



**Republic v Ashivoga (Criminal Case 17 of 2018)
[2023] KEHC 3777 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 17 OF 2018
WM MUSYOKA, J
APRIL 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FREDRICK JUMBA ASHIVOGA ACCUSED

RULING

1. Only 1 witness testified in this matter, Mary Amoi Chumba, as PW1. She did not witness the killing of the deceased. She merely said that she was informed, by a person who has since travelled abroad, and was unavailable to testify, that the deceased had died. She did not link the accused to the death, neither did she state whether the deceased had been injured, nor the state that her body was in.
2. The prosecution did not call any other witness thereafter, but the post-mortem report was placed on record by consent, on February 16, 2023. The cause of death was indicated as acute heart failure. The acute heart failure is unexplained.
3. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, he did it with malice aforethought.
4. The deceased in fact died, for PW1 saw her dead body, and was present when the police took the body away. A post-mortem report is on record. On the cause of death, the post-mortem report states that the deceased died of natural causes, which were not linked to any conduct on the part the accused. PW1 did not lead any evidence linking the accused to the death. As there was no evidence linking the accused to the cause of death, the issue as to whether there was malice aforethought does not arise.
5. It is my finding and holding that no prima facie case has been made out against the accused person herein, to warrant his being put on his defence. I accordingly find him not guilty, and acquit him, under section 306(1) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, of the murder of Sheila Lutsilili, contrary to section 203, as read with section 204, of the Penal Code, Cap 63, Laws of Kenya.



6. The accused shall be set free, if he is still in remand custody, unless he is otherwise lawfully held.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28TH
DAY OF APRIL 2023**

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Shifwoka, Advocate for the accused person.

