



Republic v Oguna (Criminal Case 77 of 2019) [2026] KEHC 2421 (KLR) (2 March 2026) (Ruling)

Neutral citation: [2026] KEHC 2421 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 77 OF 2019
RN NYAKUNDI, J
MARCH 2, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

REBECCA ASIKO OGUNA ACCUSED

RULING

1. The Accused person was arraigned before this court charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge being that Rebecca Asiko Oguna on the 4th day of December, 2019 at Shauri Estate within Uasin Gishu County, murdered Gyan Espila
2. The accused denied the offence and the trial was set down for hearing so that the prosecution can discharge the burden of proof of beyond reasonable doubt. The Accused person was represented by Mr. Isiji in terms of leading the defense as provided for under Article 50(2) (H) of *the constitution*. The prosecution in this case adduced evidence of 6 witnesses on the following elements.
 - a. That the deceased is dead
 - b. That the death was unlawfully caused
 - c. That in executing the murder the accused was motivated with malice aforethought
 - d. That the accused person on assessment of the evidence was placed at the scene of the crime.
3. Proof of evidence of murder is based on both direct and circumstantial evidence which standard and burden of proof is vested with the prosecution. It is a requirement of procedural law under Section 306 of the Criminal Procedure Code that on application of the defense if the state fails to make out a prima-facie case at the close of its case, the court may discharge the accused. While at the same time if there is evidence admitted by the trial court to the effect that the burden of proof of a prima-facie case has been established then it is the duty of the trial court to place the accused person in his or her



defense. While at the case to answer stage, the test is prima-facie evidence, the final conviction must meet the standard proof of beyond reasonable doubt.

4. In the offence of murder, one of the key highlights of the unlawful act of omission in committing the offense are the concepts of planning or pre-meditation on the part of the accused person. The court in *S V Raath* (2009) 2SACR 46 made the following observations. “ The Concise Oxford dictionary 10 ed, revised, gives the meaning of premeditate as to think out, whilst 'to plan' is given as meaning 'to decide on, arrange in advance, make preparations for an anticipated event or time.' Clearly the concept suggests a deliberate weighing-up of the proposed criminal conduct as opposed to the commission of the crime on the spur of the moment or in unexpected circumstances. There is, however, a broad continuum between the two poles of a murder committed in the heat of the moment and a murder which may have been conceived and planned over months even years before its execution. In my view, only an examination of all the circumstances surrounding any particular murder, including not least the accused's state of mind, will allow one to arrive at a conclusion as to whether a particular murder is 'planned or premeditated'. In such an evaluation the period of time between the accused forming the intent to commit the murder and carrying out this intention is obviously of cardinal importance equally, does not at some arbitrary point, provide a ready-made answer to the question of whether murder was 'planned or premeditated. In deciding whether or not appellant killed the deceased in circumstances where such killing was planned or premeditated, the test is not whether or not That had already been dealt with in finding that the killing was an act of murder. The question now is whether or not the proposed conduct either on a thought-out basis or an arranged-in-advance basis, or whether or not appellant "rationally considered the timing of method " of the killing or prepared a "scheme or design" in advance for achieving his goal of killing the de cease.
5. I have reviewed the evidence of the 6 witnesses and I am of the considered view that the accused person be placed in her defense to answer the charge of murder contrary to section 203 as read with Section 204 of the Penal Code. In the presence of the defense counsel Mr. Isiji and the Accused person together with the lead prosecution counsel M/s Kirenge the hearing has been scheduled on the 10.3.2006. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 2ND DAY OF MARCH 2026

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R. NYAKUNDI

JUDGE

