



REPUBLIC OF KENYA



**Republic v Muriuki (Criminal Case 6 of 2018)
[2025] KEHC 2175 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 6 OF 2018
RM MWONGO, J
FEBRUARY 13, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH MURIITHI MURIUKI ACCUSED

JUDGMENT

The facts

1. The accused is charged with murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the offence are that on 10th April 2018 at Kirimaini village, Mwerua location in Kirinyaga West sub-county, Kirinyaga County, the accused unlawfully murdered Sophia Muthoni Mundia. The accused pleaded not guilty and a plea of ‘not guilty’ was duly entered before the matter proceeded to full hearing.
2. Eight (8) prosecution witnesses gave evidence. The accused was found to have a case to answer. However, he disappeared and had to be brought back to Court following issuance of a warrant. He formally gave a sworn statement in his defence.
3. PW1 Bernard Maru Kiura, a cousin to the accused, testified that on the day of the incident, he spent the day with the accused at their cousin’s funeral. Later they went to drink alcohol at Red Carpet Bar. At around 9:30pm, one Peter joined them and bought them alcohol which they drank until around 11pm. Sometime between 11pm and 12 midnight, they started walking home. PW1 was walking with Peter ahead of the accused and, at some point, Peter remained behind to make a phone call, and that is when the accused attacked him (PW1) and took money from his shirt pocket.
4. He further stated that the accused made away with the money but he did not manage to steal his phone. The following morning, he called the accused to ask him why he attacked him and the accused told him that he was at the road and he asked him to meet him there. It was his testimony that while on his way



- to meet the accused, he was informed by the deceased's sister, Grace, who is also his employer, that the accused had attacked the deceased the previous night. He said he saw the accused at the road holding a panga and a slasher and he went to the farm to cut down crops belonging to Grace. The police were alerted and they arrived at the scene. He later learned that the deceased had been taken to the hospital but she died from the injuries sustained.
5. In cross-examination, he stated that Grace and the deceased are sisters and neighbours but he did not hear any noise on the night of the incident. That the accused was drunk on the night of the incident. He said that he did not report the loss of his money that night and that it is Peter who stopped the accused when he was attacking and stealing from him that night.
 6. PW2 Peter Munene Wanjira, testified that he who was with the accused and PW1 on the day of the incident. They had attended a funeral together and they passed by a bar where they drank alcohol for some time. As they were walking home, he saw the accused attacking PW1 and he went to separate them. He beat the accused and forced him to go home. Soon afterwards, he heard distress calls from one Mutembei and when he went to check, he found the deceased lying outside the house unconscious.
 7. According to PW2, the deceased had been attacked by the accused, who then went on to slash crops at the shamba belonging to Grace, his (PW2's) mother. He arranged to take the deceased to Karatina hospital in the company of one Esther Wangu and then they reported the matter to the police. In cross-examination, PW2 stated that he did not see the accused attacking the deceased but he heard Mutembei screaming as he said that it was the accused who had attacked the deceased.
 8. PW3 Grace Wanjira Munene, testified that on the night of the incident, she was at her home with the deceased and their other sister called Esther Wangu. The deceased had returned home from buying some medicine and they ate supper before going to bed. Later that night, she heard Mutembei, her employee, screaming and when she went to check, she saw the deceased lying unconscious outside on the ground and she had an injury on the head. Mutembei told her that the deceased had been attacked by the accused, whom she saw standing next to the latrine.
 9. She (PW3) stated that the compound was well lit since there was electricity and the lights were on. When she asked the accused why he had done it, he said told her that she should take the deceased to the mortuary. She arranged to take the deceased to Karatina Hospital and the incident was reported at Baricho Police Station. She returned home and found that the accused had slashed all her maize, beans and banana crops and was now cutting down coffee stems. She called the police and when the accused saw them he ran away. The police tracked the accused down through his parents and they arrested and charged him with the offence.
 10. in cross-examination, PW3 stated that when she saw the accused near the latrine, he was holding a panga in his hand and he told her to take the deceased to the mortuary. He cut down the crops during the night and then went on to cut down the coffee in the morning. She could not tell if the deceased was drunk since she saw him from some distance away. She said that the accused and the deceased were friends and she did not know why he attacked her, nor did she see any stick that could have been used to attack the deceased.
 11. PW4 Dr. Stephen Nderitu of Karatina Hospital produced the death certificate and postmortem reports as evidence. From an examination of the deceased's body, he observed that there were multiple bruises on the anterior chest and the head and there was swelling around the eyes. There was a blood clot on the front and back of his head under the skin. There was a fracture on the right side of his skull and a brain contusion. Dr. Nderitu concluded that the cause of death was head injury secondary to blunt force trauma on the head.



12. PW5 Joseph Muriithi Kabui stated that on the night of the incident at around 3.00 a.m, PW3 called to inform him that his mother, the deceased, had been beaten by the accused and she had been taken to Karatina hospital. He went to visit her at the hospital and he noted that she was in critical condition. She died the following day and he identified the body to the pathologist during postmortem. In cross-examination, he stated that the accused was raised by the deceased and he did not know of any grudge between them. He stated that he did not witness the incident.
13. PW6 Robertson Muriithi Mundia, was the deceased's brother-in-law. He testified that he visited the deceased at Karatina hospital and contributed money towards her treatment. Unfortunately, the deceased died a day after she was admitted at the hospital. He attended the postmortem exercise and found out the cause of death. He couldn't tell how the deceased had sustained the injuries on her head.
14. PW7 Oswald Mutembei Njiru stated that he is a farmhand for PW3. On the material night, he was at home. At around midnight, he heard dogs barking and the voice of a woman asking "ni nani?" (who is it?). Shortly afterwards, he heard someone or something being hit. He opened his door and went outside where he saw a young man with a big stick (like the ones used to beat macadamia) in his hand running away. He also saw the accused standing next to the door. He recognized the accused since there were security light on outside the house.
15. He started shouting and screaming when he saw the deceased lying on the ground next to the door. She was lying on her back and frothing from the mouth. The accused did not go far and he was hurling insults at them as they stood outside PW3's house. He saw the accused cutting down crops in PW3's farm that night. The family of the deceased arranged to take her to Karatina hospital and he did not see her again. The accused returned the following day and told him that he did not have a problem with him, then he went to cut down coffee stems from the farm. PW3 called the police and they visited the scene.
16. PW7 stated that he stayed at the home for 2-3 days and then he left, fearing for his life. She stated that the deceased was married but she visited PW3 often and before she died, she had stayed for 4 days. He stated that the accused's father is the brother of the deceased. He did not know if there was any grudge between the accused and the deceased.
17. PW8 Sgt. Biffent Otieno of CID Baricho produced the statement of PC Dismus Syria who was the investigating officer but had been transferred. In that statement, the IO stated that the matter was reported as an assault which was escalated to murder following the death of the deceased. The accused who was a suspect herein surrendered himself to the OCS Thika Police Station where he was booked. The following day he was transferred to Baricho Police Station where investigations were being conducted. The IO attended the deceased's postmortem where the cause of death was established and then visited the scene of crime. He recommended that the accused be charged with the offence of murder and forwarded the file to the DPP.
18. In his defense as DW1, the accused stated that on the day of the incident, he was at work until lunchtime when he took a break and went to play football. At about 4pm, PW1 called to tell him to hurry to the club known as Red Carpet where PW2 had a lot of money and wanted to buy them alcohol. He joined them at the club and they started drinking until about 11pm. They left the club together and as they were walking home, PW1 was too drunk and so he was supporting him as they walked.
19. He stated that he took PW1 to his house. At the time, they were walking ahead of PW2. PW1 stumbled and they both fell down. PW1 stated that he couldn't find his phone and that is when PW2 went and slapped him, thinking that he was attacking PW1. PW1 found his phone but said that he, DW1, had stolen his Kshs.300/=. They parted ways and he went to his house.



20. About 30 minutes later he heard PW7 screaming and he took a panga and ran outside his house to check what was happening. He checked in his cowshed to see if there were any intruders and then he went to cut some banana stems for his cow. He stated that his house is near the pit latrine where PW3 said she saw him. It was his testimony that he did not see the deceased that night and he never spoke to PW3. No one told him about the death of the deceased and 3 days later, he went to Thika to run an errand. He said that he related well with the deceased and that she raised his children, thus he couldn't have killed her. On cross-examination, he denied any involvement in the death of the deceased. He stated that he cut banana stems for his cow that night and he did not see the deceased. That he was told that the deceased was assaulted with a stick.

Parties' Submissions

21. Parties filed their written submissions as directed by the Court.
22. The prosecution submitted that the totality of the evidence adduced points to the accused person as the perpetrator of the offence. It urged that the accused possessed malice aforethought given how the injuries were inflicted and the cause of death. It urged the court to find the accused person guilty of the murder.
23. The accused relied on the cases of *Sawe v Republic* [2003] KECA 182 (KLR), *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR, *Abanga alias Onyango v. Republic* CR. App NO. 32 of 1990(UR) and *Chiragu & another v Republic (Criminal Appeal 104 of 2018)* [2021] KECA 342 (KLR). He argued that the prosecution failed to prove that he was present with the deceased at the scene or that he was the last person seen alive with her. It was submitted that the prosecution failed to prove that he intentionally inflicted fatal injuries upon the deceased. He urged that a strong suspicion that the accused committed the offence was insufficient to prove the charge to the required standard. For this argument, he relied on the case of *Republic v Angelica Mwua Wanza* [2022] KEHC 1639 (KLR) and urged the court to acquit him.

Issue for determination

24. The issue for determination herein is whether or not the offence of murder has been proved beyond reasonable doubt.

Analysis and Determination

25. In this case, the prosecution is tasked with proving beyond reasonable doubt that the accused murdered the deceased. Section 203 of the *Penal Code* provides:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

26. In the case of *Anthony Ndegwa Ngari v Republic* [2014] KECA 424 (KLR), the Court of Appeal stated thus regarding the elements of this offence:

“For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are:

- (a) the death of the deceased and the cause of that death;
- (b) that the accused committed the unlawful act which caused the death of the deceased and



(c) that the Accused had the malice aforethought.”

27. The first element is death and cause of death. The deceased’s death is not disputed. The pathologist, PW4, noted the injuries sustained by the deceased. He formed the opinion that the cause of death was severe head injury due to blunt force trauma on the head. The death certificate and postmortem report were produced as evidence.
28. As to whether the accused caused the death of the deceased, PW1 and PW2 testified that they were in his company on the night of the incident. Together, they had drinks at Red Carpet bar and walked home, each to his own house. PW1 said that he did not hear anything that night, but in the morning he learned that the deceased had been taken to hospital after she had been attacked by the accused.
29. On his part, PW2 stated that he heard PW7 screaming and when he rushed to the scene, he found the deceased lying on the ground. PW7 told PW2 that it was the accused who had attacked the deceased. PW3 was also awoken by the screams of PW7 and she saw the deceased lying outside the house unconscious and foaming from the mouth. She said that she saw the accused standing by the latrine with a panga in his hand and he told her to take the deceased to the mortuary.
30. PW7 stated that on the material night, from his house he heard the voice of a woman asking ‘ni nani?’ (Who is it?) followed by a thud or the sound of someone or something being hit. When he went to check, he found the deceased lying on the ground unconscious and there was a man carrying a big stick running away. He also saw the accused standing by the door holding a panda. None of the prosecution witnesses saw the accused person beating the deceased that night. Thus, there is an absence of direct evidence, and the court must examine the circumstantial evidence.
31. In considering circumstantial evidence, the court considers the facts of the case which create circumstances that can be used to infer guilt upon the accused. In the case of *Abanga alias Onyango v Republic CR. App NO. 32 of 1990(UR)* the Court of Appeal held as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,
- (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (iii) 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.”

32. The Court should caution itself of the risk of elevating suspicion over facts when evaluating circumstantial evidence. In such cases, the inference of guilt is to be drawn accurately, keeping in mind that the standard of proof in criminal cases is ‘beyond reasonable doubt’. In the case of *Rex v. Kipkerring Arap Koske & 2 Others [1949] EACA 135*, it was held:

“In order to justify a conviction on circumstantial evidence the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt and the burden of proving facts which justify the drawing of this inference from the facts to the exclusion of



any reasonable hypothesis of innocence is always on the prosecution and never shifts to the accused.”

33. A key witness in this case is PW7. He said that after hearing a thud, he went outside and saw another person running away from the scene with a big stick in his hand. He described the stick as similar to the ones that are used to beat macadamia nuts. Further, he said that he also saw the accused standing near the door with a panga in his hand.
34. In his defense, the accused stated that he, too, heard distress calls from PW7 and thought that it was an intruder in his cowshed. He thought to himself that something could be happening to PW1 or PW2 since they had parted ways about 30 minutes prior. He stated that he got up and took a panga before going to check at his cowshed. He also went to the scene and he denied speaking to the accused that night.
35. According to PW2, PW3 and PW7, the accused went to the farm and started slashing banana stems, maize and beans that very night. In his defense, he stated that he was cutting banana stems as fodder for his cow. PW1 stated that he saw the accused cutting down coffee stems from the farm belonging to PW3. PW7 stated that on the night of the incident, the accused was seen cutting down the crops and then the following morning, he returned to cut down coffee stems.
36. PW1, PW2, PW3 and PW7 stated that the accused related well with the deceased. The cause of death was stated by the pathologist to be blunt force trauma that resulted in head injury. However, PW8 did not produce any murder weapon.
37. In my view, there is reasonable doubt as to the whether the accused murdered the deceased. He was seen holding a panga in his hand. His defense in response to this is tenable in that he was responding to a distress call at night, and went outside armed.
38. It is not known why he went on to cut crops from the farm that night. The fact that the accused had a panga that night is not enough to infer guilt upon him. Further, it was not indicated or alleged that the panga he had was used to inflict the fatal injuries upon the deceased. The post-mortem indicated that death was caused by blunt force. Moreover, PW7 mentioned that there was another person whom he saw running away from the scene with a big stick. This evidence creates doubts as to whether it was the accused who hit the deceased.
39. In as much as the circumstances of the case raise a very strong suspicion that the accused murdered the deceased, there is, evidently, a reasonable doubt arising. In the case of *Musili Tulo v Republic* [2014] KECA 412 (KLR) the Court of Appeal held:

“There may well be serious suspicions that the appellant killed his wife, but suspicion alone, however high, has never sustained any conviction for a criminal offence.”
40. According to Duhaime’s *Criminal Law Dictionary*, reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in such a condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge. In my view, therefore, it would be unsafe to convict where the standard of proof has not been met on account of a niggling doubt.

Conclusion and Disposition

41. In light of the foregoing, it is immaterial to determine the element of malice aforethought since there is doubt as to whether the accused committed the offence.



42. Accordingly, I find and hold that the accused has not been proved to have committed the offence charged as the standard of proof for murder has not been met.
43. I therefore acquit the accused. He shall be discharged and set free forthwith unless otherwise lawfully held.
44. Orders accordingly.

DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 13TH DAY OF FEBRUARY, 2025

R. MWONGO

JUDGE

Delivered in the presence of:

1. Accused in person at Kerugoya Prison
2. Mwangi Kinyua for Accused.
3. Francis Munyao - Court Assistant

