

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
CRIMINAL CASE (MURDER) NO. E002 OF 2023

REPUBLIC
PROSECUTION

VERSUS

CARREN ODHIAMBO OSULO.....1ST

ACCUSED

MICHAEL ODHIAMBO OYUGI.....2ND

ACCUSED

DAVID AWIMBO OGOT.....3RD

ACCUSED

CHARLES OTIENO OGADA.....4TH

ACCUSED

RULING

1. The accused persons herein **Carren Odhiambo Osulo, Michael Odhiambo Oyugi, David Awimob Ogot and Charles Otieno Ogada** have 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 on 27th day of January 2023, at Rarieda village, Akom Sub-Location, in South Asembo Location, Rarieda Sub County within Siaya County, jointly with others not before court murdered one David Ochieng Apiyo.

1. The prosecution called a total of ten (10) witnesses in support of its case.
2. The prosecution's case is that the deceased who worked as a Sunking Solar lamp distributor visited the home of the 1st accused herein with the purpose of collecting unpaid dues since the said lady had received the Sunking products and had been paying via "**mdogo mdogo**" repayment loan. Apparently, the said 1st accused was not at home and when she arrived she found the deceased carrying the Tv set that she had bought from the said company and that she raised alarm and called her husband who is the 2nd accused herein to rush home. The 2nd accused arrived with other persons tied up the hands of the deceased then took him towards Aram market and that while on the way members of public joined them along Aram Ngagongo road and that the deceased was assaulted. The police later arrived at the scene to collect the body and later organized for a post mortem. The autopsy was conducted on 4/2/2023 at Lwak Mission Hospital by Dr. Kevin Omamo Ndai (PW9) who formed the

opinion that the cause of death was cardio pulmonary arrest secondary to polytrauma with evidence of subdural and epidural haematoma hemothorax and hemoperitoneum. He produced the autopsy as Exhibit 5. After investigations, the accused persons were arrested and charged.

3. At the close of the prosecution's case, learned counsels for the parties presented oral submissions.
4. Mr. Muntui for the prosecution submitted that the prosecution has made out a prima facie case against the accused persons to warrant them to be placed on defence. That all the four accused were placed at the scene of the crime and therefore they should offer an explanation as how the deceased met his death.
5. Mr. Okanda for the defence submitted that at this stage the prosecution ought to establish a prima facie case against the accused persons by availing evidence to that effect. It was further submitted that the evidence should be sufficient to convict the accused even if they elect to remain silent. It was submitted that no prima facie case has been made out as it was a mob injustice incident where none of the witness implicated the accused herein. That the doubt created should be resolved in favour of the accused persons. That the 1st accused met a thief who was already carrying her Tv set and she called her husband and that there was no blame against 1st and 2nd

accused since they performed the civic duty by alerting the police but members of public overwhelmed them. That the presence of the accused persons at the scene should not be taken as being part of the perpetrators and that there was no common intention on the part of the accused persons as they abided by the law and tried to hand over the thief to the authorities. Learned counsel urged the court to acquit the accused persons.

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 them to 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 they to elect to remain silent in defence. See **Bhatt Vs. Republic (1957) EA 332.**

7. After analyzing the evidence of the prosecution's witnesses, it is clear that the evidence of PW1, PW2, PW4, PW5 and PW6 placed the accused persons at the scene of crime. The prosecution's evidence is that the 1st and 2nd accused who are a couple and whose Tv set had been stolen by the deceased are the ones who confronted the deceased in their compound and later sought for help from the rest of the accused persons to escort the

deceased to Aram police station and while on the way along Aram Nyagongo road more members of public joined them and the assault continued until the deceased died. It is therefore incumbent upon the accused persons to render an explanation as to how the deceased met his death.

8. In view of the foregoing observations, it is my finding that the prosecution has established a prima facie case against the accused persons herein to warrant them to be called upon to make a defence. Consequently, I find each of the accused persons herein **Carren Odhiambo Osulo, Michael Odhiambo Oyugi, David Awimob Ogot and Charles Otieno Ogada** has a case to answer. They are 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 23rd day of February 2026.

D. KEMEI

JUDGE

In the presence of:

Carren Odhimbo Osulo.....1st Accused

Michael Odhiambo Oyugi.....2nd Accused

David Awimbo Ogot.....3rd Accused

Charles Otieno Ogada.....4th Accused

Okandafor Accused

Soita.....for Prosecution

Maureen/Kimaiyo.....Court Assistant