

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
CRIMINAL CASE (MURDER) NO. E024 OF 2023

REPUBLIC
PROSECUTION

VERSUS

HORACE ONGILI AGINA..... ACCUSED

RULING

1. The accused person herein **Horace Ongili Agina** has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the night of 29th May 2023, together with others not before court, in Ramula Sub Location, East Gem Location, Gem Sub-County within Siaya County murdered one George Ouma Oyoya alias Zedekiah.

2. The prosecution called a total of seven witnesses in support of its case.
3. The prosecution's case is that on the material date the deceased had gone to a neighbour's house to receive his wages for work that he had rendered and on arrival he was accosted by a group of villagers led by accused herein who claimed that they needed to go with him, so they took him. The following day the body of the deceased was found on the road side. The matter was reported at Ramula Police Post, the body was later collected by the police officers who noticed that the body had marks on the back suggesting that he had been beaten and that there was some broken sticks nearby. The police collected the sticks as well as a pair of sandals as exhibits. The body was taken to Yala Sub County Hospital mortuary where an autopsy was conducted on 15/6/2023 by Dr. Dickson Mchana (**PW3**) who formed the opinion that the cause of death was collapsed blood circulation (shock) secondary to extensive soft tissue injuries following an assault. He produced an autopsy report as Exhibit -1. Later, the accused herein and two others are alleged to have raised some money to the sum of Ksh 60,000/= and sought forgiveness over the demise of the deceased and that the same were captured in some minutes dated 6/6/2023. The accused person was arrested and presented before court and charged with the offence.

4. At the close of the prosecution's case, the counsels made oral submissions on case to answer. Ms. Kerubo for the prosecution submitted that the prosecution has proved all the essential ingredients of the offence. It was submitted that it was the accused person who approached the clan elder and apologized over the death of the deceased and further offered kshs60,000/= burial expenses. That the evidence placed the accused at the scene of crime. That a prima facie case has been made out against the accused to require him to make a defence and explain how the deceased met his death.
5. Mr. Okanda for the accused submitted that the prosecution's evidence has not met the threshold as set out in the case of **Bhatt vs R, [1957] EA 334** as they have not proved all the essential ingredients for the offence of murder. It was submitted that none of the witnesses saw the accused committing the offence and that the prosecution appears to rely solely on circumstantial evidence. That the prosecution was expected to satisfy the three tests regarding the question of circumstantial evidence. That the claim by the clan elder that the accused made a payment of Kshs60,000/= is not a proper confession per se since the clan elder is not a qualified person to receive confessions and that no evidence was shown that the accused did offer Kshs60,000/= as alleged. That the alleged minutes do not have accused's signature. Further, that the investigating officer recorded a statement in which he indicated that a

Mr. Okoth and his wife were the last persons to be with the deceased but the two were not investigated or presented as witnesses yet they are the ones who should explain the cause of death of the deceased. That the accused had legitimately expected that the investigating officer to follow up on the two persons. That it would be prejudicial for accused to be called upon to explain the cause of death yet he had presented the names of two people. That the accused should be acquitted of the charge.

6. At this stage of the proceedings, the prosecution is under a duty to establish a prima facie case against the accused person so as to warrant him make a defence. A prima facie case is one in which a reasonable tribunal directing its mind to the law and evidence can convict an accused if no evidence is tendered by the defence to the contrary. What this means is that the evidence that has been presented should be sufficient to sustain a conviction against the accused person were he to elect to remain silent in defence. See **Bhatt Vs. Republic (1957) EA 332.**

7. After analyzing the evidence at this stage, it is not in dispute that there were no eye witnesses to the incident. However, the evidence of PW4 whom the deceased had gone to visit to collect his wages places the accused person at the scene of crime in that he was the one who led a group of villagers to the home of PW4 in search of

the deceased and that they informed PW4 that they were looking for the deceased and that he took him away. It is therefore clear that the accused person and his group were the last persons to be with the deceased before his body was discovered the following morning. The accused therefore must offer an explanation as to what happened to the deceased as soon as they left the home of PW4 pursuant to the last seen principle.

8. In view of the foregoing observations, it is my finding that the prosecution has established a prima facie case against the accused herein to warrant him to be called upon to make a defence. Consequently, I find **Horace Ongili Agina** has a case to answer. He is now called upon to elect to conduct their defence in accordance with the provisions of Section 306 (2) of the Criminal Procedure Code.

Dated and delivered at Siaya this 18th day of November 2025.

D. KEMEI

JUDGE

In the presence of:

Horace Ongili Agina..... Accused

Okandafor Accused

M/s Kerubo.....for Prosecution

Kimaiyo & Maureen.....Court Assistant