



**Republic v Odiango alias Richard Odak Odiango (Criminal Case
E043 of 2021) [2024] KEHC 13978 (KLR) (11 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE E043 OF 2021
KW KIARIE, J
NOVEMBER 11, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID ODAK ODIANGO ALIAS RICHARD ODAK ODIANGO ACCUSED

RULING

1. David Odak Odiango alias Richard Odak Odiango is charged with murder contrary to section 203, as read with section 204 of the *Penal Code*.
2. The particulars of the offence are that on the 10th day of September 2021, at Rongo village, Obisa sub-location, in Rachuonyo South Sub County within Homa Bay County, murdered Hellen Ajuang Odiango.
3. Felix Otieno Okidi (PW1) is the sole witness who testified against the accused. The evidence provided by a single identifying witness must be examined with great care to ensure its truthfulness before a conviction can be based on it. This principle was restated in the case of *Kitilu & another v Republic* [2005] 1 KLR 174, where the Court of Appeal held:

Subject to certain well-known exceptions, it is trite law that a fact may be proved by the testimony of a single witness, but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a Judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the probability of error.



4. This witness told the court that on the 10th day of September 2021, the accused found him in the house of Hellen, his (accused's) mother. At about 11 a.m., they parted company, and the accused was the first to leave. He, however, contradicted himself on three occasions. He testified that he was the one who went before the accused. He further said that he did not meet the accused on that day. Curiously, he said he did not know who Hellen Ajwang Odiango was but later gave Odiango's mother as Hellen. The Court of Appeal in the case of *Ndungu Kimanyi v Republic* [1979] KLR 283 (Madan, Miller and Potter JJA) held:

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.

5. Aside from the contradictions, this witness's testimony was incoherent. At one point, while recounting the events of September 10, 2021, he stated that he did not see the deceased again after that day. Although he initially testified that he saw the deceased being removed from the house by some women, he later claimed that the accused told him his mother had followed him when he left. He also stated that he later saw the accused and his mother inside the bedroom. It is challenging to understand the sequence of his testimony and whether he was discussing events from the same day or on different occasions.

6. This witness cannot pass the credibility test.

7. After considering the evidence on record, the question is whether the prosecution has established a *prima facie* case against accused persons. In the *Black's Law Dictionary*, 10th Edition, *prima facie* case is defined as follows:

Prima facie case. (1805) I. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.

8. The Court of Appeal in the case of *Ramanlal Trambaklal Bhatt v R* [1957] E.A 332 at 334 and 335 defined *prima facie* case as follows:

It may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

9. Article 50 (2) (i) of the *Constitution* of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—
(i) i) to remain silent, and not to testify during the proceedings;

In this case, if the accused chooses to exercise his constitutional right, as mentioned earlier, I cannot convict him based on the current evidence. Therefore, the prosecution has not established a *prima facie* case against him. I hereby acquit him of the charge of murder under section 306(1) of the *Criminal Procedure Code*. He is to be released unless he is lawfully held for another reason.

DELIVERED AND SIGNED AT HOMA BAY THIS 11TH DAY OF NOVEMBER 2024



KIARIE WAWERU KIARIE

JUDGE



<https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/13978/eng@2024-11-11>