



**Republic v Omondi & 2 others (Criminal Case 74 of 2019)
[2025] KEHC 645 (KLR) (Crim) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 74 OF 2019
MW MUIGAI, J
JANUARY 29, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

CHARLES OMONDI 1ST ACCUSED

JOSEPH OCHIENG MAYOT 2ND ACCUSED

KEVIN OMONDI 3RD ACCUSED

RULING

1. The Accused persons were indicted on 7/11/2019 with murder of John Ochieng Achiando. The hearing was started by Hon LJ Mutuku, later the matter was heard by LJ Ngenye (as she then was), then LJ G.Nzioka, LJ Chepkwony and LJ L.Mutende. The Presiding Judge referred the matter to this Court.
2. On 20/1/2025 Certificate of Urgency Application was filed by 2nd Accused Person's Advocate for review and/or variation of bail/bond terms. This Court gave directions; the application be served to ODPP and may respond and inter partes on 28/1/2025.
3. Today, on mentioning the matter on line, the 1st Accused was absent while 2nd & 3rd Accused persons were present. The Accused persons Advocates were present for each of the Accused person; Mrs Nyamongo represented 1st Accused person; Mr Nyachoti represented 2nd Accused and his brief was held by Mr Meso for the 3rd Accused person.
4. The Office of Director of Public Prosecution (ODPP) was represented by Ms. Tum who informed the Court that the matter was/is part heard; 5 witnesses testified and 4 witnesses were remaining.



5. Corporal Christopher Saruni of Nairobi Remand informed Court that 1st Accused Charles Omondi passed away at Mbagathi Hospital.
6. The Court directed proceedings to be typed /photocopied first and availed to both Prosecution & Defense and thereafter directions under Section 200 CPC to be taken.
7. The pending Application was/is to be served to the ODPP and/or obtain a copy from Deputy Registrar Criminal Division and the matter to be mentioned thereafter.
8. The 2nd Accused person Kevin Omondi Ahija told the Court; before the 1st Accused person died on 23/1/2025, he was with him and was there when Prison Officers beat up the 1st Accused person Charles Omondi. He saw and knew the Prison Officers.
9. After he was beaten up he was admitted in the Prison medical Unit before he was taken to Mbagathi Hospital where he died on 24/1/2025. He died from Prison Officers beating him up. He requested the 1st Accused person's Advocate to visit Prison [Nairobi Remand] and follow up the matter.
10. SP Evans Omukuba who tried to rescue the 1st Accused Charles Omondi who was being beaten by Prison Officers, he was beaten until his hand was broken. The Prison Officers who beat Charles Omondi 1st Accused person are known and there are witnesses to the matter and the same should be investigated.
11. State Counsel ODPP Ms Tum; responded that Prison Authorities to take up the matter and would write to Prison Authorities and advise them to report the matter to DCI and update the Court on the mention date.
12. Counsel for 3rd Accused Mr Meso emphasized that he was ready to have the relevant Authorities look into the issue of 1st Accused being beaten up. The Court enforces the right to human dignity, whether one is incarcerated or not as the Persons Deprived of Liberties Act, Prisoners are to be dealt with in a humane manner.
13. Mrs. Nyamongo for 1st Accused person reiterated that Applications for Bail /Bond were made 4 times and every time the State objected to the release of 1st Accused person. She received a message from the 2nd Accused explaining to her how the 1st Accused was beaten up by Prison Authorities.
14. The 2nd message was from the 3rd Accused person telling her 1st Accused person passed on. Counsel requested for independent Post Mortem of the deceased and the Court to order an Inquest as to what happened to him.
15. The Court considered the Application made by 2nd Accused person and responses by al parties/ Counsel present in today's proceedings.
16. The 1st observation is that 1st Accused person Charles Omondi was in custody Nairobi Remand, he was taken to Mbagathi Hospital and he succumbed to his death.
17. The 2nd Accused Kevin Omondi has given in detail his version of events that culminated to the death of 1st Accused Charles Omondi that he was beaten up by Prison Officers.
18. The Court has not heard from the Prison Officials and at the same time at this stage the cause of death of 1st Accused Charles Omondi has not been established and/or confirmed.
19. The Constitutional mandate the Office of Director of Public Prosecution (ODPP) is provided under Article 157 of the [Constitution](#). The main mandate is to institute criminal proceedings.



20. Similarly, the Constitutional mandate of Directorate of Criminal Investigations (DCI) is provided under Article 247 of the Constitution. The main mandate is to collect and provide criminal intelligence while also to undertake investigations on serious crimes as also stipulated in the National Police Service Act.
21. In Geoffrey K.Sang vs ODPP& 4 Others 2021eKLR the roles of both bodies were discussed at length and dividing line was/is as per the constitutional mandate. The Court observed ODPP can direct DCI to investigate on any information that it finds fit to be investigated.
22. In the instant matter at hand the complaint incident leading to 1st Accused Charles Omondi's death was by 2nd Accused person Kevin Omondi in open Court in the presence of ODPP and Defense Counsel.
23. Therefore, since the Court only heard from 2nd Accused person and has not heard from Prisons Service specifically Nairobi Remand , it is premature to call in DCI at this stage.
24. The Commissioner of Prisons under the Prisons Act Cap 90 under Section 5 & 6 of the Act is in charge of administration of the Prison Service, control and supervision of all prisoners subject to directions of the Minister. The Commissioner is also in charge of observance of administration rules by Prison Officers.
25. Therefore, to jumpstart investigations into the matter the circumstances surrounding the death of 1st Accused person Charles Omondi and the cause of his death and giving each party opportunity to place facts before Court; this Court orders as follows;
 - a) The Commissioner of Prisons shall conduct independent investigations into the circumstances leading to demise of 1st Accused Charles Omondi while in Nairobi remand.
 - b) The investigations shall be conducted within 30 days and the Report produced in Court and to ODPP
 - c) The Post Mortem of 1st Accused person Charles Omondi shall be conducted in the presence of his Advocate on record Mrs Nyamongo to establish cause of death.
 - d) The 2nd Accused person Kevin Omondi while in Nairobi Remand shall be kept in safe custody; no confinement, harassment, torture, assault or any form of danger pending investigations into 1st accused person's cause of death.
 - e) The typed proceedings to be exchanged between Prosecution and the Defense before directions under Section 200CPC are taken.
 - f) Further Mention will be on 3/3/2025

RULING DELIVERED SIGNED & DATED IN OPEN COURT ON 29/1/2025 CRIMINAL DIVISION MILIMANI VIRTUAL/PHYSICAL CONFERENCE.

M.W.MUIGAI

JUDGE

