



**Republic v Mwangi alias Joseph KB (Criminal Case 28 of 2020)  
[2025] KEHC 186 (KLR) (21 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 186 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 28 OF 2020  
JM NANG'EA, J  
JANUARY 21, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**KARIUKI MWANGI ALIAS JOSEPH KB ..... ACCUSED**

**JUDGMENT**

**Charge facing the accused person**

1. The above named (hereinafter referred to as “the accused”) was on July 20, 2020 arraigned in this court charged with the capital offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence state that on July 10, 2020 at Goshen Village in Solai, Rongai Sub County, within Nakuru County he murdered Martha Muthoni Wangui (hereinafter referred to as “the deceased”).
2. The accused denied the offence.

**The Prosecution case**

3. The prosecution evidence is that the accused was the deceased’s spouse. On July 10, 2020 the accused is said to have rung up and sent his son (PW1) at around 3:00 p.m. to Corner Mbaya to pick some clothes and a phone. He also warned him that on getting there he should not touch a “*boda boda*” motorcycle belonging to the deceased who was PW1’s step mother. According to PW1, the accused further confessed to him that he had killed the deceased and had jumped into a river in a bid to take his life too. With that he bade good bye to PW1.
4. PW1, a *boda boda* motor cycle rider who at the time was at Wanyororo B *boda boda* motorcycles stage, did run the errand and found the phone and clothes that belonged to the accused. Together with one Charles Mbugua (PW5), PW1 went in search of his father. They found him walking towards them,



- bleeding from the head. A shirt and short he wore were wet. PW1 testified to giving him dry clothes which he wore on top of the wet ones. The accused then sought to be taken to Section 58 area and PW1 asked PW5 to deliver him there. PW1 and PW5 later decided to make a report to the police who arrested the accused.
5. PW1 further testified that the accused and the deceased had lived together in Bahati and Njoro. At the time of the deceased's demise, however, the two were not staying together. The deceased at time lived in rental premises in Bahati.
  6. While acknowledging that he was unhappy with the accused for failing to offer him good education having only studied up to class 7, PW1 denied planning to kill him. He also denied that he was unhappy with the accused's marriage to the deceased. He, however, admitted that he was not close to her.
  7. PW5 confirmed PW1's evidence and told the court that he was also a *boda boda* operator in the same area. On the material date at about 4 pm PW1 called him seeking a meeting. PW1 was not at the usual place where they would park their motorcycles. PW5 did meet with PW1 who related to him that his father wanted to commit suicide. PW1 led him to a farm but they did not find the accused there. Soon thereafter they found him by the road wearing a green blood-stained top and holding a knife. Sensing danger, PW5 told the court that he fled but not too far away. PW1 asked him to ferry the accused on his motorcycle but he decided to transport him using PW1's motorcycle instead. The accused's Boxer motorcycle was also there. On their way to Section 58 in Nakuru where the accused wanted to be dropped off, he allegedly disclosed to PW5 that he had killed his wife. PW1 called the police who apprehended the accused.
  8. PW4 was a businessman at Solai in Nakuru. On the material date at about 3:00 pm he met with the accused and the deceased beside the road. He knew the two very well having previously interacted with them. He had schooled with the accused. The accused was riding a Boxer motorcycle carrying the deceased as a pillion passenger. They stopped at a farm the deceased had leased. PW4 stated that he greeted and passed the couple. Later that day at around 8 pm he learnt from his neighbour that someone had been killed near his land which was next to the land the deceased had leased. PW4 went to the scene where he found a huge crowd and police officers. He saw the deceased's body which had a wound on the throat.
  9. PW8 told the court that he was a Matatu Conductor. On the fateful day at around 10:00 am he was in his house when the deceased called him seeking his company as she went about buying cassava crops from farmers as she usually did. He occasionally helped her source for cassava. The deceased rode her motorcycle registration number KMD2 742N with PW8 as her pillion passenger. During their travels the deceased received telephone calls including from the accused with whom she spoke at about 2:00 pm. The deceased told him that the accused was waiting for her at Umoja Trading Centre. The deceased later dropped him off and rode away. At about 10.00 pm PW8 heard of the deceased's murder.
  10. On the same date in the evening at around 6:00 pm the Chairman of the Area Community Policing (PW2) was told of a woman who had been found dead. He further learnt that the woman had leased land from one Douglas Mbachu (PW3) who directed him to the land. With the help of the villagers he found the woman's body which had a cut wound to the throat. The witness said she knew the deceased as a cassava trader. The police later removed the body from the scene. PW3 corroborated PW2's testimony.
  11. PW6 was at the material time of the County Assembly Member for Bahati Ward. A relative of the accused alerted him of the incident and he joined the police in the search for the deceased. At Corner Mbaya they found a red motorcycle that was said to belong to the accused. Several bottles of alcohol, a knife, mask and a pair of socks were also recovered. Further investigations led them to Solai where they



- traced the deceased body at 8:00 pm in a maize farm. The witness knew the accused and the deceased as spouses.
12. PW11 was the officer who first investigated the case. The report was given to the police at Solai Police Station by the accused's son, according to the officer. The same report was earlier lodged with Bahati Police Station.
  13. PW10, a police officer then based at Solai Police Station told the court that he was among other officers who found the deceased's body in a maize farm. The deceased's trousers had been pulled down to the knees level and she was oozing blood from the throat. A yellow motorcycle helmet was next to the body.
  14. PW11 exhibited the recoveries that included a knife alluded to hereinabove; the accused's green T-shirt that was allegedly blood stained, the yellow helmet and a rope the accused allegedly intended to use in committing suicide. A scene of crime officer (PW8) had photographed the exhibits at the scene and tendered the photographs in evidence.
  15. Post-mortem examination of the deceased's body was conducted at Nakuru County Teaching and Referral Hospital on 15/7/2020. The Pathologist (PW7) noted that there was a slash wound on the mid anterior neck. The trachea, oesophagus and carotids were severed. Owing to lack of oxygen the brain was swollen. The deceased lost lots of blood from the neck vessels. The pathologist's opinion was that the cause of death was due to severing of trachea and blood vessels caused by a sharp object leading to asphyxia. The autopsy report dated July 15, 2020 was tendered and admitted in evidence.

### **The Defence Evidence**

16. Upon close of the prosecution evidence and consideration of the defence submissions on "no case to answer", the accused was put on his defence to the charge. He gave sworn evidence and called one witness.
17. The accused told the court that he was a farmer residing in Njoro before his arrest. He confirmed that the deceased was his first wife. On July 9, 2020 he decided to go to Nakuru to collect his dues owed by a debtor. He also planned to visit his second wife who at the time lived with her parents in Solai Nakuru. The accused also rang up the deceased to inform her of his visit to Solai. The deceased indicated that she was also in Solai and expressed her wish to meet him.
18. The accused continued to state that when he arrived at Solai he alerted his second wife who sent a rider to pick some items he had brought for his in-laws. Later he met with the deceased, who was riding a motorcycle, before riding to see a maize farm the deceased had leased in Solai. On their way to their farm they met with the accused's classmate and exchanged greetings. After inspecting the farm they chatted about family matters. Then someone rang up the deceased offering to sell Cassava and paw paw fruits to her. She excused herself to go and meet the trader after showing the accused a short route to walk to Solai Trading Centre. Later, a motorcycle rider called Mugo dropped him off at Kiremba area where he telephoned his son (PW1) to pick him up. PW1 soon arrived together with PW5 riding their motorcycle.
19. According to the accused, PW1 was angry and he did not even greet him, instead asking PW5 to transport him to Section 58. As the accused rode away with PW5 police officers in civilian clothes suddenly appeared and blocked their motorcycle path. They were ordered to ride to Bahati Police Station under the officers' escort and was accused of murdering his wife. Both the accused and PW5 were detained in police cells as investigations continued.
20. The accused further told the court that he was enjoying good relations with PW1 whom he sired with another of his wives also deceased. The deceased herein and PW1 were, however, in bad terms. The



accused alleged that PW1 was not pleased when he bought a motorcycle for the deceased, also relishing favours from him. The accused refuted PW1's claim that he had refused to educate him.

21. The accused disowned the knife and the other exhibits the prosecution linked to him. He denied wearing the green blood stained T-shirt produced in court saying he was putting on a red and white T-shirt. He produced a photograph of him taken by prison officers on 20/7/2020 after his production in court, showing that he was wearing this T-shirt. The accused also denied confessing the murder of the deceased. Instead, he suspected that PW1 was the killer because he frequently complained about mistreatment by the deceased.
22. The accused's witness is the said Mugo who had transported him on his motorcycle from Solai Trading Centre to Kiremba area as per his evidence. The witness said the accused stated that he wanted to go to Section 58. The defence witness said that the accused who he met at lunch hour was in good spirits. He did not see blood stains on his clothes. A day after dropping off the accused, he learnt of the deceased's demise.

### **Final Submissions**

23. The prosecution chose not to offer submissions. The defence Counsel on their part submit *inter alia* that the prosecution evidence does not prove the charge beyond reasonable doubt. It is submitted that the prosecution evidence does not prove the element of malice aforethought allegedly harboured by the accused in the commission of the offence. Counsel point out that none witnessed the killing of the deceased and further contend that the knife allegedly used to kill the deceased was not subjected to forensic analysis.

### **Issues for Determination**

24. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the accused murdered the deceased, actuated by malice aforethought.
25. There is no direct evidence linking the accused to the killing. Determination of the case therefore wholly depends on circumstantial evidence. In *Mwangi vs Republic* (Criminal Appeal No. E054 of 2023) [2024] KEHC 3113 (KLR) 15 March 2023) (Judgment) this court explained that for circumstantial evidence to be reliable it must be inconsistent with the accused person's innocence.
26. In the case of *Ahamad Abolfathi & Another vs Republic* (2018) eKLR, it was elaborated that;

“Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”
27. In a much older case (*Republic vs Taylor, Weaver & Donoram* (1928) Cr. Application R 21), it was observed that;

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that is circumstantial.”



28. In the often quoted case of *Sawe vs Republic* (2003) KLR 364, it was stated that circumstantial evidence must satisfy three tests, namely:-

“the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

As in the case of *R vs Kipkering Arap Koskei* (1949) EACA 135, the prosecution must also show that there existed inculpatory facts that were incompatible with the innocence of the accused and incapable of any explanation upon any other reasonable hypothesis other than that of guilt.

29. The accused disputes malice afterthought in the killing of the deceased. Section 206 of the *Penal Code* provides that malice aforethought is proven by one or more of the following circumstances:-

- a. Intention to cause death or do grievous harm whether the death actually occurs or not.
- b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.
- c. An intention to commit a felony.
- d. An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.

30. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive (see Case law in *Robert Onchiri Ogeto vs Republic* (2004) KLR (1a).

31. In this case the pathologist’s opinion as to the cause of the deceased’s death was trauma caused by a sharp object leading to bleeding and asphyxia. The cut wound was on the throat that led to profuse bleeding. This was intention to cause death or do grievous harm in terms of Section 206 of the *Penal Code* set out *supra*. The attacker must have known that such injuries could cause death. The killer was therefore driven by malice afterthought.

32. Was the accused culpable? The prosecution evidence is that he was with the deceased for the better part of the 10<sup>th</sup> of July 2020 before the body was discovered. The accused appears to agree with the prosecution regarding his movement with the deceased before the death, although he and his witness refer to a different date, the 9<sup>th</sup> of July 2020. I will not dwell on this discrepancy as the time or date when an offence was committed is not material so long as the prosecution is mounted within any period that may be prescribed by the law (see Section 214 (2) of the *Criminal Procedure Code*).

33. As the evidence shows, the accused was the last person with the deceased before her lifeless body was traced. Section 11 (1) of the *Evidence Act* provides that when a person is accused of an offence the burden is on him/her to prove existence of circumstances bringing the case within any exception or exemption from, or qualifications to the operation of the law creating the offence charged. The *onus* is on him/her to prove any relevant fact especially within his or her knowledge unless the court is otherwise satisfied that such circumstances or facts exist and reasonable doubt has been created as to the accused’s guilt.



34. The accused was the last person with the deceased before she met her death as already noted. He was nursing injuries and his clothes were wet when he met with PW1 and PW5; a claim the accused has not refuted. As to why he was in that state was a matter that only he could explain but did not.
35. The accused does not trust PW1 and thinks he was the killer. PW1's evidence was, however, corroborated by PW5 whose credibility the accused has not impeached. As regards his claim that he was wearing a different T-shirt from the one exhibited, there is undiscredited evidence that he changed clothes when he met with PW1 and PW5.
36. The court is therefore satisfied that on the evidence and in the circumstances of the case, the stated inculpatory facts are incapable of explanation upon any other reasonable hypothesis other than guilt. That the knife and clothings exhibited were not subjected to forensic analysis does not negate the prosecution evidence in the circumstances. The prosecution proved the charge beyond reasonable doubt. Accordingly, the accused is convicted of the offence pursuant to section 215 of the *Criminal Procedure Code*.

**JUDGEMENT DELIVERED VIRTUALLY THIS 21<sup>ST</sup> DAY OF JANUARY, 2025 IN THE PRESENCE OF:**

**J. M. NANG'EA - JUDGE**

The Prosecution Counsel, Ms Sang.

The Defence Counsel, Mr Ooga holding brief for Mr Maina.

The Accused, present.

Court Assistant, Jennifer.

