



**Republic v Okodet (Criminal Case E015 of 2024)
[2025] KEHC 7177 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7177 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E015 OF 2024
WM MUSYOKA, J
MAY 29, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MARIKO OKODET ACCUSED

RULING

1. This is a ruling on whether the prosecution has adduced evidence to the threshold of establishing a prima facie case against the accused person herein, Mariko Okodet, who is charged with the murder of Laumua Lucia, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya.
2. I have read and considered the trial record. I also had the benefit of hearing and seeing all the four prosecution witnesses testify. There is no direct evidence that the accused hit or did anything to the deceased, to cause her death. He was just said to have had killed the deceased, yet the circumstances were cloudy, for none of those who testified were at that scene. It cannot, therefore, be said that this was a case founded on circumstantial evidence. For circumstantial evidence to provide the foundation for conviction, it must be strong, and point inexorably to the accused. Is that the case here?
3. PW1, Justin Arocho Odutu, was not at the scene when it happened. He came home to find that it had happened. PW3, James Ekmoiye, witnessed a fight between the accused and his wife. He separated them. The accused left, but the wife remained behind with PW3. Then a youth came to say that the accused had killed a child. The wife of the accused then left and came back with the said child. PW3 advised that the child be taken to the liguru.
4. The only witnesses who were on the ground, so to speak, were PW1 and PW3. PW2, Dr. Shem Ong'ole, was the medical officer who conducted post-mortem on the remains of the deceased. PW4, Number 110821 Police Constable Aaron Bokea, was the Investigating Officer. These four were the only ones



who testified in the matter. As stated above, the only persons who could be said to have been on the ground were PW1 and PW3. They were not present when the child was fatally injured. They did not see the accused do it.

5. None of those who were said to have reported to PW3, about the accused injuring the child, came forward to testify. There was mention of a youth, called Epuri, who reported to the wife of the accused, who was with PW3, about the assault. He never testified. There was also mention of a woman, whose voice was heard telling neighbours about what the accused had done. That woman did not testify. The wife of the accused was not with the accused when it allegedly happened. She was with PW3. She only left the presence of PW3, to where the deceased was, after it was reported that the deceased had been killed. She came back to PW3, with the child. PW3 did not tell the court what she might have informed him about what she saw when she went to pick the child.
6. None of those who testified could place the accused at the scene, where his wife picked the injured or dead child. PW3 merely got reports, from individuals who did not testify. He did not witness the assault. He did not visit the scene, after the report of the killing was made known to him. He did not, therefore, see the accused person at the scene where the child was injured. He did not see the accused and the child together, at the same space, leave alone witnessing the accused assault her.
7. I only have the word of PW3. Yet, PW3 himself only heard of it from other persons, who did not testify. The testimony of those others, who were reporting to PW3, would have, perhaps, placed the accused at the scene, or brought him into proximity with the deceased. That would have been adequate for the court to draw an inference founded on circumstantial evidence, to suggest complicity on the part of the accused, to warrant his being required to give an account, of what transpired between him and the deceased.
8. As it is there is no evidence upon which the court could convict the accused, were he not to testify in his own defence. The circumstantial evidence, if at all any exists, is very weak. I say it is weak because the said evidence is founded only on the hearsay evidence of PW3, about what he was told by others, who never took to the witness stand themselves, to testify.
9. Consequently, I find that no prima facie case has been established against the accused person herein, to require that he be placed on his defence. He has no case to answer. I hereby acquit him, under section 306(1) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, of the murder of Laumua Lucia, on a finding of not guilty. He shall be set free from remand custody, unless he is otherwise lawfully held.
10. The last word. The acquittal of the accused person herein does not mean that he was not complicit in the killing. It is for lack or inadequacy of the evidence required to establish the offence. It emerged, from remarks made at the Bar, by Mr. Onanda, that the key witnesses relocated to Uganda, and became untraceable thereafter, defeating, consequently, any successful prosecution of the accused, for the murder that he was alleged to have had committed.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 29TH DAY OF MAY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Tyson Otieno, Advocate for the accused person.



Mr. Tony Onanda, instructed by the Director of Public Prosecutions, for the Republic.

