



**State v Obura (Criminal Case E013 of 2025)
[2026] KEHC 1446 (KLR) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E013 OF 2025**

DK KEMEL, J

FEBRUARY 13, 2026

BETWEEN

STATE PROSECUTION

AND

FRANCIS OCHIENG OBURA ACCUSED

RULING

1. The accused herein Francis Ochieng Obura 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 20th day of March 2025 at Ugunja township within Ugunja Sub -County within Siaya County murdered one Linet Adhiambo Murumba.
2. The prosecution called eight witnesses in support of its case.
3. At the close of the prosecution's case learned counsels made oral submissions on the issue of whether the prosecution has made a *prima facie* case against the accused to warrant him to be called upon to make a defence.
4. Mr. Soita learned counsel for the prosecution submitted that a *prima facie* case has been established to warrant the accused to be placed on his defence. That at this stage the court can only establish the evidence has made a prima facie case. That the fact of the death is not in dispute. That the body was found lying behind Pramukh Stores with stab wound. That the witnesses confirm the stab wound on the chest. That there is no doubt about the unlawful death and the same was intentionally inflicted. As regards the participation of the accused, the evidence is direct and shows that the accused participated in the crime. That PW4 and PW6 stated that the accused returned to the hotel at 9.00 pm while intoxicated and searched for a knife. That the deceased went in search of the accused at the hotel. That the accused later turned up in company of the deceased and entered his room and later left together. That that was the last time deceased was seen alive. That the accused was found standing over the body



of the deceased. That he did not raise any alarm over the alleged attack. That it was not coincidental that all the evidence pointed towards his guilt. That the chain of circumstantial evidence leave no doubt about his involvement. That they relied on the last seen doctrine. See *Kimani v. R* (Criminal Case No. 41 of 2022 Court of Appeal), *Haji v. State* (1993) the doctrine of last seen is a circumstantial evidence and requires an accused to render an explanation. That in a case of culpable homicide, the accused is required to provide an explanation how the person he was last seen with met her death. No explanation has been tendered by the accused so far. That the stab wound targeted the chest. That the conduct of the accused before and after the incident leaves a lot of doubt about his innocence and that the prosecution's evidence is consistent and cogent. That it was found that a case to answer has been made up against the accused.

5. Mr. Okanda learned counsel for defence submitted *inter alia*; that at this stage the court must be satisfied that a *prima facie* case has been made; that in the case of *Maina & 4 Others v R* [2015] eKLR, the prosecution's evidence must be such to convince the tribunal that the evidence does not meet the threshold; that ingredients of murder is provided in Section 203 of the *Penal Code*; that the death took place which is unlawful and that the same was by malice aforethought by the accused; that the prosecution claims that its case is based on circumstantial evidence or the doctrine of last seen; that they must go further and require the suspect to render an explanation; that in the case of *Muriungi v. R* [1958] EA 71. There is need to produce moral certainty and ensue that there are no co-existing circumstances which would weaken the inference of guilt; that the investigating officer stated that they have no evidence regarding the involvement of the accused in the stabbing; that PC Yona claimed that two unknown persons stabbed the deceased; that there was inconsistency on the part of the police investigations in that regard; that the accused told police that they had been attacked; that the accused is a cook in a certain hotel which was confirmed by his employer (PW4); that there was nothing strange; that accused did not flee from the scene and had no weapon on him; that PW4 stated that the knife was later found in the hotel store; that even though the accused was the last person with the deceased, there are co-existing circumstances weakening the chain of events linking him to the offence; that the accused should not be made to make a defence and that he be acquitted.
6. I have considered the submissions of the learned counsels. I find the issue for determination is whether the prosecution has made out a *prima facie* case against the accused herein to warrant him to be called upon to make a defence.
7. A *prima facie* case has been described in the case of *Bhatt v R* (1957) EA 332 as one in which a reasonable tribunal directing its mind to the law and evidence placed before it 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.
8. The burden of proof in all criminal cases lies upon the prosecution and which must be beyond any reasonable doubt. See *Whoolmington v. DPP* (1935) AC 462.
9. Upon analysis of the evidence presented by the prosecution certain issues are not in dispute *inter alia*; that the deceased had visited the accused at a certain hotel (St. Monica hotel) where he worked as a cook and that the two left together; that the accused was seen by the hotel staff picking a kitchen knife and going with it; that the accused was found at the scene together with the deceased and who had stab wounds while the accused lay on the ground muddled; that the accused was the last person to be seen with the deceased before her body was discovered lying next to Pramukh stores within Ugunja township. The evidence of PW2, PW3, PW4, PW6 placed the accused at the scene of crime. It transpired from the evidence of those who arrived at the scene and found the accused that the accused informed them that he and the deceased had been attacked by a group of people. The accused having



been placed at the scene of crime, it is now incumbent upon him to render an explanation as to how the deceased met her death.

10. It is trite that an analysis on the issue of whether the accused has a case to answer should not be quite comprehensive especially when the court has established that a case to answer has been made out by the prosecution for the reason that the court must guard against the possibility of pre-judging the accused's defence.
11. In view of the foregoing observations, it is my finding that the prosecution has made out a prima facie case against the accused herein to warrant him to make a defence. Consequently, I find the accused herein Francis Ochieng Obura has a case to answer and is now called upon to elect to conduct his defence in line with provisions of Section 306(2) of the Criminal Procedure Code.

DATED AND DELIVERED AT SIAYA THIS 13TH DAY OF FEBRUARY 2026.

D. KEMEI

JUDGE

In the presence of:

Francis Ochieng Obura Accused.

Okanda for accused.

Soita for Prosecution.

Maurine/Kimaiyo.....Court Assistant.

