



REPUBLIC OF KENYA



**Republic v Mulindi (Criminal Case E045 of 2017)  
[2025] KEHC 931 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 931 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE E045 OF 2017  
RN NYAKUNDI, J  
FEBRUARY 4, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**GODFREY MWELEONI MULINDI ..... ACCUSED**

**JUDGMENT**

1. Godfrey Mweleoni Mulindi was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 10<sup>th</sup> August, 2017 at Randa Estate in Eldoret East Sub-County within Uasin Gishu County murdered Anna Jepkoech.
2. The accused was arraigned in court and denied the charge in totality and as a result the prosecution was called upon to disapprove his innocence. At the end of the prosecution's case, the accused was placed on his defence under Section 306 as read with section 307 of the Criminal Procedure Code to answer the charge of murder
3. The prosecution summoned the evidence of 4 witnesses to discharge the burden of proof of beyond reasonable doubt within the statutory framework of Section 107(1), 108 and 109 of the *Evidence Act*. The core elements to be proven by the prosecution for the court to make a finding of guilty include the following:
  - a. That the deceased has died
  - b. That his death was unlawfully caused
  - c. That in causing death, the accused person was actuated with malice aforethought.
  - d. That it was the accused person who committed the heinous crime.



### **Prosecution's case summary:**

4. PW1 Christian Wafula Omusoro told the court that he lives in Eldoret and that he is an insurance agent who owns a plot for rental houses. He testified that she knows Anna Jepkoech as she was living in his plot with her husband, the accused in this case. They had stayed there for about 5 months. On 8<sup>th</sup> August, 2017, being an election day, PW1 went to vote and was there till 3:00PM. When he went back home, his daughter Pricilla Asiyo told him that the accused and his wife fought at the centre. He was told that the accused carried his wife on the back and brought her to the house. PW1 made a report to the village elder, Joshua Mulimi. On 9<sup>th</sup> August, 2017 he woke up and went for work only to be called on 10<sup>th</sup> August, 2017 by her daughter called Winnie who told him that the deceased had died. He got home and in the house of the accused, he found the deceased's body covered in a blanket. The body was later to be picked up by the police and he recorded his statement.
5. PW2 Joseph Mulima Johnna testified as a village elder and stated that he knew PW1. He told the court that on 10<sup>th</sup> August, 2017 he was called by Senior Chief William Sang and told him that in the land of Wafula there was someone who had killed his wife. He rushed to the scene and when he arrived there, he found the accused who stated that he had slapped her. He immediately called the police who later collected the body and took it to the mortuary. He testified that the body had swollen tummy and face.
6. PW3 PC RTD Daniel Savimbi in his evidence told the court that on 10<sup>th</sup> August, 2017, a village elder within Kiplombe area brought in a suspect to the station claiming that he had killed his wife. He booked the report and rearrested the suspect from the clan elder, initiating investigations to establish the allegations. given that background information PW3 visited the scene in company of PC Mwendwa where they found the deceased lying on the ground covered with a blanket. On uncovering the body, they observed that he had a swollen bruise to the head. Apparently, there were witnesses who saw the prior events leading to the infliction of injuries upon the deceased.
7. PW4 Dr. Macharia Benson, a pathologist based at MTRH told the court that he was requested by the investigating officer to conduct the postmortem examination on the body of the deceased one Annah Jepkoech. The deceased was brought in having suffered a swollen face, stab wounds on the left orbital area, bruise lateral to the right eye, bruise to the left shoulder and there was also bruise on the frontal skull and perforation on the genital urinary system. As a result of the examination, the pathologist formed the opinion that the cause of death was peritonitis due to perforated gut due to blunt forced trauma. The post mortem report was admitted as Exh. 1.
8. At the close of the prosecution's case the accused was placed on his defence and he elected to give a sworn statement with the following key elements in answer to the charge. The accused admitted that the deceased was his girlfriend whom they cohabited together since 2017. Further in his evidence, the accused reiterated that their relationship had started when they met in a bar where he also frequented as a regular customer. The accused further testified that in the fateful month of August, 2017, she complained of stomach pain because she had suffered from ulcers. She was taken to the hospital but she never recovered. He denied being the perpetrator of the injuries which were inflicted upon the deceased. He denied that during their period of cohabitation he never quarreled or fought with the deceased.

### **Analysis and Determination**

9. The bone of contention here, is whether the prosecution's case has been proved beyond reasonable doubt for the offence of murder contrary to section 203 of the Penal Code which constitutes the following elements:



- a. The death of the deceased one Anna Jepkoech
  - b. The death was unlawfully caused
  - c. The death was caused with malice aforethought
  - d. The accused persons participated in or caused the death of the deceased.
10. On this doctrine, the learned author Kenny's in his book "outlines of Criminal Law 16<sup>th</sup> edition at page 416 remarked:

"That a larger minimum of proof is necessary to support an accusation of crime than will suffice when the charge is only of a civil nature ..... in criminal cases the burden rests upon the prosecution to prove that the accused is guilty 'beyond reasonable doubt'. When therefore the case for the prosecution is closed after sufficient evidence has been adduced to necessitate an answer from the defense, the defense need do no more than show that there is reasonable doubt as to the guilt of the accused." (see R. V. Stoddart (1909) 2 Cr. App. Rep. 217 at page 242 the court stated that in criminal cases the presumption of evidence is still stronger and accordingly and a still higher minimum of evidence is required; and the more heinous the crime the higher will be this minimum of necessary proof."

11. The court in *Abdu Ngobi versus Uganda S.C.Cr.* explained itself as follows on the treatment of evidence:

"Evidence of the prosecution should be examined and weighed against the evidence of the defence so that a final decision is not taken until all the evidence has been considered. The proper approach is to consider the strength and weakness of each side, weigh the evidence as a whole, apply the burden of proof as always resting upon the prosecution and decide whether the defence has raised a reasonable doubt. If the defence has successfully done so, the accused must be acquitted. But if the defence has not raised a doubt that the prosecution case is true and accurate, then the witnesses can be found to have correctly identified the appellant as the person who was at the scene of the incident as charged."

12. With the following in mind, and to appreciate the high standard through reset in the law, which is underpinned on the accused's right on the presumption of innocence until the contrary is proved, it is noted that the instant case is purely based on circumstantial evidence. As to what constitutes circumstantial evidence, the following cases provide a profound rendition on the features and characteristics of this category of evidence in contrast to what is known in law as direct evidence.

13. In the persuasive case of *Hanumant Govind Nargundkar AIR 1952 SC 343* had this to say on this doctrine:

"..... In dealing with circumstantial evidence the rules especially applicable to such evidence must be borne in mind. In such cases there is always a danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the Jury in *Reg. vs. Hodge, (1838) 2 Lewin 227* where he said:

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply



some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.”

“it is well to remember that in cases where the evidence is of circumstantial in nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable doubt for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.....”

14. In the domestic arena, the court in the case of *Ahamad Abolfadhi Mohammed and another v Republic* (2018), eKLR had this to say on circumstantial evidence:

“However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. 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. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr. App. R 21: ‘It has been said that the evidence against the Applicant is circumstantial. So it is, but 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 it is circumstantial.’”

15. In viewing the entire evidence, the circumstances of the case and the interpretation of the authorities cited above, there is clear evidence from PW1 and PW2 that the deceased and the accused cohabited together, what is commonly referred to as husband and wife although for the accused person, this was a blossoming love relationship which had not ripened into a marital union. The factual matrix from PW1 and PW2 denotes that both of them were cohabiting in a rented house owned by PW1 who happened to be their landlord. He was informed of this incident by PW2 who doubles up as a village elder of the area in which his rental houses are located. Ultimately, PW1 visited his rental premises occupied by the couple in which he discovered that the deceased’s body was covered by a blanket and on removing the blanket, he noted multiple physical injuries which may have been inflicted by a third party. The story of this unfortunate incident was reported to the area chief and the police station to initiate investigations. The other relevant piece of evidence came from PW2 the clan elder who visited the house of the accused and the deceased to carry out an inquiry on what had transpired and under which circumstances the deceased had met her death. The observation taken as a whole by PW2 was that the assault incident had been caused by the accused person. This inference was drawn from the conversation held with the accused who confirmed that he had indeed slapped the deceased. Similarly, PW2 informed the court that on arrival at the rental premises, the accused was present as the body lay in the same house while covered with a blanket. In a way taken cumulatively, the statement made by the accused person to PW2 on the slapping of the deceased provided a hint on what had transpired prior to the arrival of both PW1 and PW2 at the scene, it appears to this court that the romantic enchantment



which the accused and the deceased experienced during the first few months of their cohabitation had completely disappeared and looked like a lost dream or paradise lost.

16. A careful perusal of the nature of the evidence of this catastrophic incident leads this court to the irresistible conclusion that the deceased died on 11<sup>th</sup> August, 2017 at Randa estate in Eldoret East. The fact of death is not disputed by the accused person despite giving a different view on the cause of death. From his perspective, the deceased had suffered some health complications and she also had a habit of being alcoholic. He took great effort to exonerate himself from the circumstances relating to the death of the deceased. However, the autopsy report dated 14<sup>th</sup> August, 2017 is uncompromising on the element of death of the deceased and on causation issues that it was unlawfully caused through acts of omission and commission.
17. To take the other side of the picture, for the offence of murder to be sustained by the prosecution, the compelling circumstances and evidential material must establish existence of malice aforethought as defined in Section 206 of the Penal Code. Malice aforethought is defined as follows:
  - “206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—
    - a. an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
    - b. knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused; (c) an intent to commit a felony; (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”
18. There are a plethora of authorities covering manifestation of malice aforethought in homicide cases on the charge under Section 203 of the Penal Code. For the offence of murder and proof of malice aforethought in *Rex v Tubere s/o Ochen* {1945} 1Z EACA 63, Eastern Court of Appeal observed:

“In determining existence or nonexistence of malice one has to look at the facts proving the weapon used, the manner in which it is used and part of the body injured.”
19. In the case of *Hyam v DPP* {1974} A.C. the Court held inter alia that:

“Malice aforethought in the crime of murder is established by proof beyond reasonable doubt when during the act which led to the death of another the accused knew that it was highly probable that, that act would result in death or serious bodily harm.”
20. I have gone through the evidence herein above and also gone through the documentary evidence with utmost circumspection. The question of significance will be whether this homicide in its nature was committed with malice aforethought. This court relying on the evidence of the pathologist Dr. Macharia who conducted post mortem on the body of the deceased vide exhibit 1 stated candidly that during the post mortem, he confirmed lacerated wounds spreading over the upper and middle limbs of the body of the deceased. He also confirmed mild frontal scalp bruising and as opined in the report



that the cause of death was peritonitis due to perforated gut due to blunt forced trauma. The other findings were also injuries to the head. This evidence has not been disputed by the accused person. The accused was and has been unable to tell either through cross examination of the witnesses through to his defence who murdered his wife inside the house. There is no explanation in this regard although the accused and his wife lived together. In such a situation, considering the circumstances of the case and the available evidence, Section 111 of the *Evidence Act* is applicable. The gist of it is that the prosecution having discharged its burden through the admission of probative evidence rendered by PW1 and PW2 due to the elements of this provision, it was the opportunity for the accused who had special knowledge of the murder of his wife to provide some evidence on how she died. In the absence of any convincing explanation being given by the accused after the murder, it is the finding of this court that the accused is the author of the crime of murder of his wife. Incidentally for this case, PW1 and PW2 found the accused person within the rental premises used as their residence with the wife but no explanation was given by the accused regarding the injuries suffered by the deceased and how she was assaulted fatally succumbing to death. This fact was within his specific knowledge and the law binds him under Section 111 of the *Evidence Act* to offer some explanation. This exceptional circumstances provided under Section 111 were within the knowledge of the accused which he could have proved without difficulty or inconvenience. In the matter of Section 106 of the Indian *Evidence Act* which has identical provisions with our Section 111 of the *Evidence Act*, the Supreme Court in Nagendra Sah v. State of Bihar (2021) 10 SCC 725 pronounced itself as follows:

“Thus, Section 106 of the *Evidence Act* read conjunctively with the Kenyan *Evidence Act*, Section 111 will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the court can always draw an appropriate inference.

When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of Section 106 of the *Evidence Act*, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden under Section 106 of the *Evidence Act* which is similar to our Section 111 is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused. (Underlined emphasis mine)”

21. The accused in his defence withheld information which he had special knowledge as to the death of his wife on the material day of 10<sup>th</sup> August, 2017 at Rada village. There is every justification for drawing the inference that prior to the information on the death of the deceased being communicated to the landlord PW1 by his daughter and the succeeding circumstances adverted to by PW1 and PW2, the accused is the murderer of the deceased.
22. Apart from the above, the last seen theory as articulated in the case of Moses Jua versus The State (2007) LPELR-CA/IL/42/2006 applies squarely to the circumstances of this case as founded by the court in the following statement:

“Even though the onus of proof in criminal cases always rests squarely on the prosecution at all times, the last seen theory in the prosecution of murder or culpable homicide cases is that where the deceased was last seen with the accused, there is a duty placed on the accused to give an explanation relating to how the deceased met his or her death. In the absence of



any explanation, the court is justified in drawing the inference that the accused killed the deceased.”

23. In another Nigerian case of *Stephen Haruna v The Attorney-General of The Federation* (2010) 1 iLAW/CA/A/86/C/2009, the Court in considering the same doctrine opined thus:

“The doctrine of “last seen” means that the law presumes that the person last seen with a deceased bears full responsibility for his death. Thus where an accused person was the last person to be seen in the company of the deceased and circumstantial evidence is overwhelming and leads to no other conclusion, there is no room for acquittal. It is the duty of the appellant to give an explanation relating to how the deceased met her death in such circumstance. In the absence of a satisfactory explanation, a trial court and an appellate court will be justified in drawing the inference that the accused person killed the deceased.”

24. This last seen theory is manifested in the testimony of PW1 and PW2 when they arrived at the scene of the homicide in which the deceased happened to have met her death. This evidence is relevant as it completes the chain of circumstantial evidence and undoubtedly succeeds in proving that this heinous crime was committed by the accused person solely or with others who never managed to be netted by the police investigations. There is irrefutable presumption that the deceased was in the company of the accused alive and together before PW2 arrived only to find her covered with her blanket, with her body having suffered multiple injuries.
25. In the premises, I accordingly find and hold as a matter of law under Section 203 of the Penal Code that the accused person herein with malice aforethought caused the death of the deceased by inflicting fatal injuries. I find him guilty and convict him accordingly of the offence as charged.

### **Ruling on Sentence**

26. The accused person, Godfrey Mweleoni Mulindi, has been found guilty of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The court found that on 10th August 2017 at Randa Estate in Eldoret East Sub-County within Uasin Gishu County, he murdered Anna Jepkoech.
27. In arriving at an appropriate sentence, I am guided by the decision in *Francis Muruatetu versus Republic* [2017] eKLR which emphasized that in sentencing an offender, the court must consider:
- “The age of the offender, being a first offender, whether the offender pleaded guilty, character and record of the offender, commission of the offence in response to gender-based violence, remorsefulness of the offender, the possibility of reform and social re-adaptation of the offender, and any other factor that the court considers relevant.”
28. The evidence in this case painted a disturbing picture of domestic violence that culminated in death. The post-mortem findings by PW4 Dr. Macharia Benson revealed extensive injuries including a swollen face, stab wounds on the left orbital area, bruise lateral to the right eye, bruise to the left shoulder, bruise on the frontal skull and perforation on the genital urinary system. The cause of death was established as peritonitis due to perforated gut due to blunt force trauma.
29. In the case of *Titus Ngamau Musila alias Katitu-Criminal Case No 78 of 2014*, the court cited with approval the case of *Santa Singh v State of Punjab* [1978] 4 SCC 190, which held:

“Proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances extenuating or aggravation of the offence, the prior criminal record, if any,



of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, society and social adjustment, the emotional and mental condition of the offender, the prospects for rehabilitation of the offender..."

30. I also must not lose sight of the principles in the 2023 Judiciary of Kenya Sentencing Policy Guidelines which expressly provides as follows:

That sentences are imposed to meet the following objectives:

- a. Retribution: To punish the offender for his/her criminal conduct in a just manner.
- b. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- c. Rehabilitation: to enable the offender reform from his criminal disposition and become a law-abiding citizen.
- d. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
- e. Community protection: to protect the community by incapacitating the offender.
- f. Denunciation: To communicate the community's condemnation of the criminal conduct."

31. In considering the appropriate sentence in this case, this court must carefully weigh both aggravating and mitigating factors while acknowledging the broader societal concern regarding domestic violence. The court must balance the accused's personal circumstances, society's interests, and the nature of the crime including the circumstances of its commission. The aggravating circumstances in this case are significant. The medical evidence reveals a brutal assault that caused grievous injuries to multiple parts of the victim's body. The accused's attempt to minimize his actions by claiming to PW2 that he had merely "slapped" the deceased demonstrates a concerning lack of candor and remorse. Furthermore, the domestic setting of this crime, where the deceased should have felt safe - adds to its gravity.

32. The mitigation by the accused highlights several personal circumstances: he has a daughter who was four years old at the time of his arrest and is now twelve, whom he hasn't seen since his incarceration. His parents are deceased, and he was not married to the child's mother.

33. Regarding the circumstances of the case, the defense argues that the deceased and the accused met at a bar and had a brief relationship lasting one month. The deceased reportedly had pre-existing health issues, including stomach pains, before meeting the accused. The defense contends that the prosecution failed to establish direct causation between the accused's actions and the deceased's death, noting that while the deceased had facial bruises from alleged fights or falls, the exact cause of death was not clearly established.

34. While cognizant that the death penalty is no longer mandatory for murder following the Muruatetu decision, this court must impose a sentence that reflects the gravity of the offense, deters potential offenders, and protects society. The brutal nature of the assault, the domestic context of the crime, and the accused's lack of remorse call for a substantial custodial sentence.

35. Having considered all factors, I hereby sentence the accused to twelve (12) years imprisonment. This sentence reflects both the gravity of the offense and the need to protect society, while still leaving room



for the accused's eventual rehabilitation. The sentence shall run from the date of arrest in accordance with Section 333(2) of the Criminal Procedure Code giving effect to the credit of 9 years or so spent in pre-trial detention.

36. It is so ordered. 14 day Right of Appeal.

**DATED AND SIGNED AT ELDORET THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2025.**

In the Presence of

M/s Sidi for the DPP

Mr. Nyambegera for the Accused Person.

.....

**R. NYAKUNDI**

**JUDGE**

