



**Republic v Atieko & another (Criminal Case E003 of 2024)
[2025] KEHC 11391 (KLR) (1 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E003 OF 2024
DK KEMEL, J
AUGUST 1, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

RICHARD OGUTA ATIEKO 1ST ACCUSED

CALVIN OTIENO OKOKA 2ND ACCUSED

RULING

1. The accused herein Richard Oguta Atieko and Calvin Otieno Okoka have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence are that on 7th September 2023 at unknown hours in Hawinga Sub Location in Siaya Sub County within Siaya County jointly with others not before court unlawfully killed one David Omondi.
2. The prosecution called a total of eleven witnesses in support of its case.
2. The prosecution’s case is that on the material date the deceased and his girlfriend (PW4) had gone to a certain pub to enjoin themselves. Later they retired to the deceased’s house after having been dropped by a motor cycle rider (PW5). That later at around 4.00 am they were rudely woken up by persons who were claiming that they had stolen a motor cycle. That the said group of people being led by the two accused persons herein assaulted the deceased together with the girl friend and then frog matched them to the nearby Hawinga market where they were viciously attacked. That the accused persons were joined by an irate mob in the attack. That the deceased’s girl friend was later spared and allowed to go after sustaining injuries. That the mob being led by the accused persons continued to assault the deceased and later hanged him with a rope tied to a nearby kiosk. That several other witnesses such as PW2, PW3, PW4 and PW5 visited the scene and witnessed the attack on the deceased by the mob being led by the two accused persons herein. The scene was visited by DCI officers from Siaya and that



a scene of crime officer (PW10) secured the scene and took photographs which were later produced as exhibits. That the body of the deceased was later collected by police and taken to Siaya County Referral Hospital where an autopsy was conducted by Dr. Erick Okong'o (PW1) who formed the opinion that the cause of death was severe head injury with tension pneumothorax secondary to blunt trauma.

2. 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.
2. At this stage of the proceedings, the prosecution is under a duty to establish a prima facie case against the accused person so as to warrant him 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 person were he to elect to remain silent in defence. See *Bhatt Vs. Republic* (1957) EA 332.
2. As noted in the introductory part of the analysis, the prosecution's case is that on the material date the deceased and his girlfriend (PW4) had gone to a certain pub to enjoin themselves. Later they retired to the deceased's house after having been dropped by a motor cycle rider (PW5). That later at around 4.00 am they were rudely woken up by persons who were claiming that they had stolen a motor cycle. That the said group of people being led by the two accused persons herein assaulted the deceased together with the girl friend and then frog matched them to the nearby Hawinga market where they were viciously attacked. That the accused persons were joined by an irate mob in the attack. That the deceased's girlfriend was later spared and allowed to go after sustaining injuries. That the mob being led by the accused persons continued to assault the deceased and later hanged him with a rope tied to a nearby kiosk. That several other witnesses such as PW2, PW3, PW4 and PW5 visited the scene and witnessed the attack on the deceased by the mob being led by the two accused persons herein. The scene was visited by DCI officers from Siaya and that a scene of crime officer (PW10) secured the scene and took photographs which were later produced as exhibits. That the body of the deceased was later collected by police and taken to Siaya County Referral Hospital where an autopsy was conducted by Dr. Erick Okong'o (PW1) who formed the opinion that the cause of death was severe head injury with tension pneumothorax secondary to blunt trauma. From the foregoing analysis of the evidence, it is clear that the two accused persons were placed at the scene of crime and hence they must now offer an explanation as to how the deceased met his death.
2. In view of the foregoing observations, it is my finding that the prosecution has established a prima facie case against both accused persons herein to warrant them to be called upon to make a defence. Consequently, I find Richard Oguta Atieko and Calvin Otieno Okoka 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 1ST DAY OF AUGUST, 2025.

D. KEMEI

JUDGE

In the presence of:

Richard Oguta Atieko.....Accused.

Calvin Otieno Okoka.....for Accused.

Oorofor Accused.

M/s Kerubo.....for Prosecution.



Kevin/Kimaiyo.....Court Assistant.

