



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Bwana (Criminal Case E003 of 2022)
[2024] KEHC 7677 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE E003 OF 2022**

KW KIARIE, J

JUNE 27, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

LAMEK MAKIRI BWANA ACCUSED

JUDGMENT

1. Lamek Makiri Bwana 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 22nd day of August 2021, at the Kakaeta village, Ndhiwa Sub County of Homa Bay County murdered Paul Opiyo Odoyo.
3. When the deceased herein was found badly injured, he was taken to hospital, where he later succumbed to the injuries while undergoing treatment. The accused was charged with his death.
4. In his defence, the accused contended that he had found an intruder near his cattle shed. He raised the alarm. People who responded beat the deceased. When they saw police officers, they ran away.
5. The issues for determination are:
 - a. How did the deceased sustain the injuries that led to his death?
 - b. Whether the accused was involved in injuring him; and
 - c. Whether the prosecution proved their case to the required standards.
6. The prosecution presented two versions of how the deceased sustained the injuries that led to his death. One version was that there was a fight between the accused and the deceased at the home of Ali. The other version was that the deceased was attacked at the home of the accused when he was found near the cattle shed.



7. Kerina Akinyi Odiyo (PW1) is the deceased's sister. Her evidence was that she found the deceased lying on the road and was not able to talk. When later said that the deceased informed her that the accused beat him at the home of Ali and later carried him to his house, one is left wondering whether this was her invention. During cross-examination, she testified that when she reached where the deceased was, the only thing he did was to request water.
8. The prosecution did not attempt to elicit evidence to reconcile this glaring contradiction.
9. James Odera (PW2) is another witness who said that the deceased informed him that Bob had beaten him. We are aware that the deceased was not talking when he was found on the road and that he died while being treated; this evidence is suspicious. Had he received treatment and improved before succumbing, there is a possibility he may have communicated. We do not have such evidence on record.
10. The accused's brother, Norman Bwana (PW6), testified that he heard the accused raise the alarm about a cattle thief. He went out and found the accused and the deceased near the cattle shed. He was told that the deceased was found near the cattle shed. He went to report the incident at Kamata Police Post. While returning to the scene in the company of police officers, some public members ran away, but some remained. George Onyango Ochieng (PW8) testified that he was one of the people who police officers found at the scene. He assisted in carrying the deceased to the road.
11. Corporal Jacob Odhiambo Ouso (PW5) testified that he was informed by the accused that he found an intruder near his cattle shed. When he approached the man, he attempted to cut him with the machete he had. This is when he hit back.
12. In his defence, Lamek Makiri Bwana, the accused, said that he was woken up by footsteps outside his house. He went out with a stick and a mobile phone and found somebody standing inside his cattle shed. The intruder ran away after seeing him. He threw his stick at him, but since it was dark, he did not know whether it hit him. He raised the alarm. People responded and beat the intruder. The members of the public ran away when they saw police officers arrive. His contention was supported by the evidence of Simeon Odera Okombo (DW2) and Eunice Auma Riegi (DW3), who responded to the alarm.
13. The defence of the accused was supported by the evidence of the witnesses he called and some prosecution witnesses. It is worth noting that the version by the accused is logical, for the one proffered by the prosecution of a fight in the home of Ali does not explain how the deceased found himself in the home of the accused. There was a feeble attempt to allege that the accused dragged him to his home. The post-mortem findings did not support this.
14. I, therefore, find that the prosecution has failed to prove their case against the accused to the required standards. I acquit him of the offence of murder and set him at liberty unless otherwise lawfully held.

Delivered and signed at Homa Bay on this 27th day of June 2024

KIARIE WAWERU KIARIE

JUDGE

