

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL CASE NO. E002 OF 2025

REPUBLIC.....DIRECTOR OF PUBLIC
PROSECUTIONS

VERSUS

MARTIN ODUOR alias NYANYA.....1ST ACCUSED
STEPHEN OUMA.....2ND ACCUSED

JUDGMENT

1. The accused persons herein, Martin Oduor alias Nyanya and Stephen Ouma, face a charge of murder. It is alleged that they murdered William Owino, on 14th November 2024, at Siganga area of Bunyala Sub-County, Busia County, contrary to sections 203 and 204 of the Penal Code, Cap 63, Laws of Kenya. They denied the charges, and a trial was conducted. The prosecution presented 6 witnesses.
2. PW1, Francisca Taka, was informed, on 14th November 2024, that her house had been broken into. She rushed home, and confirmed the same. When she went to the house of her neighbour, the deceased herein, to inform him of what had happened, she did not find him. The police later arrested her, and she was in custody for 17 days.
3. PW2, Daniel Ouma, was at home on 14th November 2024. The deceased, who was his friend, came, looking scared, and informed him that, where he lived, his neighbour was alleging that he had stolen from her. Another friend, who testified in these proceedings as PW3, joined them, and later left with the deceased for the police station, to make a report. Later, he, PW2, heard screams outside, and claims that there was a thief. He was later informed, by his wife, that the deceased was being beaten. He telephoned a brother of the deceased, called Oduor, to inform him, and to ask him to get police help. By the time Oduor came to the scene, the deceased had already died. The police came and removed the body. PW2 stated that he did not visit the scene, where the deceased was killed, but he did see a group of 3 chasing the deceased, 30 minutes after he had left with PW3.
4. PW3, Meshack Oduor Ouma, was a *boda boda* operator. He found PW2 and the deceased together, at the home of PW2, having supper.

PW2 informed him that the deceased was being accused of theft. He, PW3, took the deceased to the police station, at Port Victoria, to report. They made their report, after which he, PW3, took the accused back to his home. The accused asked to be dropped at the home of PW1, the victim of the alleged theft. PW3, knocked at her door. PW1 came out, making a lot of noise. She and PW3 began talking. While at it, a man came out of his house, and started accusing the deceased, saying that he was the person who stole from PW1. PW3 decided to go look for the village elder. He left the deceased behind. When PW3 came back, he found a crowd. PW1 telephoned someone, informing that person that the person who had stolen from her had been caught. Again, PW3 left the scene, to go look for the area Assistant Chief. He found him, and they rode back to the scene, to secure the deceased. When they got to the scene, they found the deceased being assaulted. He identified the 2 accused persons amongst the persons assaulting the deceased. When the Assistant Chief asked them to stop the assault, he was grabbed by a John, and an Andu, and removed from the scene. He, the Assistant Chief, thereafter, asked PW3 to take him back to his house, so that he could collect his mobile phone. He did so, and the Assistant Chief telephoned the police. PW3 then went back to the scene, and found that the deceased had died.

5. During cross-examination, he stated that it was him who advised the deceased to report to the police, the allegations that were being made, that he had stolen from PW1. He stated that the deceased had informed him that he had also lost items in the alleged theft. The police did not record his report, instead they referred him to the Chief, for investigations. He said he was merely transporting the deceased around, in his capacity as a *boda boda* operator. They were going to the Chief, when the deceased asked to be dropped at the home of PW1. He said that the crowd, at the scene, was demanding that the deceased produce the items that he had stolen. He said he saw the 2 accused persons beating the deceased. He said that the 2 accused persons were persons that he knew personally. He said the assaults did not happen at the home of PW1, but some distance away. When he left to take the Assistant Chief back to his home, the accused were still assaulting the deceased. He said he was not able to intervene, to restrain them, as they were armed. He said that he got close enough to them, at the scene, and he was able to recognize them. He said he did not identify the other assailants.

6. PW4, Dr. Bildad Ewase, was the medical officer, who performed postmortem, on the body of the deceased, on 20th November 2024. He noted a cut wound on the scalp, and multiple bruises on the facial region, chest, abdomen and upper limbs. Internally, the lungs had collapsed, and there was multiple haematomata on the scalp. His opinion was that the deceased died of the subdural haematoma, caused by blunt head trauma. He said the chest trauma was a secondary cause. It was alleged the injury was caused by a mob.
7. PW5, No. 92773, Police Constable Richard Onger, was the arresting officer. The 1st accused ran, when he saw the police officers, but was chased and arrested. The 2nd accused person was arrested at his home, while sleeping. He said that when the murder incident happened, he was on leave. He heard that it was a case of mob justice.
8. PW6, No. 9483, Police Corporal John Matei, investigated the matter. He went to the scene, after a report was made to the police. He found a big crowd, and the body of the deceased, which had injuries. He was informed that the deceased had just come back to his rented house, when his neighbour, PW1, accused him of being a thief. When he sought to exonerate himself, she screamed, attracting a crowd. When he sensed danger, the deceased ran away, but was chased by the crowd, and killed, 100 metres away from his rented house. After his death, a section of the crowd realized that he was innocent, and sought to attack PW1, while another group protected her. The police arrived, just on time, to secure her. The body was removed from the scene. A witness showed up, who gave out the names of 2 suspects. He alleged that the accused persons fled to Mageta Island, and only resurfaced after a month or so.
9. On 18th July 2025, I delivered a ruling, where I found and held that a *prima facie* case had been established against the 2 accused persons, to warrant their being required to present a defence. A defence hearing was conducted. The accused persons made sworn statements.
10. The 1st accused, Martin Oduor alias Nyanya, testified as DW1. He denied the charges. He stated that, on that material day, he left home at 4.00 AM, and went into the lake to fish. He did not come back until 5.00 PM. He went to bed at 9.00 PM. His son informed him of noises outside, and he instructed his wife to establish what it was all about. He also went to the scene. He said that by the time he got out,

the noises had died down. He saw PW3 and the Assistant Chief on a motorcycle. He saw a body on the scene, with stones and sticks around it. Someone said Nyanya had killed another. He said he was not the Nyanya referred to, but another Nyanya, from Bumadeya. He went home after that. He said that there was a grudge between him and PW3. He said that he was arrested on 2nd January 2025. He denied that he had fled to the islands. During cross-examination, he said the deceased was his schoolmate at Bumadeya, while PW1 was his sister-in-law, as her sister was married to his brother. He said he went to the scene, and found someone lying there. He said that he met PW3 on the road. He denied fleeing to Mageta Island.

11. The 2nd accused, Stephen Ouma, testified as DW2. He, like the 1st accused, had gone fishing on the material day. He left home at 4.00 AM, and returned at 5.00 PM. He had his meal and slept. He said his wife mentioned something about screams outside, but he did not go out to investigate. He said that there was an issue between him and PW3, for he had accused him, at some stage, of stealing a pig. He reported him, PW3, to the authorities, and he was caned by the village elder, supposedly as a form of punishment. He said he was arrested on 2nd January 2025.
12. At the close of the oral hearings, the parties did not submit.
13. The offence of murder has 4 elements: proof of the death, the cause of it, the role of the accused in the causation, and malice aforethought. A conviction should be founded upon these elements being positively proved.
14. On proof of the death, PW3 saw the body at the scene, and so did the 1st accused person. PW6, the investigating officer, was among the police officers who removed the body from the scene. PW4, the medical officer, performed postmortem on the body. Proof of the death was overwhelming.
15. On the cause of the death, PW4, did an autopsy on the body, and noted several serious injuries. There were 7 cut wounds on the scalp, one of which was described as deep. There were various bruises on various parts of the body, including the face, chest, abdomen and upper limbs. The lungs had collapsed, and there was haematoma on the scalp. The conclusion was that death happened because of the subdural haematoma. Eventually, the deceased died of

blood loss from the head injuries. The injuries were multiple, consistent with assault from multiple sources, or repeated assaults.

16. On the role of the accused, in the causation, there was the evidence of PW3. He was the sole eyewitness, presented by the prosecution. He was with the deceased, shortly before the killing. He was at the scene, and could be trusted to give a fair account of what happened. The 1st accused confirmed seeing him at the scene. PW3 testified to seeing both the 1st and 2nd accused persons at the scene, and to witnessing both of them assaulting the deceased. He said that when the Assistant Chief, who the 1st accused confirmed to have been with PW3, tried to restrain them, another 2 individuals took him away. The 2 accused persons and PW3 were both from the local area, and knew each other. PW3 recognized them. He said he was close enough to see them and recognize them. He had gone to fetch the Assistant Chief, to bring him to the scene, to secure the deceased, which placed him, PW3, at the centre of the events, and bringing him to very close proximity with those involved in beating the deceased.

17. I am alive to the fact that this was a case of a single identifying witness. However, this was not just a case of identification, but recognition. As stated above, both the accused and PW3 knew each other. The accused were persons that PW3 knew, he recognized them at the scene. There were, of course, from the testimonies, other individuals present, at the scene, who did not come forward to testify. PW6, the investigating officer, expressed his frustration. He stated that there was a problem in that area, as the locals there do not come forward to assist the police with investigations. They do not cooperate. Indeed, that appears to be the case here. Even the Assistant Chief, that PW3 was ferrying about, on his motorcycle, also refused to cooperate with the police. Yet, he was the State security officer on the ground, that the State relies on, at the local level, for maintenance of law, order, safety and security.

18. I heard the defences by the accused. The 1st accused visited the scene. He said that he got there when it was all over. I saw PW3 and the 1st accused both testify, and I heard both of them. Between the narrative given by PW3 and that given by the 1st accused, I believe that by PW3. PW3 was at the heart of the whole matter. It unfolded before his eyes. The deceased was a pillion passenger on his motorcycle. He brought him to the scene, to see PW1. When issues began to run out of control, he went out to look for help, from the

village elder and the Assistant Chief. He was close enough to see who was at the scene, and who did what. The 2nd accused claimed that he was not at the scene at all, but PW3 saw him, and recognized him. PW3 detailed to the court what he saw him, the 2nd accused, do to the deceased.

19. In terms of the role of the accused persons in the causation of the death of the deceased, I am persuaded that the prosecution was able to demonstrate, beyond reasonable doubt, that the 2 were part of the crowd that was assaulting the deceased, and that they had actually beaten the deceased. They played a role. They were complicit.

20. On malice aforethought, the same is defined in section 206 of the Penal Code. It is about intention to kill, and knowledge that certain acts could cause death, yet the perpetrator engages in them, regardless. The intention could be direct, where the perpetrator voices or utters or expresses that he was going to kill. It could be indirect, to be implied from the conduct of the perpetrator, which causes or leads to the death.

21. The deceased herein was killed by a mob. PW3 identified the accused persons as having been part of that mob. He detailed how both hit the deceased. There was no evidence of utterances, from the crowd, or the accused persons, expressing an intention to kill the deceased. That then means that there was no proof of direct intention to kill. However, as an intention to kill may be deduced from the circumstances of the killing, the same may be inferred from what happened. The deceased came to the scene healthy, but was assaulted, by the mob, so badly that he died, within minutes of arriving at that scene. Those who assaulted him, to the point of causing his death, must have intended to kill him, or to cause him grievous harm or injury, or to commit some felony, or were indifferent that the act of beating him, so badly, could cause his death. Quite clearly, there was intention to kill, hence there was malice aforethought.

22. The death was caused by mob action. In such circumstances, intention attaches on all those participating in the acts that cause injury to the deceased, eventually culminating in his death. It has to be deemed that anyone, from or in the crowd, who hit or kicked the deceased, had a common intention, with everyone else, who also hit

the deceased. The mere fact that the death was caused by mob action does not diminish the complicity and criminal responsibility of any of those involved.

23. In view of everything said above, I do hereby find and hold that the prosecution has established, beyond reasonable doubt, that the accused persons herein, are guilty of unlawfully causing the death of the deceased, William Owino, contrary to sections 203 and 204 of the Penal Code. I, accordingly, convict them, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya.

24. For the purpose of sentencing, I do hereby direct the County Director of Probation and Aftercare Services to look into the antecedents of the accused, and get the views of the community, and thereafter file a pre-sentence report, within 14 days. There shall be a sentencing hearing on 19th February 2026. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS
2ND DAY OF FEBRUARY 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Office of the Director of Public Prosecutions, for the Republic.

Mr. Juma, Advocate for the accused persons.