



REPUBLIC OF KENYA



**Republic v Otieno (Criminal Case (Murder) E021'B' of 2022)
[2025] KEHC 4997 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4997 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE (MURDER) E021'B' OF 2022**

DK KEMEL, J

APRIL 28, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN OKINYO OTIENO ACCUSED

JUDGMENT

1. The accused herein John Okinyo Otieno has been charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the charge are that on the night of 12th and 13th of July, 2022 at Usigu Sub Location, in Bondo Sub- County, within Siaya County, he murdered Florence Odhiambo Okinyo.
2. The prosecution called four witnesses in support of their case while the accused called one witness which was as follows:
3. PW1 Dr. Rita Opondo, a Medical Officer testified that on the 21/07/2022 at Bondo Sub County hospital, she conducted an autopsy on the body of Florence Adhiambo Okinyo. She testified that externally there was multiple facial bruises, 4 x4cm around the chin and forehead. On the head, there was hemorrhagic congestion of the skull on the left frontal parietal zone, a sign of trauma as well as the right temporal occipital zone. No skull fracture was noted. On the nervous system, there was mild hemorrhage within the subdural space on the left lobe of the brain. She formed the opinion that the cause of death was head injury secondary to blunt trauma. She produced the autopsy report as exhibit 1.
On cross examination by the defence counsel, she reiterated that the cause of death was head injury due to trauma by a blunt object causing internal bleeding.
4. PW2 was Brighton Otieno, a 14 year old boy in class 8. He testified that on 12/07/2022 he came back from school at 5.00 PM and found his siblings Cate and Mackenzie and asked them on the whereabouts of their mother and who informed him that she had left. He went ahead to prepare dinner. At 9.00



pm their father John Okinyo arrived. He asked them about the whereabouts of their mother and that he informed that he didn't find her when he came back from school. That their father then left while locking the main door from outside and who came back at 11.00 pm. That when the door was opened, he saw his mother lying at the door. That his father requested him to help him carry his mother to bed. That his father then asked him for water and sponge and which he used to wipe out blood that was in her mouth and face. That he went to sleep but that he could hear his mother crying in low tones. That the following day, his father informed him that their mother was dead.

On cross examination, he testified that he heard his father earlier saying that his mother would see him the following day.

5. PW3 Absolom Ligodi Oketch a jua kali worker from Ndori testified that on 21/07/2022 he was called by Bondo police to go and witness the post mortem on the body of the deceased who had been his cousin. That he was with other close family members and that he identified the body. That the doctor informed them that she had been hit by a blunt object that led to her death.
6. PW4 No.92530 Corporal Nelson Ariba testified that on 13/07/2024 a case was reported at Usenge police station vide 07/13/2022 by the assistant chief Joakim Mnjuria of Got Kaswani village, Usigu sub location. He had received information that one Florence Odhiambo had passed on and that her body was lying at her matrimonial home. That in the company of his colleagues, they visited the scene and found the body lying on the floor covered with a bedsheet. That on further investigations, the investigation officers learnt that the previous night the accused and the deceased were involved in a scuffle. The accused's brother one Sylvester witnessed it. That the accused beat the deceased with sticks (produced as exhibits). That on visiting the scene of the fight, the investigating officer recovered rubber shoes belonging to the deceased. That one could see signs of a struggle at the scene. Relatives and neighbours informed the officer that the two used to fight a lot. That the accused fled the scene but later presented himself at Siaya police station where he was arrested.

On cross-examination, he stated inter alia; that the accused's relative Sylvester witnessed the incident; that he recovered deceased's shoes; that the accused interfered with the scene since the body of deceased had been moved from the bed and that it had been washed; that the scene had not been secured and that one could see signs of a struggle.

7. At the close of the prosecution case, this court found that the prosecution had established that a prima facie case had been established against the accused to warrant him to make a defence. He was thus placed on his defence. He opted to tender a sworn testimony.
8. DW1 John Okinyo Otieno testified that on 12th July 2022, he woke up early and went to fix a dog kennel for a neighbour and stayed there up to 2.00 Pm then went home but did not find his wife that he remained at home up to 9.00 Pm but still his wife had not returned and therefore he decided to go and look for her that after walking for about 1.5 kilometres, he stumbled upon his wife lying on the ground and who had injuries. He together with a neighbour Erick Otieno, lifted his said wife and escorted her home where he cleaned her up and placed her in bed and that they slept until morning. That at 5.00 Am, he woke up the children to prepare tea and arranged them to go to school. That he later realized that the deceased's body had become cold and he rushed to his mother and briefed her about it and that he also alerted his in-laws. They later lodged a report at Siaya Police Station but they were referred to Bondo Police Station. That his said wife was an alcoholic and at times could turn violent and that he used to be called to go and intervene whenever his wife was involved in fights with other alcohol drinkers. He denied having assaulted the deceased as alleged.

On cross-examination, he stated inter alia; that the deceased was his wife with whom he had lived for twelve years and were blessed with three children; that they used not to live in peace due to the



deceased's frequent drinking habits; that he had already married another woman before the deceased died; that his second wife had disagreed with the deceased; that it is not true that he was angered by the deceased's conduct in chasing away his second wife; that he does not have medical documents regarding the injuries inflicted on him by the deceased; that his second wife had lodged a report of assault by the deceased at Usigu Police Station but there are no records over the same.

On re-examination, he stated that he had been trying to correct the deceased over her bad behaviour.

9. Learned counsels for the parties filed and exchanged submissions.
10. I have considered the evidence of both the prosecution and defence as well as the submissions. I find the issue for determination is whether the prosecution proved its case against the accused beyond any reasonable doubt.
11. It is trite law that in criminal trials the burden of proof is always on the prosecution to discharge. A trial court is therefore enjoined by law to determine whether at the conclusion of the prosecution's case there exists a case discharging that burden of proof. Indeed, the prosecution has an obligation to establish the guilt of the accused for the offence charged beyond reasonable doubt. See *Woolmington - vs DPP (1935) AC 462*. The burden of proof is also expounded in section 107 of the *Evidence Act* which provides that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
12. The offence of murder is provided for under section 203 of the *Penal Code* which stipulates thus:

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
13. The essential ingredients of the offence of murder which must be proved by the prosecution are as follows:
 - a. That the deceased died.
 - b. That the death was unlawfully caused.
 - c. That the death was actuated by malice aforethought.
 - d. That the accused is the perpetrator of the crime.
14. On whether there was death of the deceased, the evidence of the pathologist Dr. Rita Opondo (PW1) left no doubt about the same. The said witness conducted an autopsy on the body of the deceased and who noted that there were multiple facial bruises around the chin and forehead as well as swollen right upper limb with multiple bruises. There was also a bruise on the left inner thigh. There was hemorrhagic congestion on the skull on the left frontal parietal bone which was a sign of trauma. She also noted that the nervous system had mild haemorrhage within the subdural space on the left lobe of the brain. She formed the opinion that the cause of death was head injury secondary to blunt trauma. He produced the autopsy report as exhibit 1. I find this ingredient was proved by the prosecution beyond any reasonable doubt.
15. On whether the death was unlawfully caused, it is noted that by dint of Article 26 of *the Constitution*, all homicides are deemed unlawful unless authorized by law. The deceased was a middle aged woman who was then in good health save for the fact that she had been deeply immersed in alcohol and which had caused a lot of strife between her and the accused herein who was her husband of twelve years. The injuries inflicted on the deceased were so severe and which did not give her a chance to survive. The said injuries left no doubt that the perpetrator intended those injuries to lead to the death of the



deceased. The accused in his defence confirmed that the deceased sustained injuries and that he placed her on the bed and slept until the following morning. It is instructive that the accused did not bother to take the deceased to hospital for treatment and only cleaned blood from deceased's mouth and face with the help of his son (PW2). PW2 stated that he could hear his mother crying in the bedroom. The evidence of the investigating officer (PW4) is that they received evidence at the scene that the accused had assaulted the deceased at the road with sticks and then dragged her to their house where the body of the deceased was found the following morning. It is clear that the deceased died due to blunt trauma. The deceased therefore did not deserve to die in the manner that she did. I find this ingredient was proved beyond any reasonable doubt by the prosecution.

16. On whether the accused was directly placed at the scene of crime, PW2 Brighton Otieno testified that their father who is the accused herein arrived home at 8.00 Pm and inquired about the whereabouts of their mother and that he informed him that he did not find her when he arrived from school. He stated that the accused locked the main house from outside and went away but later came back at 11.00 Pm and woke him up and that it was then that he saw his mother (deceased) lying outside the door. That the accused asked him to help him carry the deceased to the bedroom. That he assisted him as requested, and it was then that the accused asked him to bring a sponge, which he used to wipe out blood that was in her mouth and face. That while he was sleeping he could hear his mother (deceased) crying in a low tone. That in the morning he woke up to prepare to go to school when his father (accused) asked him to get him water and sponge and that he saw him cleaning the deceased's face. That later his father (accused) informed him that his mother (deceased) was dead. It was then that the police arrived and took the body to the mortuary. The said witness stated on cross-examination that his father had earlier threatened that their mother would see the following day. I find the evidence of this witness was very crucial in that, he witnessed his father (accused) dragging their mother into the main house and who requested him to assist him place the deceased on her bed and that the accused requested him to bring a sponge and water and used it to wipe out blood which was on the deceased's mouth and face. Further, the witness heard the deceased crying at night and that the following morning the accused requested him again for water and sponge which he used to clean the deceased's face and that he later informed him that the deceased had died. It is therefore quite clear that the accused was placed at the scene of crime as he was the last person to be seen with the deceased before she died. The principle of the last seen doctrine is applicable in the circumstances to place the accused herein at the scene of crime as the perpetrator of the crime. Again, the evidence of PW2 was corroborated by the investigating officer (PW4) who stated that he visited the scene and recovered some sticks that had been used to assault the deceased and that he learnt that the accused had accosted the deceased and assaulted her before dragging her home only for her body to be found the following day at accused house. It is also instructive that the accused quickly tried to clean blood on the deceased's mouth and face before placed her on the bed and did the same ritual the following morning. This action by the accused was purposely to erase any evidence linking him to the crime. It is also instructive that the accused did not bother to rush the deceased to hospital if at all he had found her already injured as claimed in his defence evidence. The accused literally left his wife to die on their matrimonial bed. It seems that the accused had gotten tired of the deceased's alcoholism and thus decided to get rid of her. I find this ingredient was proved by the prosecution beyond any reasonable doubt.
17. On whether there was malice aforethought, section 206 of the *Penal Code* defines the same as follows:
'Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—
- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;



- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
 - (c) an intent to commit a felony;
 - d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.
18. It was PW2's testimony that his father (accused) arrived home with the deceased at 11.00 Pm and that his father (accused) and that he requested him to assist carry the deceased to her bed in the main house and that the accused requested him to give him water and sponge which he used to wipe blood on the deceased's mouth and face. That as he slept at night, he could hear the deceased crying in low-tones and that the following morning the accused requested him again to give him a sponge and water which he used to clean the deceased's face and that the accused later informed him that the deceased had died. It is instructive that the accused did not bother to assist the deceased get any medication despite knowing that she had injuries. The fact that the accused could let the deceased lie on the bed until she died, is a clear indication that he wanted her to die. Further, as confirmed by PW2, the deceased was crying in the night and that it is clear that the accused herein must have been assaulting her. It transpired from the evidence that the deceased had been an alcoholic and that the accused and the deceased used to fight a lot and that the accused had opted to bring a second wife only for the deceased to kick her out. It is therefore clear that the accused had gotten tired of the deceased's drinking habits and therefore decided to end her life. Indeed, the accused confirmed in his defence evidence that he has been trying to correct the deceased over her bad behaviour. The act of correction was obviously disciplining her by way of beating or assault. There was therefore, malice aforethought on the part of the accused. There is no evidence that the accused resorted to other channels of redress such as involving the family members or the clan elder. The fact that the accused could leave the deceased with severe injuries and then attempt to erase any signs of injuries by wiping away blood and cleaning it, is a clear demonstration that he wanted to erase any evidence of culpability in the crime. It is instructive that the accused did not bother to take the deceased to hospital despite knowledge that she had injuries. The accused just placed her on the bed and left her to die. I find that the prosecution has proved this ingredient beyond any reasonable doubt. The defence evidence did not shake or cast doubt upon the evidence of the prosecution which was overwhelming against the accused. The accused in his defence evidence confirmed that he had gone to look for the deceased and found her lying by the roadside and escorted her home and thus he was the last person to be with the deceased before her cold body was found the following morning lying on her bed. The accused's alibi defence did not dislodge the prosecution's evidence against him. I find that this ingredient was proved beyond reasonable doubt by the prosecution.
19. The defence has contended that the prosecution did not call crucial witnesses. Indeed, the prosecution tried to summon three witnesses who are brother of the accused to no avail and that even warrants of arrests did not bear fruit. The prosecution was forced to close its case. Even in the absence of the three witnesses, iam satisfied that the four witnesses lined up by the prosecution have managed to place the accused at the scene of crime. The star witness herein was PW2 who was a son of the accused who witnessed the incident from the time the accused arrived home with the decased. Nothing transpired that the accused and his said son had any differences so as to suggest a frame-up. It is trite law that the prosecution is under no obligation to call a fluidity of witnesses in order to prove a case and which is also expounded by section 143 of the *Evidence Act*. I find the four witnesses lined up managed to prove the case against the accused beyond any reasonable doubt.



20. Having taken into account the evidence of all the witnesses, including the defence of the accused, this court is satisfied that the prosecution proved all the elements of the offence of murder sufficiently beyond any reasonable doubt. Consequently, i find the accused herein John Okinyo Otieno guilty of the offence of murder and he is hereby convicted accordingly.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF APRIL, 2025.

D. KEMEI

JUDGE

In the presence of:

John Okinyo Otieno.....Accused

Ooro F.....for Accused

Soita.....for Prosecution

Mboya.....Court Assistant

