

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE (MURDER) NO. E013 OF 2023

REPUBLICPROSECUTION

VERSUS

LAWRENCE ODUOR WAYODI.....ACCUSED

JUDGMENT

1. The accused herein **Lawrence Oduor Wayodi** has 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 the 12th day of April 2023 at Sirongo village in Kakumu Kombewa in Alego Usonga within Siaya County murdered one Erick Otieno.
2. The prosecution called a total of eight (8) witnesses in support of its case.

3. The prosecution 's case is that on the material date the deceased was found lying outside his door having died. The area Assistant Chief Phillip Ogolla Fara (**PW2**) was alerted by the village elder. He rushed there and found the deceased's body next to the door. That he made inquiries and learnt that the brother of the deceased one **Lawrence Wayodi** (accused) was the one who had killed him. Apparently, the said Lawrence Wayodi was within the vicinity. That he and the clan elder interrogated him and established that a quarrel had ensued between the accused and deceased over a certain kitchen knife which was in possession of the deceased. That in the process of the struggle, the accused stabbed the deceased. That he saw the deceased had five (5) stab wounds in the stomach. That he called the OCS Siaya Police Station to rush to the scene. That the body was later collected and taken to Siaya County Referral Hospital mortuary where an autopsy was later conducted by Dr. Okong'o Eric (**PW3**). The pathologist noted the presence of two stab wounds on the left side of the chest, one at the 3rd and 4th ribs while the 2nd was on the 5th and 6th ribs on the anterior. He also saw a stab wound on the right rib cage on the 3rd and 4th ribs as well as a stab wound on the super pubic area. That there was also massive blood within the abdomen and that the spleen was ruptured. The said doctor formed the opinion that the cause of death was severe hemorrhage secondary to spleen rupture. The scenes was visited by the crime officer CPL Simon Likonyi (**PW4**) who took photographs of the body at the scene where there were blood stains on the kitchen floor and that he recovered a blood-stained kitchen knife. That he also

saw that the deceased's clothes were blood stained. That he took 14 photographs in all which he presented them to court as Exhibits. That the matter was investigated by No. 258525 PC Victor Lagat (**PW5**) and who collected the exhibits recovered at the scene and later forwarded some to the government analyst for DNA profiling. He later charged the accused and then later produced the exhibits in court. The specimens and exhibits were taken to the Government Chemist for analysis and which were handled by Polycap Lutta Kweyu (**PW6**) who formed the opinion that the DNA profiles generated from the exhibits namely kitchen knife ("A"), T-shirt ("B"), Jumper ("D") and jeans trouser ("C") were identical and matched the DNA profile of Eric Otieno Oduor (deceased). Further, the DNA profile of Lawrence Oduor Wayodi (accused) did not match with the DNA profiles aforesaid. He produced the analysis report and the exhibit memo. The accused was later taken before No. 236203 ASP Ole Kilua Patrick Johnson (**PW7**) where he recorded a confession over the murder of the deceased in the presence of his father James Opondo Wayodi. The said confession was produced as Exhibit 9. Further, No. 256775 PC Langat Dominic (**PW8**) was one of the arresting officers who rushed to the scene on the date in question and found the body of the deceased lying in a pool of blood outside a certain kitchen. That they apprehended the accused and collected some exhibits which included blood stained clothes and a blood-stained kitchen knife which he produced in court as exhibits. The accused was later charged with the present offence.

4. At the close of the prosecution's case, the court ruled that a prima facie case has been made out against the accused to warrant him make a defence. The accused opted to give sworn evidence.
5. **Lawrence Oduor Wayodi (DW1)** testified that the deceased was his brother with whom they had no differences. That on 12/4/2023 he was at home while the deceased had left for work and that he did not see him in the evening. That they had no altercation. That he did not kill the deceased. That he did not make any confession to the clan elder Philip Ogola and also maintains that he did not make a confession with the police and that during the alleged confession, his uncle James Opondo Wayodi was not present.
6. I have considered the evidence presented by the prosecution as well as the defence. I have also considered the submissions tendered. I find the issue for determination is whether the prosecution proved its case against the accused beyond reasonable doubt. This being a charge of murder, the burden of proof lay upon the prosecution to discharge and that the standard of proof is one of beyond any reasonable doubt. See **Woolmington Vs Dpp [1935] AC 462**. The offence of murder is provided for under Section 203 of the Penal Code which is to the effect that **"any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder."** Hence, in order for the

prosecution to secure a conviction for the offence of murder, it must establish certain ingredients inter alia; the death and the cause of that death; that the accused committed the unlawful act which caused the death of the deceased; that the accused had malice aforethought. Throughout the trial, an accused who has denied the charge remains innocent until proved guilty and that they are under no obligation to prove his/her innocence.

7. As regards the aspect of the death of the deceased, the pathologist Dr. Okong'o Eric (PW3) upon examining the body of the deceased noted several injuries inter alia; stab wounds on the left side of the chest through the third, fourth, fifth, sixth and the mid rib as well as on the rib cage. He formed the opinion that the cause of death was severe hemorrhage secondary to spleen rupture. He produced the autopsy report dated 17th April 2023 as exhibit as Exhibit No. 4. As there is no dispute on the fact of the death of the deceased, I find that the prosecution proved this ingredient beyond reasonable doubt.
8. As regards the unlawful nature of the killing, it is noted that the deceased then aged 26 years was a young man in good health and did not have any medical problems in that his sudden death baffled his family. Looking at the injuries which revealed several stab wounds in the sensitive part of the deceased body, it is obvious that the assailant intended that those injuries would cause grievous harm or even death. As the death was not in accordance with the law, the killing of the deceased was

therefore unlawful. I find this ingredient was also proved beyond reasonable doubt.

9. As regards the aspect of malice aforethought, Section 206 of the Penal Code provides that the same shall be deemed to have been established by evidence proving any one or more of circumstances inter alia; an intention to cause death or to do grievous harm to any person, whether that person is the person actually killed or not; knowledge that the act or omission causing death will probably cause death or grievous harm to some person, whether that person is the one killed or not, accompanied by indifference whether death or grievous injury occurs or not by a wish that it may not be caused; an intention to commit a felony; an intention by the act or omission to facilitate the flight or escape from lawful custody of any person who has committed or attempted to commit a felony. It is trite law that in offences of murder this ingredient is quite crucial and must be proved by the prosecution beyond any reasonable doubt. In the case of **R Vs Tubere S/o Ochen [1945] 1 EACA 63** the court held that an inference of malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused during and after the attack. In the present circumstances, the accused and the deceased had had an altercation in which the accused had refused to give the deceased Ksh10/= which he wanted to use and that the deceased got annoyed and picked kitchen knife and threatened the accused who seized the knife

from him and in the process stabbed him. After the encounter the accused went back to his house and slept and that the following morning, it was discovered that the deceased had died outside his house. Under those circumstances, the element of malice aforethought appears not to have been proved by the prosecution in view of the fact that the incident was spontaneous and not premeditated. No evidence was tendered to the effect that the accused had planned to eliminate the deceased who was his brother. The disagreement only arose after the accused refused to give the deceased a sum of Kshs10/= which he wanted. That being the position, the evidence presented appear to support a charge of manslaughter under Section 202 as read with Section 205 of the Penal Code.

10. As regards the participation of the accused person in the crime, learned counsel for the defence has submitted that her client has been fingered out due to suspicion and that the said suspicion, if any, should not be a basis of conviction against him. Reliance was placed in the case of **Republic versus Josephat Muiruri**, Meru Criminal case No. 168 of 2002 as was mentioned in the case of **Evans Ochengo & 2 Others versus Republic** Kisii Criminal Case No. 105 of 2010 which stated that 'in law, suspicion alone no matter how strong cannot be a basis of conviction.'
11. Even though the accused in his defence vehemently denied committing the offence and further denied making any

confession before the police and further denied that his uncle James Opondo Wayodi was present during the alleged confession, the evidence of **No. 236203 ASP Ole Kilua Patrick (PW7)** is that the accused recorded a confession on the 2nd May 2023 before him and that the accused had been accompanied by his father James Opondo Wayodi and that the confession was produced as Exhibit No. 9. The production of that confession put to rest the involvement of the accused in the crime and left no doubt that he was the one who killed the deceased. It is instructive that during the production of the said confession, the defence did not object the same so as to warrant a trial within a trial and to eventually establish whether the said confession was obtained in accordance with the requisite provisions of the Evidence Act. Hence, his defence evidence did not shake that of the prosecution which is overwhelming regarding him being the perpetrator of this crime. Further, the recovered knife, a torn short sleeved T-shirt, a black pair of long jeans trousers, a purple long sleeved jumper as well as buccal swab from the accused were taken for analysis at the government chemist at Kisumu which were analysed by **Polycarp Lutta Kweyu (PW6)** who formed the opinion that the DNA profiles generated from the kitchen knife, T-shirt, jumper and jeans trouser were identical and matched with the DNA profile of the deceased. Further, the DNA profile of the accused did not match with the DNA profile on those items. It is clear that the blood samples found in those items belonged to the deceased and not the accused. Even if the samples have not been linked with the accused, his confession

that he killed the deceased is sufficient and which now dislodges his defence evidence. I find that the accused was placed at the scene of crime and the confession aforesaid fortified the prosecution's case. I find that this ingredient was proved by the prosecution beyond reasonable doubt.

12. An analysis of all the evidence of the eight prosecution witnesses left no doubt that the accused was squarely placed at the scene of crime. His defence evidence did not shake the said evidence which is overwhelming against him. The confession which was produced as Exhibit No. 9 clearly left no doubt about the accused's involvement in the killing of the deceased. However, as noted above, the evidence supports a charge of manslaughter instead of murder.

13. In view of the foregoing observations, it is my finding that the prosecution has not proved the charge of murder against the accused, herein Lawrence Oduor Wayodi beyond any reasonable doubt. However, I find that the prosecution has proved a charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code against the accused herein beyond any reasonable doubt. I find the accused **Lawrence Oduor Wayodi** guilty of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and is convicted accordingly.

Dated and delivered at Siaya this 25th day of November 2025.

**D.KEMEI
JUDGE**

In the presence of:

Lawrence Oduor Wayodi..... Accused

Mirembe for M/s Akinyi.....for Accused

Soita.....for Prosecution

Maureen/Kimaiyo.....Court Assistant