



**Republic v Omboto (Criminal Case 25 of 2021)  
[2024] KEHC 2840 (KLR) (18 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2840 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CRIMINAL CASE 25 OF 2021**

**KW KIARIE, J  
MARCH 18, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DOMINIC OGEGA OMBOTO ..... ACCUSED**

**JUDGMENT**

1. Dominic Ogega Omboto is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 20<sup>th</sup> day of August 2021, at the Gakero sublocation, Machoge location in Gucha Sub County of Kisii County murdered, Dorothy Achieng Agot.
3. Probably, what Silvia Moraa (PW2), aged thirteen years, witnessed on the morning of the 20<sup>th</sup> day of August 2021 will remain etched in her mind for the rest of her life. When she visited her uncle's home, the accused herein, she found him in bed, and her aunt was lying on a seat. Her aunt's head was bloody, and on the floor, she saw a knife and a machete. She ran home and informed her mother.
4. When police officers went to the scene, in addition to what the little girl had seen, they found a plate with blood, some acaricide and a syringe. The accused was lying outside unconscious. The accused was arrested and charged with the murder of his wife.
5. The accused contended that they were attacked by robbers who attacked them. They cut his wife when she raised the alarm and, after that, forced him to take some substance he did not know.
6. The issues for determination are:
  - a. Whether the accused was the one who fatally injured the deceased; and
  - b. Whether the offence of murder was proved.



7. There was no direct evidence against the accused. The prosecution adduced some circumstantial evidence that tends to suggest that he must have been the one who killed his wife and then attempted to commit suicide. In the case of *Mohamed & 3 Others vs Republic* [2005]1KLR 722, Osiemo Judge explained what circumstantial evidence is as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for a reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

Earlier in the case of *Republic vs Kipkering arap Koskei & Another* 16 EACA 135, the Court of Appeal had the following to say on circumstantial evidence:

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

Therefore, I will find whether the circumstantial evidence against the accused meets the requisite threshold.

8. Anne Kerubo Mauti (PW1) testified that on the 19<sup>th</sup> day of August 2021, the accused and the deceased took supper in her house before they left for their house to sleep. Her evidence was that they were happy with each other as they went to sleep.
9. In his defence, the accused testified that they were duped to open the door by the voice of a woman seeking help. When they opened the door, some attackers pounced on them and demanded some money. He initially directed them where to get some under the mattress. They picked up the money, hit him on the back with a club, and demanded more. His wife started crying, and this was when one of the attackers cut her on the head. He gave them some more money. He was forced to drink something he did not know and was ordered to get into bed. He was directed to lie on his stomach, covering his head with a blanket.
10. Unless the accused is a brilliant schemer, anybody with suicidal thoughts will not be meticulous in his bid to kill himself or in an attempt to cover for an offence he had committed. The presence of the syringe, together with the acaricide, persuades me to believe that he was a victim, not a villain. The court of appeal in the case of *Sawe vs Republic* [2003] KLR 354 held as follows:  

Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.

In the instant case, the evidence has not gone beyond suspicion, which, in my view, is very weak.
11. Based on the preceding analysis of the evidence on record, the prosecution has failed to prove its case against the accused to the required standards. I accordingly acquit him of the offence of murder and set him free unless otherwise lawfully held.

**DELIVERED AND SIGNED AT KISII THIS 18<sup>TH</sup> DAY OF MARCH 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

