



**Republic v Obonyo (Criminal Case E019 of 2022)
[2025] KEHC 15542 (KLR) (16 October 2025) (Judgment)**

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**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL CASE E019 OF 2022
ACA ONG'INJO, J
OCTOBER 16, 2025**

BETWEEN

THE REPUBLIC PROSECUTION

AND

JOHN OTIENO OBONYO ACCUSED

JUDGMENT

1. The Accused John Otieno Obonyo was charged with 3 counts of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars are that John Otieno Obonyo on 3rd September 2022 at Uradi village, Alego East Sub-Location, Awendo Sub-County in Migori County in the Republic of Kenya murdered Caroline Awuor Moi.
3. The particulars are that John Otieno Obonyo on 3rd September 2022 at Uradi village, Alego East Sub-Location, Awendo Sub-County in Migori County in the Republic of Kenya murdered Gloria Akinyi Moi.
4. The particulars are that John Otieno Obonyo on 3rd September 2022 at Uradi village, Alego East Sub-Location, Awendo Sub-County in Migori County in the Republic of Kenya murdered Glen Washington Odiwuor.
5. The Prosecution adduced evidence of 9 witnesses to support the charge and the Accused when placed on defense gave sworn statement and denied the charge.
6. PW1 Mary Oluoch Omuya testified that Caroline was her daughter in-law and Glen was child of Caroline and her grandchild whereas Gloria was her great grandchild and grandchild to Caroline. She testified further that on 4th September 2022 at 6.30pm she was at home when her standard 8 grandchild came back and told her that there was noising coming from the cow shed at the home of Glens parents



but there was a padlock at the cowshed. PW1 send wife to her son to find out but she returned and said that she called out but no one responded. That in company of Francis they proceeded to Caroline's home. She said they carried a lamp and on arrival they found the door was not locked. That when Francis pushed the door they saw a child lying on the sofa covered with a blanket and a purple scarf on the head and the head had injuries. She said she identified the body to be that of Glen. That she told Francis to look for Gloria and the mother and in Caroline's bedroom they found Gloria's body at the door on the floor and the head was cut open and the body was not covered. That Gloria's mother was in the same room in bed rolled up in a blanket. That when Francis removed the blanket and they found her ears and head had been cut and the legs were also flattened. The village elder was informed and he called the police who went to the scene and collected the bodies. PW1 said he has seen the deceased persons on Saturday. She said she did not know who killed the deceased persons.

7. In cross examination PW1 said that her grandson known as Charles told her the cows were still in the cowshed since they had not been removed the whole day. She said they went to Caroline's home when it was getting dark and they did not get any weapon at the house. She said Caroline's TV and the goods she had bought for her shop were stolen
8. PW2 Rosemary Onyango testified she lived in Credit near Awendo in South Sakwa Alego East and that she was a trader. She said she trades in milk. She said that she was married to Caroline's eldest brother. She said she knew Gloria who was Caroline's grandchild and Glen was Caroline's last-born child. She testified that on 4th September 2022 when she came back from church after 6.30pm PW1 told her she had not seen Caroline the whole day and asked her to go and check on her. That when she went to Caroline's home there was no response and the door was closed, That she went back and reported to PW1 what she found and they went back to the home together. That as darkness had set in they carried a lamp and on entering the house she found a child lying on the sofa in the house and she told PW1 that they should go and call her eldest brother-in-law. That they went to call Francis Otieno. That when they returned to Caroline's house with Francis and uncovered the body of the child on the sofa she identified him as Glen. She said apart from the blanket used to cover him there were other clothes and he had a cut on the head. That when they entered the bedroom they saw another body on the bed and they came out and called the village elder and the Assistant Chief who came to the scene and called the police from Awendo. That when the police arrived at about 9.00pm they entered the house and saw Caroline had been cut on the ear and head severally. That the bodies were collected by the police and taken to Awendo mortuary.
9. PW2 said she had seen the accused one time in August 2021 when they met at the posho mill and asked her if she knew Simon son to Caroline and she answered in the affirmative. When she went home she informed Simon who went to the posho mill to meet the accused. PW2 said it is Simon who told her later that the accused was husband to Lilian the daughter Caroline. PW2 also said that Caroline told her that Lilian's husband had come home but she was not aware of any dispute between Lilian and the husband. She said it was on 5th September that Ramogi FM announced the murder.
10. PW3 Jacob Onyango Osanya testified that on 4th September 2022 he had returned home from his place of work and arrived at 5.00pm. He said as he passed by in his sister-in-law Caroline's home he noticed cattle in the shed and clothes were on the line. That he went to his mother's house, took tea and left at 6.00pm to go to Olande center to go and deposit for his mother money to a women's group. When he did not find the treasure at the center he proceeded to his home. That while he was eating his brother Samwel Masime Osanya called from Nairobi and asked where he was and informed him mama Lucy was found dead in the house. In of the Treasurer they proceeded home and found a crowd gathered. That when he arrived at the home he found Caroline and her grandchild and last born son had been



- murdered in the house and the bodies were covered on the sofa, floor and bed. He said that Caroline had her ear cut and head injured with skull exposed. He said Caroline's TV was missing.
11. PW3 said that the accused used to live with Gloria and Glen together with Lilian who was his wife. That when Lilian and the accused differed and Lilian left him the accused went to claim the money he had spent helping Lilian's family. He said the body of Caroline was not having clothes and her phone was recovered but it had no line.
 12. PW4 Dr. Samora Ocharo of Bomachoge Sub-County Hospital examined the bodies of the 3 deceased persons namely:
 1. Caroline Awuor Moi aged 40 years
 2. Gloria Akinyi Moi aged 9 years
 3. Glen Washington Odiwuor aged 6 years.
 13. PW4 examined Caroline Awuor's body and observed depressed skull fracture on the left frontal area extending to the upper jaw line; exposed bone fragments and brain matter exposed on the affected area and in the tracheal bleeding. He formed the opinion that death was caused by severe head injury due to depressed fracture.
 14. For Gloria Akinyi the pathologist established that she had a deep cut wound starting from the frontal area to right parietal area with brain matter exposed. There was also another cut on the occipital area measuring 10cm. He was of the opinion that death was caused by severe head injury due to deep cut wound to the head.
 15. On examination of the body of Glen Washington PW4 observed that he had deep cut wound on the occipital area and depressed skull fracture measuring 10cm long. He said brain matter around the occipital area and internal bleeding was also noted. He assessed cause of death as severe head injury due to deep cut wound.
 16. The three postmortems were produced as exhibits Exhibits 1, 2 & 3.
 17. PW5 Coporal Livingstone Katui processed 6 coloured photographs taken at the scene of murder and produced them as exhibits Ex 4(a) to (f) and Certificate Ex P 5. He said the photographs were taken to him by Inspector Kandie of Awendo for certification.
 18. PW6 Lilian Adhiambo Moi testified that in 2021 she was an intern at Kakrao Technical School and she was living in Kakrao Secondary School. She said that she moved to Busia in 2023. PW6 said that when she came to Kakrao in 2020 she was selling milk and she came to know the accused and they started dating and later cohabited until April 2022 when they parted due to a little misunderstanding. PW6 said that her daughter Gloria was living with her mother Caroline the 1st deceased herein in Uradi. She also said that Glen aged 6 years was also known to her as he was her younger brother and also resided with her mother Caroline.
 19. PW6 testified further that she was not married to the accused. She said that on 3rd September 2022 she was living alone at Kakrao Secondary School. That when they broke up she informed her mother and when the accused went to her home with another young man called mzee seeking reconciliation she told him that they could only talk in the presence of her family and not her mother alone.
 20. PW6 said further that on 4th September 2022 at about 7.30pm her uncle Ernest called and informed her of the murder of her family and when she arrived at the home she found the bodies had been



removed Rapcom mortuary. Lilian said that after she broke the relationship with the accused he started to threaten her with death through phone calls.

21. In cross examination PW6 said that she lived with the accused for three months and when they parted the accused threatened to kill her but she did not report to the police. She said she did not know if the accused had any wrangles with the deceased. She said she did not know who killed her family members.
22. PW7 Chief Inspector William Kandie testified that he investigated the murder herein. He said he got information from the OCS Awendo Police Station that there was a murder incident which took place in Uradi village. That in company of the OCS and other officers they proceeded to the scene and found a large crowd of people who were screaming. He also found Assistant Chief at the scene. That he calmed the crowd down and on being shown the house where the bodies were he entered and on the right side was a sofa with body of a child aged 6 years covered in a blanket. That on observing the body there were injuries all over the head and right ear was slit with a sharp object. That the sitting room was neat and well arranged and there was ugali and vegetables on the table which were partly eaten.
23. That when they entered the bedroom one meter from the door they met with body of a girl child lying on the floor and she had similar injuries to those on the first body. He said blood was streaming all over. That the same room was partitioned with a bedsheet. That when he removed the bed sheet he found the body of the mother Caroline Moi on the bed pushed towards the wall. That the body was naked and it was covered by a blanket. PW7 observed that the bedroom was also neat with all the deceased Caroline's clothes well arranged but were blood stained. He said that Caroline had similar to the other two bodies i.e. head injuries with brain matter exposed and the ears were slit. That they processed the scene and the three bodies removed to the Rapcom Hospital mortuary for preservation and postmortem. PW7 produced the sketch plan that he drew at the scene as Ex P 6
24. That upon taking photographs at the scene and completing investigations the accused herein was traced using his phone, arrested in October 2022 and charged. PW7 said that the accused was overheard saying he was happy the woman had died.
25. In cross examination PW7 said that he did not find the accused at the scene on the material night and they did not find the murder weapon at the scene. He also said that he did not do DNA test. He said solar panel was missing from the house and it was not recovered. When referred to his statement he said there was a probability that there was somebody sleeping with Caroline or that she was waiting for somebody to sleep in her house. The I/O also said that during the time of the incident Lilian was in college in Migori but was not staying at home. PW7 denied saying that it the man who inherited Caroline who committed the murder.
26. PW7 said that he charged the accused because he was heard talking on phone. He said that he requested for call logs but Airtel did not give the data for the accused person's phone.
27. PW8 Morris Odongo Mboya testified that on 5th September 2022 he had come from church and he was with Pastor Joshua until after they had supper and he escorted the Pastor. That after escorting the Pastor he heard accused talk on phone while walking along the road and saying in dholuo language that it is only the death of his child which was painful to him. PW8 said that there was a lady across the road. PW8 said that when he went to his shop at Oyani he heard boda boda riders say that a woman who was the accused person's mother in-law had died badly with her children. PW8 said that when he heard the accused talk on phone he was quarrelling and saying he was not bothered by the death of the woman as she chased him away. He said the accused person's phone on loud speaker as he was speaking to a lady on the other end. He said he did not hear accused say he committed the murders and he cannot tell if he did commit the murders.



28. PW9 Henry Okongo testified that he was from Oyani Masai and that he was a mason. It was his testimony that on 7th September 2022 he left home to go to Oyani centre around 10.00am and on the way he met the Accused person herein and they spoke for about 5 to 10 minutes and that the Accused person told him that among the people who had died was his child and he was deeply pained. That when he parted with the accused he went to the market and met Morris and they spoke and while still at the market CID Officers came and Morris told him to go and record a statement concerning what the Accused told him. PW9 said that the Accused was suspected to have committed the murders.
29. In cross examination PW9 said that he met John in company of his grandfather and he did not say that he is the one who committed the murders.
30. When the Accused was placed on his defense he gave sworn statement and said between 2nd to 4th September 2022 he was at home in Pith Kongaro planting maize and that on 5th September 2022 at 7.00am he went to Uriri/Oyani Technical Training Institute where he was a student and he remained there until 7.00pm when he returned home. That on 6th September 2022 he was processing HELB in readiness for admission on 7th September 2022 and he took the HELB forms to the Principal of the college to sign. That he stayed in school up to 23rd September 2022.
31. The Accused testified that he knew Lilian Adhiambo Moi in April 2020 when he came from Nairobi and they met at Oyani market at a milk shop and they became friends and started staying together at Kakrao where Lilian used to teach.
32. That in January 2022 when he returned he broke up with Lilian due to some misunderstanding. The Accused said he knew the deceased Caroline Awino Moi but he did not know the minor deceased persons. That Lilian went to their home with a bag and left it there and in July 2022 when he went through the bag he found Certificate of birth, burial permit and Death Certificate. In the said documents he found a contact which Lilian could use in his phone claiming it was for her mother. That he used the said contact to reach Lilian's mother and he was given directions to go home and take the bag that Lilian left at his home. When he arrived he found Lilian plaiting her mother's hair and he handed over the documents he found in the bag
33. The Accused person said he learnt of the murder of Lilian's mother, brother and sister when Liz, Lilian's friend called and asked if he was going to attend burial.
34. In cross examination the Accused admitted he was in a relationship with Lilian and they lived at Kakrao but they had a serious misunderstanding and broke up. He said that on the day that he was given directions to Lilian's home the mother tried to reconcile them and that he was in company of his cousin Kennedy. He said he did not go to Lilian's home for reconciliation and he told Lilian's mother that they could not have a meeting where other members of the family were absent as Lilian had never introduced him as her husband. He denied demanding for refund of money he used on Lilian as alleged by PW3. He also confirmed he did not question PW3 on the evidence given that he demanded for refund. He said he did not hear Lilian say that he threatened her when she refused to reconcile with him. The Accused denied having stayed with Lilian and her 2 children at Kakrao. He said that Lilian was not picking his calls in September 2022 as they had broken up and he was not allowed to go to her house. He said Lilian's mother wanted them to reconcile but the conditions at his home could not allow.
35. In re-examination the Accused said there was no proof in Lilian's evidence that he threatened her and no report was made to police. He said he knew Lilian's house at Kakrao but he did not commit the offence.



36. Upon close of defense case submissions dated 25th April 2025 were filed by the Accused persons Advocate Ms Agade. She submitted that prosecution witnesses contradicted themselves on the date when the offence was committed. That the date on the Information is stated as 3rd September 2022 but the Investigating Officer said it was committed on 4th September 2022 whereas Mary Oliech Osana said the offence was committed on 2nd September 2022. It was submitted that the contradictions raise suspicion as to admissibility of the testimonies.
37. Ms Agade further submitted that the prosecution failed to call crucial witnesses including the Principal of Uriri TTI/TVC who recorded a statement and confirmed that the Accused was a student and that he reported to school on 5th September 2022 and was also in college on 14th September 2022 for orientation.
38. Ms Agade argued that the Accused was not at the scene of the offence when it occurred and he was not found in possession of any murder weapon at the time of his arrest and further no DNA test was conducted to connect him to the murder. It was therefore contended that the ingredients of the offence of murder had not been proved against the Accused person and he ought to be set free.
39. The Accused person's Advocate referred the court to the cases of:
- Republic Vs John Maina Muthoni [2017] eKLR
 - Republic Vs Daniel Musyoki Muasya & 2 Others (2014) eKLR
 - Mwangi Vs Republic (1983) eKLR
 - Bhatt Vs Republic (1973) EA 332 and
40. Republic Vs GOO [2020] eKLR to support their position that the Prosecution had not proved the charge of murder against the Accused person. The court was urged to resolve the benefit of doubt in favour of the Accused person.

Analysis And Determination

41. Having considered the evidence on record for the Prosecution and the defense this court is to determine whether the Prosecution has proved beyond reasonable doubt that the Accused committed the offence of murder.
42. Section 203 of the Penal Code provides:
- Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
43. The ingredients for the offence of murder were established in the case of Anthony Ndegwa Ngari v Republic, where it was held that the prosecution must prove the death of the deceased and its cause, that the death resulted from an unlawful act or omission by the accused, and that this act was committed with malice aforethought. These three elements must be proven beyond all reasonable doubt.
44. PW1, PW2 & PW3 testified that they discovered the bodies of the three deceased persons in Caroline's house and each of the deceased persons had deep head injuries. PW4, the pathologist, confirmed severe head trauma, skull fractures, and brain matter exposure in each case. He produced the postmortem reports (Exhibits 1-3) which established beyond doubt that the three persons died and that the deaths were homicidal, resulting from multiple sharp-force and blunt-force head injuries. It is therefore clear that fact of death and cause thereof was duly proved.



45. On whether the deaths were caused by an unlawful act no evidence was presented suggesting lawful justification such as self-defence or accident. The nature and multiplicity of the injuries show deliberate use of excessive force against vulnerable victims, a woman and two minors. This court therefore finds the killings were caused by unlawful acts on the part of the perpetrators within the meaning of Section 203 of the Penal Code.
46. On whether the Accused was the perpetrator the case is entirely based on circumstantial evidence as there was no eye-witness to the killings, and no murder weapon or forensic evidence directly linked the accused to the scene. PW6 (Lilian Adhiambo Moi) confirmed she had been in an intimate relationship with the accused, which ended acrimoniously in April 2022. She testified that the accused threatened to kill her after the break-up. PW3 corroborated that after the separation, the accused demanded “refund of money” he had spent on Lilian’s family, including the deceased Caroline. The Prosecution sought to infer that anger and resentment following rejection and perceived financial loss motivated the accused to commit the offence.
47. However, for circumstantial evidence to lead to a conviction it must meet a three-part threshold as established in the case of *Judith Achieng’ Ochieng’ v. Republic* namely :
- a. The circumstances must be cogently and firmly established,
 - b. Have a definite tendency unerringly pointing to the accused's guilt,
 - c. and when taken together, form a chain so complete that there is no escape from the conclusion of guilt.
 - d. ensures that the evidence is incompatible with the accused's innocence and points solely to their guilt beyond a reasonable doubt:
48. In the case of *Abanga alias Onyango v Republic Cr. A. No. 32 of 1990* it was held that to sustain a conviction on circumstantial evidence, the chain must be complete, consistent with guilt, and inconsistent with innocence.
49. The accused was not seen at or near the scene of the offence at the material time. PW8 and PW9 testified that after the murders, the accused was overheard lamenting that “it is only the death of his child that pained him” and that “he was not bothered by the woman’s death as she chased him away. While these statements reveal an unusual lack of remorse and indifference, they fall short of a confession as defined under Section 25A of the *Evidence Act*.
50. PW7 (the Investigating Officer) conceded that no DNA, call log, or weapon linked the accused directly to the crime scene.
51. The accused raised the defence of alibi which was not rebutted. He said that he was at his home in Pith Kongaro and later at Uriri TTI, and although the I/O doubted his version, he did not summon the college principal to rebut that claim. Once the defence of alibi is raised, the prosecution bears the burden to displace it. In this case that was not done.
52. The defense submitted that there were contradictions in the Prosecution case as to the date the offence was committed but from the evidence on record PW1, 2, and PW3 said they discovered the bodies in the evening of 4th September 2022. The deceased persons had not been seen the entire day and it is PW1’s grandson who noticed something unusual when on his way from school in the evening at 6.30pm he realized that cattle in the shed were making noise and the shed was locked and he alerted PW1. It appears that the deceased persons were murdered on the night of 3rd/4th September 2022. The contradiction is therefore not material



53. This court finds that the circumstantial evidence tendered by the prosecution does not irresistibly point to the accused as the perpetrator to the exclusion of all others.
54. On whether the prosecution established malice aforethought the nature of injuries inflicted, multiple, targeted to the head, and with a with a sharp object on minors and an adult clearly demonstrates malice aforethought within Section 206(a) and (b) of the Penal Code — intention to cause death or grievous harm was clearly demonstrated. Malice aforethought was proved as an element of the offence of murder but attribution to the accused fails.
55. In conclusion this court finds that although the deaths and their unlawful nature are proved and malice aforethought inferable from the brutality however, the prosecution failed to prove beyond reasonable doubt that the accused was the person who committed the murders. The circumstantial evidence was too weak, inconsistent, and not exclusive of other possible perpetrators. The accused person’s defense of alibi stands unshaken and this court returns the verdict that the prosecution has failed to prove the charge of murder against the accused person beyond reasonable doubt. The accused is hereby acquitted under Section 322 (1) of the Criminal Procedure Code and shall be set at liberty unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 16TH DAY OF OCTOBER 2025.

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ANNE ONG’INJO

JUDGE

