



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ogina (Criminal Case E012 of 2020)
[2025] KEHC 15232 (KLR) (23 October 2025) (Interim Judgment)**

Neutral citation: [2025] KEHC 15232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E012 OF 2020
WM KAGENDO., J
OCTOBER 23, 2025**

BETWEEN

THE REPUBLIC PROSECUTOR

AND

MARTIN ODHIAMBO OGINA ACCUSED

INTERIM JUDGMENT

The Charge

1. The accused is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63 of the Laws of Kenya.
2. The particulars are that on the 25th day of December, 2018, at Tudor area in Mombasa County, jointly with others not before Court, the accused murdered Joseph Ochieng Otieno.
3. The information was read to the accused, who pleaded not guilty. Consequently, the matter proceeded to a full trial.

The Evidence

4. The prosecution called six witnesses in support of its case. The accused gave an unsworn defence and did not call any witness.
5. PW1, the deceased's biological father, testified that on 25th December 2018, he received a phone call from his brother, PW4, informing him that there had been a scuffle at Tudor. He did not take immediate action. Later that day, at about 5.00 p.m., the accused called him and reported that the deceased was causing a disturbance. PW1 advised the accused to take the deceased to Makupa Police Station.



6. Edwin Otieno Obala (PW2) testified that he lived in a hostel owned by PW4 at Tudor with Dennis Sadi and Ramadhan. On the material day, the deceased, who was their cousin, visited them and a quarrel broke out between Dennis and the deceased. PW2 heard the deceased claim that Dennis and another person had beaten him over a phone. PW2 separated them and told both to take their fight outside.
7. The deceased, however, went round to the main door, pushed and broke the grill, re-entered, and held Dennis by the collar. Another scuffle ensued, but PW2 managed to separate them, and the deceased left the premises.
8. Towards lunchtime, the accused returned and found the door broken. Upon inquiry, he was told that the deceased had caused the damage. The accused, together with Martin and Ramadhan, went to look for the deceased. They found him and brought him back home in a tuk-tuk.
9. PW2 further testified that he saw the accused slapping and kicking the deceased. He left for the kitchen but heard the deceased crying in pain. When he pleaded with the accused to stop, the accused ignored him and continued assaulting the deceased until he lost consciousness.
10. Richard Omeno Ochieng (PW4), the accused's father and PW1's brother, testified that when he left home that morning, the accused was not there. Later, one Edwin called to inform him that the deceased had fought with Dennis Sadi, though no mention was made of the accused. PW4 was later called by Joseph Kanyago (now deceased) and informed that the young men he had left in the house had fought, and Joseph (the deceased) was unconscious.
11. PC Moses Mwaniki (PW5) testified that while on patrol on 25th December 2018, he received a call from Makupa Police Station and proceeded to the scene. They found a dead body lying on the verandah of the main house. He recovered a floral shirt, a beige pair of jeans belonging to the deceased, and a wooden jembe handle, suspected to be the murder weapon. The body was escorted to Coast General Hospital for preservation and postmortem examination.
12. Dr. Gabriel Mngola (PW3) conducted the postmortem on 7th January 2019. The findings were as follows:

External injuries:

 - a. Multiple cuts on the shins;
 - b. Multiple bruises and fractures on the right arm;
 - c. Bruises on the anterior chest wall;
 - d. Indented wounds on the forehead;
 - e. Deep cut wound on the right side of the scalp.

Internal findings:

Scalp haematoma and subdural haematoma on the right side of the head.

Dr. Mngola concluded that the cause of death was severe head injury secondary to trauma. He produced the postmortem report as Exhibit 2.
13. When placed on his defence, the accused denied the offence. He stated that on 24th December 2018, he was at his home in Mtopanga with his family. On 25th December, he reported to work early in the morning, completed his shift at 8.00 a.m., and was requested to prepare for another shift beginning at 9.00 a.m. Before returning, he passed by his father's home at Tudor, where he found the deceased,



Dennis, and Edwin having breakfast. He later returned to work and remained there until about 6.00 p.m.

14. He confirmed that the deceased was his cousin, that they had no differences, and that he was deeply saddened by his cousin's death. He attributed the earlier fight to a dispute over a lost phone and said it involved PW2 and Dennis Sadi.

Submissions

15. The defence argued that the evidence of PW2 was unreliable, citing Deuteronomy 17:6, which provides that no person shall be put to death on the testimony of one witness. It was contended that PW2, being one of the initial suspects, fled to Nairobi after the incident and only implicated the accused to save himself.

The Law

16. Article 26 of *the Constitution* of Kenya guarantees the right to life, providing that no person shall be deprived of life intentionally except as authorized by law.
17. The accused was charged under Sections 203 and 204 of the Penal Code. The elements of murder were articulated in *Republic v Andrew Omwenga* [2009] eKLR, namely:
 - i. Proof of death and cause thereof;
 - ii. That the accused's act or omission caused the death (actus reus);
 - iii. That the act was accompanied by malice aforethought (mens rea).

Issues For Determination

18. The issues for determination are therefore:
 - a. Whether the accused caused the death of the deceased; and
 - b. Whether malice aforethought was established.

Proof of Death

19. The death of Joseph Ochieng Otieno is not in dispute. The accused himself expressed regret over the death. PW3 confirmed the cause of death, and the postmortem findings were produced in evidence.

Whether the Death Was Unlawful and Attributable to the Accused

20. The genesis of this tragic incident appears to have been a quarrel between the deceased and Dennis over a lost phone. When the deceased visited his cousins, he reignited the dispute and attempted to fight Dennis. PW2 stated that the deceased was intoxicated. He broke the door trying to re-enter the house after being separated.
21. Upon returning home and finding the broken door, the accused became enraged and decided to "discipline" the deceased. In doing so, he took the law into his own hands.
22. Although the defence sought to discredit PW2's testimony, the Court finds it consistent and credible. His evidence was corroborated by PW1, who confirmed receiving a call from the accused about the disturbance and advised him to report to the police.



23. The accused initially claimed to have been at work all day, but later admitted that he had gone home and found the damaged door. The Court accepts PW2's account that the accused went with others to fetch the deceased and that upon their return, he inflicted a severe beating on him, resulting in fatal injuries.
24. The defence's reliance on biblical principles regarding witnesses cannot override the provisions of Kenyan criminal law. Under Section 143 of the *Evidence Act*, a conviction can lawfully be based on the testimony of a single credible witness.

Malice Aforethought

25. Section 206 of the Penal Code defines malice aforethought as the intention to cause death or grievous harm, knowledge that death or grievous harm is a probable result, intent to commit a felony, or intent to facilitate the escape of a felon.
26. Malice aforethought may be proved by direct or circumstantial evidence. In *Morris Aluoch v Republic* [1997] eKLR, citing *R v Tubere s/o Ochen* (1945) 12 EACA 63, the Court held that repeated blows inflicting severe injury may justify an inference of malice.
27. The deceased sustained multiple injuries — deep cuts, bruises, fractures, and internal head trauma. The nature and extent of these injuries, coupled with the continued assault even after the deceased cried out in pain, demonstrate an intention to cause grievous harm or death.
28. The accused's conduct in retrieving the deceased and inflicting a prolonged beating, rather than reporting the matter to the police as advised, clearly reveals malice aforethought.

Conclusion

29. The Court is satisfied that the prosecution has proved all the elements of murder beyond reasonable doubt.

Accordingly, the accused is convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

**DATED, SIGNED AND DELIVERED IN OPEN COURT (AND VIRTUALLY VIA MS TEAMS)
AT MOMBASA THIS 23RD DAY OF OCTOBER, 2025.**

HON. LADY JUSTICE W. K. MICHENI JUDGE

In the presence of;

The accused person and his advocate Mr. Ngiri for the state

Ms Bebora court assistant

