his parents and had the dead sheep taken and placed on the deceased's bed. It also transpired that the accused persons later in the night teamed up with other villagers and stormed the home of the deceased and viciously attacked him and left him for dead. The deceased later succumbed to the injuries the following morning. It also transpired that the accused persons after being advised by the clan elder to wait for him the following day when he would resolve the matter, they marshalled other villagers at night and



stormed the home of the deceased and seriously injured him. I find this was clear evidence of malice aforethought and thus I find that the prosecution proved this ingredient beyond any reasonable doubt.

24. As regards the identity of the perpetrator, the accused persons have maintained that the prosecution's case is based on suspicion alone and thus they should be given the benefit of doubt about their alleged involvement in the crime. It was the evidence of PW1 who testified that earlier around 6.00 PM that the 1st accused arrived at her home and informed her that his son (3rd accused) and his wife (2nd accused) had earlier brought a dead sheep and placed it on her bed. That she checked her bed and found the dead sheep lying on it. That as she arranged to take away her children, the said 1st accused and the 3rd accused picked up the dead sheep. The said witness further stated that later in the night the three accused persons came and attacked her husband and that she saw them assaulting him with pangas and clubs. She added that she had a solar lamp which enabled her to see the attackers. She also added that the 2nd accused was also taunting the deceased by urging him to cry a little bit more. That they later took the deceased to the house and left and that the following day, they brought the dead sheep to her homestead as the clan elder was to deliberate on the matter. Her evidence was corroborated by that of PW2 who visited the home of the deceased prior to the incident after PW1 alerted him of the action of the accused persons in dumping a dead sheep on her bed and that he advised the accused persons to report to the clan elder. The said PW2 stated that he later rushed to the scene upon hearing screams and found the three accused herein together with other villagers assaulting the deceased and that security lights from a nearby home belonging to his uncle. Further, the evidence of PW3 placed the accused persons at the scene of crime when he stated that the accused persons earlier in the day brought a dead sheep and placed it on his parents' bed and started searching for his father and later came at night and assaulted him. The clan elder (PW4) testified that he had received a report from the 3rd accused over the killing of his sheep and that he had advised him to go and remove it from the deceased's bed and take it to his home and bring it the following day so that he would resolve the matter and that when he visited the deceased's home the following day, he found that he had died and on confronting the accused persons, they told him off and maintained that they were dealing with a thief. I find the evidence of the three witnesses aforesaid was credible regarding the accused's involvement in the crime. The witnesses knew the accused persons quite well as they hail from the same area. Further, the witnesses who were present at night stated that there was sufficient lighting from a solar lamp and security lights from a nearby residence which enabled them to recognize the assailants who were well known to them. It is instructive that the accused persons had earlier in the day taken a dead sheep and placed it on the bed of the deceased in the presence of PW1 and PW3 and that the deceased and 3rd accused later in the evening met at the home of the clan elder (PW4) where they each lodged their rival claims. It came out quite clearly from the entire evidence that the genesis of the matter arose from a claim made by the 3rd accused that he had found the deceased had strangled his sheep and placed it inside a maize plantation and that he rushed home and alerted his mother (2nd accused) and together with his father (1st accused), they took the dead sheep and placed it on the deceased bed. It was from there that the matter ended up with the clan elder who advised the accused persons to remove the dead sheep and keep it at their home until the following day when he would resolve the dispute. It turned out that the 3rd accused could not wait and thus whipped up the villagers during the night and together with his parents (1st and 2nd accused) they stormed the house of the deceased and dragged him to the roadside and viciously assaulted him and later took him to his house and locked him in. I am satisfied that the three accused persons herein were positively identified and placed at the scene of the crime. There was sufficient lighting which enabled the witnesses to recognize the assailants who were well known to them as they reside in the same village. Indeed, in a case of identification at night, care must be taken so as to avoid situations of mistaken identification of suspects. The Court of Appeal in the case of Joseph Muchangi Nyaga and another versus Republic [2013] Eklr Stated that before acting



on evidence of visual recognition, the trial court must make inquiries as to the presence and nature of light, the intensity of such light, the location of the source of light in relation to the accused and time taken by the witness to observe the accused so as to be able to identify him subsequently. Again, in the case of Anjononi and others Versus Republic [1980] KLR the court held that recognition of an assailant is more satisfactory, more assuring, and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other. Since the accused persons were well known to the witnesses, their recognition and being placed at the scene of crime was not in any doubt. It is instructive that the accused persons had vowed to kill the deceased whom they described as a thief and therefore they went ahead and actualized their threat. The 3rd accused in his defence evidence, confirmed that he was at the scene as well as the 1st and 2nd accused and that he had carried a stick to the scene.

Learned counsel for the defence in his submissions has urged the court to dismiss the charges since the evidence levelled against his clients is based on suspicion and that even circumstantial evidence is not enough to sustain a conviction against them. As noted in the foregoing analysis, I find the evidence presented by the prosecution clearly placed the accused persons at the scene of crime. The defence evidence does not shake that of the prosecution which is quite overwhelming against the accused persons. Even if this court was to go by the suggestion of the defence council regarding the effect and weight of circumstantial evidence, I find that the circumstantial evidence already presented leaves no doubt that the accused persons are the key perpetrators of the crime since they are the ones who mobilized the villagers to go and attack the deceased who was then sleeping in his house at around 3.00 AM. In Ahamad Abolfathi Mohammed and Another [2019] eKLR the court stated as follows:

“Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the accused person, and to no other person, as the perpetrator of the offence. In *Abang’a alias Onyango v. R* CR. App. No 32 of 1990, this court set out the principles guiding the courts in matters of circumstantial evidence:- “It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

Again, circumstantial evidence is said to be the best evidence. This is what the court stated in *Neema Mwandoro Ndunya vs. Republic* CRA 466 of 2007 where the Court of Appeal cited with approval the case of *R vs. Taylor Weaver and Donovan* (1928) 21 CRC 20 where the court held: - “Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics”.

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An analysis of the whole evidence that has been presented leaves no doubt that the evidence adduced by the prosecution is believable and places the accused persons to the scene of crime. Their defence evidence has not cast any doubt whatsoever on that of the prosecution which is quite overwhelming against them.

25. In view of the foregoing observations, it is my finding that the prosecution has proved the charge of murder under Section 203 as read with Section 204 of the Penal Code against all the three accused herein beyond any reasonable doubt. I find each of the accused herein John Ochieng Owama, Florence Achieng Owama and Brian Onyango Ochieng guilty therefor and are convicted accordingly.

DATED AND DELIVERED AT SIAYA THIS 24TH DAY OF OCTOBER 2024.

D.KEMEI

JUDGE

In the presence of:

John Ochieng Owama.....1st Accused

Florence Achieng Owama.....2nd Accused

Brian Onyango Ochieng.....3rd Accused

Oduol.....for all accused

Soita.....for Prosecution

Kimaiyo/Maureen.....Court Assistant

