



**Republic v Opakwa (Criminal Case E023 of 2023)  
[2024] KEHC 2061 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2061 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CRIMINAL CASE E023 OF 2023**

**DK KEMEL, J**

**FEBRUARY 29, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**GODFREY OPAKWA ..... ACCUSED**

**RULING**

1. The accused herein Godfrey Opakwa has been charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that on the 28<sup>th</sup> day of June, 2023 at Brigadier market in Tongaren sub- county within Bungoma County he murdered Dennis Khaemba.
2. The Prosecution called six witnesses in support of its case.
3. Amos Wafula Saenyi (PWI) testified that he worked as a security guard at Makuti club within Brigadier market. He stated that on the night of 27<sup>th</sup> and 28<sup>th</sup> June, 2023 he was taking some alcohol at 9.00 pm and that around midnight he saw one “Junior” pushing the deceased and who lifted him up and threw him outside the bar. He stated that the said “Junior” he talked of is the accused herein. He stated that the deceased came back to the bar only for the accused again to push him outside. He stated that the deceased had earlier been drinking at the bar but had created disturbance. He found the deceased lying down outside the door and was unconscious. He alerted the bar manager who organized for the deceased to be taken to hospital. He finally added that there were security lights at the bar.

On cross examination, he stated that he did not see accused assaulting the deceased. He stated that the accused had been hired by the bar owners as a bouncer that day and to provide security. He added that the deceased was pushed outside the bar and that he could not tell if he injured himself on a hard surface.



4. Paul Wafula Wanjala (PW2) testified that he was selling chips at Makuti Bar on the material date and that he saw the deceased lying outside the bar. He was among those who escorted the deceased to hospital. On cross examination, he stated that he did not witness the incident.
5. Maurice Agama Obindi (PW3) testified that he worked at Makuti Bar as a maintenance officer and that he was on duty on the material date until midnight. He added that the accused and deceased had scuffled at the bar and that the accused threw him outside the bar and that he could not tell what took place outside.  
  
On cross examination, he stated that he did not see the accused assaulting the deceased but recalled that the accused only escorted the deceased outside. He also confirmed that the deceased had created disturbances inside the bar and that many patrons had complained that he had become a nuisance.
6. Kennedy Misiko (PW4) testified that the deceased had been his younger brother. He witnessed the post mortem examination and identified the post mortem report which was marked as MF 1.
7. No. 88038 PC Shadrack Marangu (PW5) testified that he is the investigating officer in the matter. He stated that he visited the scene and later picked up the accused who had already been apprehended and placed in police custody. He later witnessed the post mortem on the body of the deceased which revealed the cause of death as head injury due to physical assault. On cross examination, he stated that he established that the deceased had entered the bar at around midnight and caused disturbance and that the accused tried to remove him and escorted him outside.
8. Dr Reuben Kere Nyongesa (PW7) testified that he conducted the post mortem on the body of the deceased on 3.7.2023 and noted multiple bruises on both forearms as well as skull fractures. He formed the opinion that the cause of death was critical base of skull injury due to physical assault. He produced the report as exhibit one. On Cross examination, he stated that there were no injuries on the neck region save for injuries on the base of the skull and bruises on both forearms.
9. The prosecution closed its case. Learned counsels opted to rely on the evidence so far tendered at this stage of the proceedings regarding the issue of whether the prosecution has established a *prima facie* case against the accused to warrant him to be called upon to make a defence.
10. I have considered the evidence adduced at this stage of the proceedings and find that the only issue for determination is whether or not the prosecution has made out a *prima facie* case against the accused to warrant him to be called upon to make a defence.
11. It is trite law that prior to placing an accused on his /her defence, the prosecution is required to have established a *prima facie* case against such accused. A *prima facie* case is established when the evidence adduced is such that a reasonable tribunal directing its mind to the law and evidence placed before it could convict an accused if no explanation is offered by the defence to the contrary. See *Bhatt -vs- Republic* (1957) EA 332.
12. The Prosecution in order to sustain a conviction in a charge of murder must prove all the ingredients of the offence which are inter alia; that there was death that the death was unlawfully caused and with malice aforethought; that the accused directly or indirectly participated in the commission of the alleged crime.
13. As to the fact of death, the evidence of the pathologist (PW6) is quite sufficient and that the cause of death was established to be critical base of skull injury due to physical assault.
14. As to the unlawful nature of the death, it is trite that all homicides are deemed unlawful unless caused accidentally or authorized by law. The deceased, then aged 35 years old, lived a healthy life and had no



medical or health challenges and hence his death must have been unlawful as it did not transpire that the circumstances leading to the death did point to a case of suicide.

15. As to the issue of malice afore thought, the post mortem report indicated that there were bruises on both fore arms as well as critical base of the skull injuries. The injury on the base of the skull left no doubt that the assailant desired the death of the deceased or that the said grievous injuries would lead to his death. This shows that there was malice aforethought in the mind of the assailant.
16. As regards the identity of the assailant, it transpired that the deceased had entered Makuti Bar and created disturbances in which the accused herein who was the one in charge of security ( bouncer) got hold of him and threw him outside the bar and that the body of the deceased was later found lying outside the bar. Hence, the evidence placed the accused at the scene of crime. The accused thus must offer an explanation as to how the deceased met his death.
17. In view of the foregoing, i find that in the absence of any explanation to the contrary from the defence, the evidence led by the prosecution has placed the accused at the scene of the crime and that he had an opportunity of harming the deceased and that there is reason to believe that he did so since he was last seen ejecting the deceased from the bar after he created disturbances and interfered with the peace of the bar patrons. Hence, from the evidence adduced, i find that the same is sufficient to sustain a conviction against the accused were he to elect to remain silent in defence .
18. In the result, it is my finding that the prosecution has established a prima facie case against the accused herein. I find the accused Godfrey Opakwa has a case to answer and is now called upon to elect to conduct his defence in accordance with the provisions of section 306 (2) of the [Criminal Procedure Code](#).

**DATED AND DELIVERED AT BUNGOMA THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024**

**D. KEMEI**

**JUDGE**

**In the presence of :-**

Godfrey Opakwa Accused

Wattangah for Accused

Miss Kibet for Prosecution

Kizito Court Assistant

