



REPUBLIC OF KENYA



**Republic v Eliakim (Criminal Case 56 of 2024)
[2025] KEHC 1945 (KLR) (12 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 56 OF 2024
DR KAVEDZA, J
FEBRUARY 12, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

PHILIP MAKAYA ELIAKIM ACCUSED

JUDGMENT

1. The accused Philip Makaya Elaikim is charged with offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on the night of 6th and 7th March 2021 at Gatwekera area in Kibra sub-county within Nairobi County, the accused murdered Annah Atieno Omunga alias Flora alias, Mama Diana.
2. The accused pleaded not guilty to the charge and the matter proceeded to a full hearing. The prosecution called six (6) witnesses in support of their case.
3. The prosecution's case is as follows: Diana Achieng Makaya (PW1), a resident of Kariobangi South, Nairobi, was at home with her child when she received a call from her neighbour, Felix, instructing her to check on her younger sister, Adrian Sung. At approximately 4:00 a.m., she noticed a missed call from Felix. As she attempted to return it, Felix knocked on her door, informing her that her mother had been injured. He stated that he and the accused, her father, had attempted to carry the deceased but found her unresponsive.
4. PW1 proceeded to the scene and found her mother lying in a pool of blood. The deceased, still conscious, stated she felt cold and requested a 'shuka'. The room was in disarray, with broken soda and beer bottles and blood-stained curtains. PW1 fetched a 'shuka' and accompanied the deceased, Felix, and the accused to Vipawa Hospital by taxi. During the journey, the deceased disclosed that a male caller had mistakenly dialled her number while she was with the accused. Suspecting an affair, the accused became enraged, leading to an altercation.



5. At Vipawa Hospital, the deceased received first aid and continued communicating with PW1, who then notified her uncle, George Odhiambo (PW2). PW1 later returned home to collect clean clothes for the deceased, noticing visible injuries, including cuts above the eye, swollen arms, and knee wounds.
6. On 8th March 2021, PW1 learned that the deceased had been transferred to Mbagathi Hospital. After facilitating her discharge, PW1 took her home, where she endured severe pain throughout the night. On 9th March 2021, the accused transferred the deceased to Kenyatta National Hospital (KNH) without informing PW1.
7. At midnight, PW1 received a call from her aunt, Caroline, informing her of the deceased's death. Unwilling to believe the news, PW1 continued her routine the next morning. Later, she borrowed a phone from her neighbour, Joyce, to contact the accused, who downplayed the situation. Returning home, PW1 found a gathering at her parents' residence. Joyce handed her a phone containing a message from the accused:

“Sikumanisha kufanya kitu imefanyika. Ati mama ametaja jana usiku. Ati watoto wangu mnisamehe. Nimekuwa nimelemewa.”

(Translation: "I did not mean for this to happen. Mother passed away last night. My children, forgive me. I have been overwhelmed.")
8. PW1 noted that the accused occasionally drank alcohol and used bhang. Domestic violence was frequent in their household, though PW1 had not heard any screams on the night in question. She later submitted the deceased's blood-stained clothes to the DCI at Kilimani. On 9th March 2021, PW1 saw the accused at KNH Mortuary but not thereafter, as he had fled.
9. On 7th March 2021, George Odhiambo Oguda (PW2), a security guard and the deceased's brother, received a call from PW1 at 6:00 a.m., informing him that the accused had fought with the deceased, leaving blood everywhere. PW2 travelled to Kibera and found the deceased in critical condition with cut injuries and punctured eyes. The deceased revealed that the fight started when the accused found a suspicious phone number on her phone. Upon calling the number, a male voice answered, triggering the accused's violent attack. Before PW2 left at 2:00 p.m., the deceased disclosed that the accused had assaulted her with an axe.
10. On 9th March 2021, at midnight, Caroline informed PW2 of the deceased's death. He went to KNH Mortuary, where they searched for the body for four days before finding it labelled as "unidentified." The accused had transported her to the KNH Emergency Room but had not registered her identity. He then disappeared for two weeks before surrendering to Kilimani Police Station.
11. PW2 stated that the accused and the deceased had a strained relationship, with the accused previously breaking the deceased's leg in a past altercation. Despite recurrent domestic violence, the deceased never reported the abuse. PW2 had counselled the couple, but the accused continued the assaults, especially while intoxicated.
12. On 6th March 2021, at 11:30 p.m., Maureen Atieno Onyango (PW4), a security guard and the deceased's neighbour, heard screams but did not investigate. The next morning, she learned from Mama Diana that the cries had come from the deceased's house. On 10th March 2021, she accompanied the deceased's parents to KNH Police Post, where they were assigned a CID officer to assist in locating the body. Upon identification, PW4 observed that the deceased's head bore a stitched wound and a cut on her leg.



13. PW4 did not personally know the accused but identified him in court. She had no knowledge of the circumstances surrounding the deceased's death.
14. On 10th March 2021, Veronicah Adhiambo Omunga (PW3), an international development expert, received a call from her sister, Francisca Omunga, informing her of the deceased's death. She joined the family at KNH Mortuary the following day, where she met Caroline Makaya, the accused's sister. However, the accused was absent. PW3 assisted in searching for the deceased's body, which was eventually found unidentified in the mortuary. The deceased had swelling on her face, a deep facial cut, and multiple injuries. They proceeded to the Kilimani CID Office to report the matter, where the deceased's fingerprints were taken for identification. PW3 provided official documents from KNH and the Registrar of Persons to establish the deceased's identity.
15. PW5 Dr. Benard Owino Mdiia, a pathologist at Kenyatta National Hospital, holds an MBChB and a Master's in Human Pathology and Forensic Medicine. On 15/3/2021, he conducted a post-mortem on Anna Atieno Omunga at KNH mortuary, identified by her relatives, George Odhiambo Oguda and Pau Omondi Omunga. The body was of a middle-aged female (between 45-65 years), refrigerated, and showed signs of medical intervention.
16. Findings included skin scratches, incised wounds on the upper and lower limbs, and abrasions on the left thigh. Internal examination revealed extensive bruising, subcutaneous bleeding on the trunk and limbs, and scalp bleeding on the forehead. There was also bleeding under the skin near the lower part of the neck and forearms, suggesting defence injuries. The cause of death was determined as multiple injuries, including head and neck trauma, consistent with blunt and sharp force assault. Some blood samples were submitted to the Investigating Officer.
17. An error on page 2 of P Exhibit 1 initially misidentified the body as male; it was corrected to female. In his opinion, Dr. Mdiia stated the injuries were inflicted either by falling or being hit with a blunt object. He did not specify the depth of the sharp wounds but confirmed significant force caused the severe injuries.
18. PW6 No. 93385 CPL Philip Bett, attached to DCIO Nyeri South, previously Kilimani DCIO, was assigned the case on 12/3/2021 by his superior, Madam Fatuma Hadi. The case was reported as a murder at Kilimani Police Station under OB No. 94/11/3/2021. The deceased, alias Flora/Mama Diana, was allegedly beaten by her husband and succumbed to injuries on 9/3/2021.
19. CPL Bett visited the scene, which had already been cleaned. He recorded witness statements and traced the deceased's medical history. A letter dated 27/5/2021 to Vipawa Clinic confirmed she was admitted in a semi-conscious state, with blood-stained clothes, multiple cut wounds, deep bruises, and cuts on her face and head. She was referred to KNH. This letter was produced as P Exhibit 2.
20. A similar letter to KNH on 27/5/2021, produced as P Exhibit 4, confirmed the deceased was admitted on 9/3/2021 as an unidentified African woman and died the same day. Fingerprint identification later confirmed her identity. The body was collected on 9/3/2021 for burial in Ugenya, signed for by George Odhiambo.
21. On 24/5/2021, the suspect surrendered with legal counsel and was arrested. CPL Bett sought custodial orders on 25/5/2021, granted for seven working days. A mental assessment by Dr. Maundu deemed the suspect fit for trial, admitted as P Exhibit. The suspect was charged with murder.
22. Cross-examination by Mr. Aswani revealed no witnesses had seen the assault. PW1 and PW2 confirmed the deceased and accused lived as husband and wife. The P3 form of the accused indicated forehead injuries, likely from a blunt object. Investigations suggested the deceased had extramarital affairs,



leading to the altercation. Re-examination by Ms. Maina reaffirmed the suspected motive was the deceased's extramarital affairs.

23. After the close of the prosecution's case, the accused was found to have a case to answer and was put on his defence. In his defence, he gave sworn evidence and stated that he was 47-year-old man who had been married for 24 years and lived with his wife and children in Kibera Katwekea. On the night of March 6th–7th, 2021, after spending the evening drinking together, an argument broke out between him and his wife when she received a phone call. The quarrel escalated, and she hit him with a bottle. In response, he stood up, and she claimed he had hit her. Concerned for her condition, he took her to Kipawa Clinic near their home, where she received treatment. He paid Kshs. 500 and left her at the hospital, returning home to check on their children.
24. Later, after meeting his brother-in-law, he returned to transfer his wife to Mbagathi Hospital. At Mbagathi, she was drowsy from an injection but attempted to stand for an X-ray. She lost her balance, fell against a wall, and hit her head. The X-ray was then conducted while she lay down. Due to COVID-19 restrictions and full hospital wards, she was hospitalized for a day and later discharged. Though she could walk with his support, her condition worsened at home. Realizing she was deteriorating, he took a taxi and rushed her to Kenyatta National Hospital (KNH).
25. Upon arrival at KNH, he left her in a room as instructed by the doctors. When he returned from a walk, he found her being resuscitated, but she did not survive. Shocked, he reported the matter to the police and requested to be locked up. The police declined, stating there was no complainant. The next day, he returned to KNH and met his wife's sisters, but they initially struggled to identify her body, as she had been labelled as "unknown." Eventually, they located the body. Afterward, fearing to return home, he sought refuge with an advocate who later accompanied him to the police station. He maintains that he did not kill his wife.
26. During cross-examination, the accused confirmed he was with his wife and children on the night of the incident. He disputed claims that his daughter, PW1 Diana, told the court her mother had identified him as the assailant. He admitted to having assaulted his wife in the past but denied beating her on the night in question or fracturing her leg. He acknowledged that she had injuries caused by both blunt and sharp objects but insisted he was the one who took her to the hospital and did not abandon her.
27. He explained that he could not provide her identification at KNH, leading to her being admitted as an "unknown" patient. He fled their home, not out of guilt, but because he was seeking legal assistance. He reaffirmed that he and his wife had argued over accusations of infidelity but insisted that he did not cause her death.
28. I have considered the evidence and written submissions on record, and the applicable law. The issue for determination is whether the prosecution proved the offence charged beyond reasonable doubt.
29. The accused is charged with the offence of murder contrary to Section 203 of the [Penal Code](#). Sec. 203 provides:

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
30. The ingredients of the offence of murder which the prosecution must prove beyond reasonable doubt are:
 - a. The death of the deceased.
 - b. The unlawful cause of death



- c. That in causing death the accused committed it with malice aforethought.
31. The post-mortem report by Dr. Benard Owino Mdiia (PW5) established that the deceased, Anna Atieno Omunga, died due to multiple injuries, including blunt and sharp force trauma to the head and neck. These findings were consistent with medical records from Vipawa Clinic, Mbagathi Hospital, and Kenyatta National Hospital (KNH), which confirmed that the deceased was admitted in critical condition and later succumbed to her injuries. The extent and pattern of injuries ruled out accidental causes such as a simple fall, indicating that they were inflicted intentionally and with great force.
 32. The accused admitted that he fought with the deceased on the night of March 6th–7th, 2021, following a quarrel over a phone call. While he alleged that the deceased struck him with a bottle, he did not present any medical evidence of injuries on his part. In contrast, the post-mortem findings showed deep bruises, cuts, fractures, and defensive wounds on the deceased, suggesting a one-sided and prolonged assault. The injuries documented by Dr. Owino included blunt force trauma to the head, neck, and limbs, sharp force trauma on the upper and lower limbs, and subcutaneous bleeding over the trunk and limbs, all of which pointed to a sustained beating rather than an isolated act of self-defence.
 33. Several witnesses corroborated the accused’s involvement in the fatal assault. PW1 (Diana, the deceased’s daughter) testified that her mother told her, before dying, that the accused was responsible for her injuries. This dying declaration is significant under the law and is strong evidence of the accused’s guilt. PW2 (George Odhiambo, the deceased’s brother) confirmed that the deceased had a history of domestic violence at the hands of the accused. He further testified that he saw the deceased in a semi-conscious state, severely injured, before she was taken to the hospital. PW6 (CPL Philip Bett, the investigating officer) verified that the accused was the last person with the deceased before her hospitalization. He further noted that the accused failed to provide the deceased’s identity at KNH, leading to her being labelled as “unknown.” This raises suspicions about the accused’s intentions and suggests a possible attempt to conceal evidence.
 34. The accused’s conduct after the incident further points to his culpability. Instead of seeking immediate and proper medical care for the deceased, he delayed, allowing her condition to deteriorate. After her death, he fled home and avoided the police for over two months, only surrendering when pressure mounted. His disappearance suggests consciousness of guilt. Additionally, his failure to provide the deceased’s identification at KNH raises the suspicion that he was attempting to conceal her identity and hinder investigations.
 35. Under Section 206 of the *Penal Code*, malice aforethought is inferred when injuries inflicted are severe, targeted at vital areas, and suggest an intent to cause grievous harm or death. The pattern of injuries, which included both blunt and sharp force trauma, indicates that the deceased endured a violent, sustained beating rather than a single retaliatory blow. The accused’s history of domestic violence, combined with his failure to seek urgent medical attention, demonstrates a reckless disregard for human life.
 36. Based on the post-mortem findings, witness testimonies, and medical records, the prosecution has successfully established that the deceased’s death resulted from a violent assault inflicted by the accused. The nature and severity of the injuries confirm that the act was not accidental, but deliberate. Therefore, there is sufficient evidence to support the charge of murder contrary to Section 203 of the *Penal Code* against the accused.
 37. Accordingly, I find the accused guilty of the charge of murder and convict him accordingly.

JUDGEMENT DATED AND DELIVERED THIS 12TH DAY OF FEBRUARY 2025



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D. KAVEDZA

JUDGE

In the presence.

Ms. Maina for the state

Ms. Nyamongo for the accused

Accused present

Achode – court assistant

