



**Republic v Muthoni (Criminal Case 9 of 2015)  
[2025] KEHC 2234 (KLR) (25 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2234 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 9 OF 2015  
JM NANG'EA, J  
FEBRUARY 25, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**STEPHEN NDERITU MUTHONI ..... ACCUSED**

**JUDGMENT**

**Charge facing the accused person**

1. The above named (hereinafter referred to as “the accused”) was 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 8<sup>th</sup> February 2020 at Baraka Estate , Njoro Town, in Njoro Sub County of Nakuru County he murdered Catherine Wangui Wamboi (hereinafter referred to as “the deceased”).
2. The accused denied the offence.

**The Prosecution case**

3. The prosecution evidence as adduced by 6 witnesses is that on 8<sup>th</sup> February, 2015 at around 9:00 p.m. PW1 (James Otuori) was informed by his tenant called Maina that the deceased who was the accused person’s wife had committed suicide. PW1 rushed to the accused’s houses and found him weeping in the company of one Githaiga. The accused was his tenant too. Maina and Githaiga appeared drunk and were shouting upon entering the house. PW1 found the deceased’s body on the sofa set. The accused related to him that the deceased hang herself using a lessa. The witness could see a lessa tied to the ceiling and a knife on a table. The accused was said to have denied quarrelling with the deceased before her death. PW1 further told the court that she called the police who arrived and took away the body. He identified the lessa in court.



4. PW2 (Nancy Ombati) is PW1's wife. She confirmed the report of the deceased's alleged suicide made to them. She also stated that she did not see the deceased that day. According to PW2, the accused and the deceased had a 1 ½ years old child whom she did not also see on the material date.
5. The deceased's mother (James Githaiga) testified as PW3. She heard the bad news of her daughter's demise on 9<sup>th</sup> February 2015. Her neighbours had informed her that she was required at Njoro Police Station. On reporting to the station it was relayed to her that the deceased committed suicide in the house of the accused. She later saw the deceased's body in the mortuary and noted a bruises on the back of the head and the neck. There was bleeding from the mouth and the nose. PW3 testified that she did not know of the deceased's cohabitation with the accused. According to her the deceased was not married. PW3's sister (PW4 – Elizabeth Wacuka) and PW5 (Mary Muthoni) who is the deceased's cousin corroborated this testimony.
6. PW6, a police officer, testified to receiving orders from his boss on 8<sup>th</sup> February, 2015 at around 8:20 p.m. to proceed to the premises where the deceased's body was. He led other officers to rental premises at Baraka Estate in Njoro where they were shown the body lying on top of a sofa set. There was a lessa hanging on the ceiling while another piece of the same cloth was on the floor. The exhibits were kept in police custody and the witness identified only one of the pieces of lessa in court.
7. Post mortem examination of the deceased's body was conducted on 12<sup>th</sup> February 2015 at Nakuru County Referral Hospital Mortuary. The pathologist (PW7 – Dr. Daniel Wainaina) observed facial, neck and right arm bruises. The scalp was swollen. Extensive bleeding on the occipital region exerted pressure on the brain tissue. PW7's opinion was that the cause of death was "severe head injury with intracranial hemorrhage caused by multiple blows by blunt objects – homicide"
8. The last prosecution witness (PW8) the case Investigating Officer. He told the court that he was among the officers who visited the scene and removed the deceased's body. The accused who was present is said to have told the officers that the deceased, his girlfriend, committed suicide. The witness confirmed PW6's evidence. After completion of investigations, the accused was charged with murdering the deceased. PW8 produced a piece of lessa he said was found around the deceased's neck.
9. PW 8 discounted the suicide theory saying that it was the accused who put the body where they found it.
10. The accused was put on his defence at the close of the prosecution evidence, he confirmed that the deceased was his lover with whom he lived at Baraka Estate, Njoro Town. The deceased worked as a waitress in a club and the couple had one child who lived with them. The accused further stated that their parents did not know of their union.
11. The accused continued to testify that on 8<sup>th</sup> February 2015 in the morning he left for his "boda boda" transport business. He afterwards returned home and ate breakfast prepared by the deceased who later left home for a family planning visit to the hospital. She did return home whereupon the accused again left at 2:00 p.m. The accused further stated that he later tried to contact the deceased by phone but she did not pick his calls. When he got home at about 9:00 p.m. he found her lifeless body hanging from the ceiling with a "lessa" tied around the neck. He cut the "lessa" and tried to administer First Aid on the deceased unsuccessfully. His landlord came and they decided to call the police who arrived and removed the body to the mortuary. The accused told the court that he never saw any injuries on the body.
12. The accused therefore denied killing the deceased, adding that they had no disagreement. He had lived with her for only a week before she died. He suspected that she committed suicide.



## Issues for Determination

13. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the accused murdered the deceased, actuated by malice aforethought.
14. 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.
15. 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.”
16. 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.”
17. 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.
18. The accused denies killing the deceased as they had not quarreled, implying that he had no malice aforethought which is an essential ingredient of the offence of murder. 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.
19. 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)*).



20. In this case the pathologist's opinion as to the cause of the deceased's death was severe head injury leading to massive bleeding caused by multiple blows by blunt objects. The medical expert therefore suggested that this was a case of homicide. Clearly, the attacker's 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.
21. Was the accused culpable? The prosecution evidence as given by the first witnesses who went to the scene (PW 1 and PW 2) is that the deceased's body was found lying on the sofa seat. A piece of "lesso" was hanging on the ceiling and a knife was on a table. Similar evidence was given by PW 6 and PW 8 who went to the accused's home on receiving the report. The accused denied differing with the deceased before allegedly taking her own life.
22. PW 8 ruled out the suicide theory saying that he was convinced it was the accused who put the body on the sofa set where they found it.
23. There is evidence that it was one Maina who alerted PW 1 and PW 2 of the deceased's demise and that he was at the accused's home at the time together with one Githaiga. These crucial witnesses who were reportedly present when the deceased allegedly killed herself were not called to testify on circumstances leading to the purported suicide. The said Maina from his report vindicates the accused on the suicide theory.
24. There is also mention of a knife found on a table in the house in which the deceased's body lay but the knife was not exhibited and its relevance to the case was not explained. The accused has expressed his innocence and maintains that the deceased took her own life.

#### **Determination**

25. The evidence on record does not in the premises contain inculpatory facts showing that it was only the accused who could have killed the deceased. There are no facts or circumstances clearly pointing to his guilt. No motive for the killing is also shown to have been harboured by the accused. The prosecution therefore failed to prove the charge beyond reasonable doubt as the evidence presented does not displace his sworn defence. Accordingly, the accused is acquitted thereof pursuant to section 215 of the *Criminal Procedure Code*. Any Bond/Bail security deposited by or on behalf of the accused is discharged.

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

**JUDGEMENT DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:**

The Prosecution Counsel, Ms Sang.

The Defence Counsel, Absent

The Accused, present.

Court Assistant, Jennifer.

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

