

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. E037 OF 2024

REPUBLICPROSECUTION

VERSUS

JOHN OKOTH ODHIAMBO.....1ST

ACCUSED

ERICK OTIENO OYANGE.....2ND ACCUSED

RULING

1. The accused herein **John Okoth Odhiambo** and **Erick Otieno Oyange** have 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 14th July 2024 at Ajigo Sub location in Bondo Township Location, Bondo Sub-

County within Siaya County murdered Benard Otieno Odhiambo.

2. The accused persons denied the charges and thus a trial commenced in earnest wherein the prosecution called seven (7) witnesses in support of its case.
3. The prosecution's case is that on the material date the deceased arrived home and made some noise as had been his habit and went straight to his house. Later, his mother Roselyn Auma Odhiambo (PW1) got concerned when the deceased failed to come out of his house to take his dinner and so she sent her daughter to go and check but her daughter declined due to fear of the deceased who was known to be violent in nature and so she decided to take his food to his house only to find the door ajar and that she saw him lying on a mattress while foaming in the mouth and that she immediately alerted her other children. She alerted the village elder who advised them to report the matter to the police at Luanda Kotieno police station. The police visited the scene and who advised that the body be taken to a mortuary. That while they arranged to take the body, word went round that irate members of public were threatening to torch the houses belonging to the accused persons herein.
4. The body of the deceased was later examined during an autopsy conducted by Dr Bruno Okal (PW5) on 31/7/2025 in the presence of Reuben Opiyo Oyangi (PW2) who found multiple bruises all over the body which indicated signs of a struggle. He also noted an injury of the right bronchial artery.

That he formed the opinion that the cause of death was inconclusive and that the bruises on the body were not significant enough to cause death and likewise the internal organs. That the autopsy was conducted after two weeks from the date of death. That the result could have been different if the autopsy was conducted earlier. The doctor produced the autopsy as exhibit one.

5. It was the evidence of Roslyn Achieng Boyi (PW3) who stated that on the material date, she heard noise and on checking, she saw both accused herein assaulting the deceased and that they informed her that they were claiming that the deceased had taken their mother's bicycle the previous day but failed to return it. That she pleaded with them to stop assaulting the deceased. That the accused persons were using bladders as whips. That the deceased was then lying down and requested for water which was given by the wife to 1st accused.
6. No. 240778 IP Kipkoech Kosgei (PW4) testified that he visited the house of the deceased and saw that he had bruises on hands and then organized to take the body to Bondo Sub County Hospital.
7. No. 88050 Pc Ongaga Nyariaro (PW6) testified that he established that the deceased had been assaulted by his brother and cousin whom he later charged with the offence herein.
8. Edwin Jakino Olima (PW7) was the assistant chief of Bar Kowino Sub Location of Bondo Sub County. That he was alerted of the death of the deceased and later received a call

from an anonymous person who gave him a tip off that the assailants were the two accused herein and that the caller turned out to be a relative of both deceased and the accused herein who wanted to hush up the matter but he insisted that they should let the authorities handle it.

9. At the close of the prosecution's case, both learned counsels opted to rely on the evidence adduced as regards the issue of whether the prosecution has established a prima facie case against the accused persons herein.

10. At this stage of the proceedings, the prosecution was under a duty to establish a prima facie case against the two accused herein so as to warrant them to be placed on their defence. A prima facie case is one in which a reasonable tribunal directing its mind to the law and evidence placed before it could convict an accused person if no evidence is offered by the defence to the contrary. Hence, what this means is that the evidence which has so far been tendered at this stage of the proceedings should be sufficient to sustain a conviction against the two accused persons herein if they elect to remain silent in defence. See **Bhat Vs Republic [1957] EA 332.**

11. After analyzing the entire evidence adduced at this stage of the proceedings, I find that the evidence of PW3 who was a close relative of both accused placed them at the scene of crime as she had found them at 6.00 PM assaulting the deceased using bladders and when she confronted them, they informed her that the deceased had taken their mother's bicycle but had not returned it. The evidence of the pathologist (PW5) also corroborated her evidence in that the

doctor found several bruises on the body of the deceased which was consistent with her claim that the deceased was whipped with bladders. That being the position, iam satisfied that the accused persons were squarely placed at the scene of crime and they must now offer an explanation as to how the deceased met his death.

12. In view of the foregoing observations, it is my finding that the prosecution has established a prima facie case against both accused herein to require them to be called upon to make a defence. Consequently, I find that each accused herein John Okoth Odhiambo and Eric Otieno Oyange have a case to answer and 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 28th day of April 2026.

HON.D. KEMEI

JUDGE

In the presence of:

John Okoth Odhiambo.....1st Accused.

Eric Otieno Oyange.....2nd Accused.

Odhiambo.....for Both Accused

Soita.....for Prosecution

Mourine.....Court Assistant.

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