



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Onditi (Criminal Case E005 of 2022)  
[2024] KEHC 4035 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4035 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL CASE E005 OF 2022**

**KW KIARIE, J**

**APRIL 25, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**RICHARD OMONDI ONDITI ..... ACCUSED**

**JUDGMENT**

1. Richard Omondi Onditi 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 3<sup>rd</sup> day of February 2022, at the Koguna beach, Gembe West location, Mbita Sub County of Homa Bay County, murdered Dominic Odongo.
3. The scene of the incident that gave rise to this case was at Koguna Beach. Some people, including some fishermen, were playing cards while others were taking chang'aa. Both the accused and the deceased were at the scene. It is not clear what led to the incident from the prosecution witnesses, but they held out the accused as the aggressor and the person who stabbed the deceased.
4. The accused contended that when the deceased wanted to fight him and was armed with a knife, he held him, and both fell. People around surrounded them, and he could not remember what transpired after that.
5. The issues for determination are:
  - a. As between the deceased and the accused, who was the aggressor;
  - b. Whether the accused fatally stabbed the deceased; and
  - c. Whether the prosecution proved their case to the required standards.



6. Denish Oyuko (PW4) testified that he was at the incident scene. He was chatting with some friends when some noise attracted him. He then saw the deceased running away, and the accused was in hot pursuit. When the accused returned, he had a knife. He learnt that the deceased had been stabbed. This was the gist of the evidence of Everly Achieng Oringo (PW5). She added that on her part, she heard a woman cry and say, “he has Killed him” This is when she saw the accused chasing the deceased.
7. Glen Omondi Okoth (PW3) testified that he witnessed the accused stab the deceased but did not know the cause.
8. The evidence of Elijah Omondi Dache (PW1) is that the deceased was stabbed on two occasions. After the initial stabbing, while they were taking him to the hospital, the accused stabbed him again.
9. In his defence, the accused contended that it was the deceased who had the knife and wanted to stab him. This was, however, not supported by the evidence of the witnesses who were present and his confession.
10. Though the accused, in his defence, contended that the deceased was the aggressor, the evidence on record does not support his contention. The only evidence that tended to support this theory was by Thomas Juma Odero (DW2). This witness mainly testified on what he attributed to having been told by those present. Therefore, self-defence cannot be available to him.
11. Although no evidence was adduced to suggest the motive, the accused's confession indicated that they had previously disagreed and possibly that the accused was revenging. However, this is not conclusive.
12. I, therefore, find that the accused fatally stabbed the deceased.
13. To convict on the evidence on record, the prosecution must prove the existence of malice aforethought. In *Black's Law Dictionary*, 10th Edition, malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called “abandoned and malignant heart”), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).

14. Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:

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.



15. Since there was no conclusive evidence on the motive, I find that the prosecution has not proved the offence of murder against the accused person. However, the prosecution has proved beyond any reasonable doubt the lesser offence of manslaughter. I accordingly reduce the charge of murder to that of manslaughter. I acquit the accused of the charge of murder. I find him guilty and convict him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.

**DELIVERED AND SIGNED AT HOMA BAY ON THIS 25<sup>TH</sup> DAY OF APRIL 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

