



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Oduor & another (Criminal Case E014 of 2023)
[2025] KEHC 449 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 449 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E014 OF 2023
DK KEMEL, J
JANUARY 27, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN OTIENO ODUOR 1ST ACCUSED

ABRAHAM OMONDI OTIENO 2ND ACCUSED

RULING

1. The accused herein John Otieno Oduor and Abraham Omondi Otieno were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the night of 25th and 26th day of April, 2023 at about 2200 hrs in Rembe village, Jina sub-location, Yala township location in Gem Sub County within Siaya County, they murdered Zedekiah Wasonga Ogonji.
2. The prosecution called a total of six witnesses in support of its case.
3. The prosecution's case is that on the material date, neighbours of the deceased heard noise and on coming out they found the two accused persons herein who were armed with pangas viciously attacking the deceased. The deceased's mother Penina Andeso (PW1) also came out and saw the two accused persons attacking her son. She raised alarm even as accused persons continued assaulting the deceased. That the neighbours rushed to the scene and that they managed to scare the accused persons. The deceased was left at the scene until the following day when the area chief visited the scene. Apparently, the deceased died at around 6.30 am. The villagers became irate and managed to flush out the accused persons from their hideout and administered mob injustice on them before the chief arrived and called the police. The police managed to rescue the accused persons from the irate mob who had already seriously injured the accused persons. The police managed to contain the crowd and escorted the two accused to Yala Sub County Hospital for treatment while the body was taken to



the mortuary. The accused persons were later escorted to Yala Police Station. One panga which had bloodstains was recovered from the scene and was later produced as Exhibit No. 1. A post-mortem was conducted on the body of the deceased by Dr Bruno Okal on the 5th of May 2024 and the post-mortem report was later produced on his behalf by Dr. Victor Ochieng (PW4). The autopsy report revealed that the cause of death was severe brain injury and a deep cut wound on the head coupled with cardiorespiratory failure and hemorrhagic shock. During the autopsy exercise, some specimens were collected namely: fingernail cuttings of the deceased which were later analysed and which matched with the blood of the deceased that had been found on the panga recovered from the scene. Both accused were later charged with this offence.

4. At the close of the prosecution's case, learned counsels for the parties opted not to tender submissions on a case to answer and relied on the evidence already presented.
5. At this stage of the proceedings, the prosecution is under a duty to establish a prima facie case against the accused persons so as to warrant them 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 persons were they to elect to remain silent in defence. See *Bhatt Vs. Republic* (1957) EA 332.
6. After analyzing the evidence of the prosecution's witnesses, it is clear that the evidence of PW1, PW2, PW3 and PW6 placed the accused persons at the scene of crime. The accused persons were actually arrested at the scene of crime after the villagers became irate and attacked them over the killing of the deceased. Indeed, the police arrived in the nick of time and managed to rescue them. Having been placed at the scene of crime, the accused persons herein must now offer an explanation as to how the deceased met his death.
7. In view of the foregoing observations, it is my finding that the prosecution has established a prima facie case against both accused herein to warrant them to be called upon to make a defence. Consequently, I find John Otieno Oduor and Abraham Omondi Otieno have 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 27TH DAY OF JANUARY, 2025

D. KEMEI

JUDGE

In the presence of:

John Otieno Oduor.....1st accused

Abraham Omondi Otieno.....2nd Accused

M/s Akinyi.....for both Accused

M/s Mumu.....for Prosecution

Ogendo.....Court Assistant

