



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Republic v Abuya (Criminal Case E019 of 2023)  
[2025] KEHC 2589 (KLR) (14 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2589 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL CASE E019 OF 2023  
WM MUSYOKA, J  
MARCH 14, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**STEPHEN ODUORI ABUYA ..... ACCUSED**

**JUDGMENT**

1. The accused, Stephen Oduori Abuya, faces a murder charge. It is alleged that, on the night of 13<sup>th</sup> and 14<sup>th</sup> September 2023, at about 22:00 Hours, at Shibaje Village, Bunyala Sub-County, within Busia County, he murdered his wife, Carren Auma Achieng, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya. He denied the charges. A trial ensued. 6 witnesses testified.
2. PW1, Dr. Bildad Emase, was the medical officer who conducted post-mortem on the body of the deceased, on 20<sup>th</sup> September 2023. He did not note any external physical injuries, but there were internal injuries. There was a spill of blood in the chest, but the chest itself had no injuries. There was also collection of blood within the digestive system. There were deep lacerations on the liver. He concluded the death was caused by a blunt abdominal injury to the liver. He opined that the deceased was hit at the abdomen bluntly, causing a deep cut to the liver, leading to bleeding into the abdomen. The blood loss was massive, compromising blood circulation.
3. PW2, Alphonse Majoni Okello, was a brother of the deceased, and was with the deceased and others at their home, on 13<sup>th</sup> September 2023, at 8:00 PM, when the accused and John, PW3 herein, came calling. By then the deceased had separated from the accused, and was staying at her maternal home. They said they wanted to talk to the deceased. The deceased and the accused talked, and she gave copies of her national identification card, a birth notification for their child and his clothes. PW3 then requested that the deceased escort the accused, and he pulled her outside, and they left, that is the deceased, the accused and PW3. The witness then retired to bed. Later, at about 4:00 AM, on



- 14<sup>th</sup> September 2023, someone knocked at his door, to announce that the deceased had died. PW2 telephoned the accused, but it was Maloba, a brother of the accused, PW4 herein, who answered the phone, and told him that the accused had killed the deceased. He saw the body of the deceased at the mortuary.
4. PW3, John Ojiambo Ngobe, was a liguru and an elder brother of the accused. He testified that the accused approached him, on 13<sup>th</sup> September 2023, at 8:00 PM, with the request to be accompanied to the maternal home of the deceased, to see her. PW3 initially resisted, saying that it was rather late in the day, and requesting that they do the visit the following morning, but the accused insisted. He escorted the accused to that home, and they had a meeting with the deceased and other persons who were at that home. It was agreed that the deceased would go back to the home of the accused at the weekend that was to follow. PW3 suggested, when the time came for them to leave, that the deceased should escort the accused, and the 3 of them then stepped out of the house where they were meeting, into the night, at about 9:00 PM. He parted with the deceased and the accused outside the compound, and went his own way home, which was just metres away from the home that they had visited. He went to bed, after he got home. He was later telephoned by Maloba, their brother, PW4 herein, at about 10:30 PM, who informed him that the accused had killed the deceased. He contacted another liguru, who escorted him to the scene. They confirmed that the deceased had indeed died. He did not note any physical injuries on the body.
  5. PW4, John Maloba Abuya, was a brother of the accused and PW3. He testified that the accused telephoned him at 10:19 PM, on 13<sup>th</sup> September 2023, crying, and informed him that his wife, the deceased, had died. The accused did not tell him how his wife had met her death. He told him that her body was at an open field at Sibanje village, and asked him to go there and establish for himself. He rushed there, and found the body of the deceased lying there, face up. He did not note any blood nor physical injuries on the body. The accused was not at the scene, and there was no one there. He telephoned the accused, and informed him that the deceased was indeed dead. He then telephoned PW3, his brother, the village elder, who came to the scene, with a colleague. They contacted the police, who came, from Port Victoria Police Station, and collected the body. They drove to their home, where he telephoned the accused, who came to the police vehicle, and was arrested.
  6. PW5, No. 11472 Police Constable Dismas Kiptoo, was from the office of the Bunyala Directorate of Criminal Investigations, and the arresting officer. At 23:00 Hours, he and another officer got information from a village elder of a murder incident, and they proceeded to the scene. They found the body of the deceased lying in an open field. The body had no physical injuries. They removed the body from the scene. They found PW4 at the scene, and he took them to where the accused was, and they arrested him. He admitted that he had committed an offence, and was willing to accompany them to the police station. PW6, No. 101822, Police Constable Ruth Apondi, was the investigating officer.
  7. I put the accused on his defence, on 18<sup>th</sup> October 2024. He testified on oath, on 2<sup>nd</sup> December 2024, and called no witnesses. He denied killing the deceased. He testified that he and PW3 did visit the maternal home of the deceased, on 12<sup>th</sup> September 2023, and they left with the deceased. The deceased then slipped and fell, and was badly injured. He screamed for help, but no one came to his assistance. He telephoned PW4. He then went out to look for a motorcycle to take her to hospital. When he got back to the scene, he found a crowd, and established that the deceased had died. After that he was arrested, and charged.
  8. The prosecution has filed written submissions. It is argued that the recorded evidence pointed to the accused as the perpetrator of the offence. Section 206 of the *Penal Code* and Republic vs. Tubere s/o Ochen [1945] 12 EACA 63 are cited on what constitutes malice aforethought.



9. The elements, for the offence of murder, are proof of the death, the cause of it, the involvement of the accused in the causation, and the fact that the accused caused the death with malice aforethought. See *The Crown vs. Bopwe binti Seif El-Ismailia (1939 – 1950)* 7 ZLR 72 (Sir John Gray CJ).
10. On the death, there is ample proof that the deceased died. PW2, her brother, saw her body at the mortuary, while PW3 and PW4, who were her brothers-in-law, testified to seeing the dead body of the deceased at the scene where she died. PW1 conducted post-mortem on the dead body of the deceased.
11. On the cause of death, the medical officer of health, PW1, testified that the deceased had suffered massive bleeding into her abdomen and chest, caused by an injury to her liver, which had been caused by a blunt trauma to her abdomen.
12. On the role of the accused in the causation, there is no direct evidence of the involvement of the accused in the causation of the death, for none of the prosecution witnesses attested to seeing or witnessing him cause the fatal injury on the deceased. The available evidence is circumstantial, based on 2 pieces of evidence, the fact that the accused was the last person to be seen with the deceased before she died, and the fact that he was the one who alerted PW4 to the fact that the deceased was lying dead at some open field.
13. So, did the accused have any role in the causation? Did he have any role in the infliction of the injuries that caused the death? PW2 and PW3 put the deceased and the accused together, on 13<sup>th</sup> September 2023, when they left her maternal home together. The accused himself conceded that he was indeed together with the deceased at the time she died. He put the date at 12<sup>th</sup> September 2023, and not 13<sup>th</sup> September 2023, but I think it should not matter, as he, PW2, PW3, PW4 and PW5 all testified on the same incidence, and I believe the correct date was 13<sup>th</sup> September 2023. He conceded that the deceased sustained the fatal injuries while she was with him, but he denied doing anything to her, which would have caused the injuries, explaining that she slipped and fell, and got injured.
14. As the fact that the accused and the deceased were together, when the fatal injuries were sustained, is not disputed, the only consideration should be as to who caused the injuries. The prosecution holds that the accused caused them, while the accused asserts that the deceased fell on her own and suffered those injuries. Who is to be believed?
15. None of the witnesses who testified claimed to have had witnessed the accused assault or do anything to the deceased, for it to be concluded that he caused her death. The prosecution case is that the 2 were last seen together, with the accused person being the last person to be seen with the deceased alive, and upon the deceased turning up dead, the accused was bound to give an account, otherwise the conclusion would be that he caused her death. Whether he caused that death can only be evaluated from the circumstances of the death and the surrounding facts.
16. The first fact is that the accused and the deceased, who were a married couple, according to the witnesses, were, at that time, estranged. She had moved back to her parents' home, with 1 child, that the accused later took away. According to PW3, he escorted the accused to the maternal home of the deceased for reconciliation. The accused was not allowed to take her away immediately, and she only reluctantly agreed to escort him, or see him off, as it was nighttime. The 2 were not on good terms. There were allegations of infidelity, made against the deceased, by the accused, according to PW4. It was possible that the accused was jealous and bitter, and, therefore, he would have had a motive to kill or harm the deceased. Of course, motive is not a critical element for the offence of murder, but it becomes a crucial factor, in cases where there is no direct evidence, and reliance is placed on circumstantial evidence. Motive would be one of the several circumstantial factors to be considered.



17. The second consideration should be in connection with the conduct of the accused after the death of the deceased. The case by the prosecution is that the accused called his brother, PW4, to inform him that the deceased had died, and gave him directions on where to find her body. PW4 then called their brother, PW3, who was a village elder. It was PW3 who called in the authorities. The police then went to the home of the accused, where he was, and arrested him. The version of the events by the accused is that after the deceased fell, and was unresponsive, he telephoned PW4, and then rushed to get a motorcycle to take her to hospital. When he came back, he found a crowd, which included the police, and he was arrested.
18. I find it curious, that neither PW3 nor PW4 testified to seeing the accused arrive at the scene with a motorcycle, in readiness to take the deceased to hospital. PW5, the arresting officer, did not talk of meeting the accused at the scene. He did not arrest him at the scene, but at his home, where he was with his father, and it was PW4 who called him out. It comes out as a lie, that the accused went to get transport, to take the deceased to hospital, and that he went back to the scene after the deceased was fatally injured.
19. The third consideration should be that after the deceased was fatally injured, it was PW4 that the accused called, to tell him that the deceased had died. PW4 then decided to call their liguru brother, PW3. PW4 did not disclose what he informed PW3. PW3 testified that PW4 informed him that it was the accused who had killed the deceased. PW2 testified similarly, that PW4 informed him that the accused had killed the deceased. It is quite clear from the testimony of PW4, that he was careful not to be seen to be incriminating the accused. He testified that the accused merely informed him that the deceased had died, but he did not tell him what had killed her. I tend to believe the testimony by PW3, a government functionary at the local level, which tallies with that of PW2.
20. What is curious is that the accused gave directions to PW4 on where he was to find the body. The accused knew by then, that the deceased had died. PW4 did not talk about the accused informing him that the deceased had slipped and fallen badly, and was injured, and, therefore, he, the accused, was out looking for transport to take her to hospital. PW4 did not talk about the accused asking him for help in connection with that, taking her to hospital. The help he needed was with PW4 going to the scene to confirm that the deceased was dead. The conduct of the accused, from the testimony of PW4, was not of a person who was keen on getting the injured to hospital. The person was already dead. There was no need for hospital. The narrative by the accused, about looking for means of transport to take the deceased to hospital, could only be a lie.
21. Then there is the medical evidence. PW1 was categorical, that the injury that caused the death was because of an assault, on the abdomen, which caused a deep cut or laceration to the liver, which led to massive bleeding into the abdominal cavity, compromising blood circulation. The medical officer did not mention a fall as a possible cause of the injury, and he was not cross-examined on that by the defence. If the injury was caused by an assault, then that assault could only be by the person who was last seen with the deceased alive, who is the accused herein, who conceded to having been the last person to be with her before she met her demise.
22. The conclusion, I draw, therefore, from these facts, is that there is sufficient evidence that the accused person had a role in the causation, of the death of the deceased. The circumstantial evidence is very strong, for purposes of supporting a case for the conviction of the accused. The standard of proof, in criminal cases, is that the prosecution must establish its case against an accused person beyond reasonable doubt, and that for a conviction to be founded on circumstantial evidence, the evidence of the incriminating circumstances must inexorably point to the accused person. See *Rex vs. Kipkering arap Koske and another* (1949) 16 EACA 135 (Edwards CJ, Sir John Gray CJ & Ainley J) and *Sawe vs.*



- Republic [2003] KLR 364, 1 EA 280 (Kwach, Lakha & O’Kubasu, JJA). I believe that I have evidence, before me, which establishes beyond reasonable doubt, that the accused herein killed the deceased, and the circumstantial evidence, presented by the prosecution, to support the charge, inexorably points to guilt on the part of the accused.
23. The last consideration should be whether the accused caused that death with malice aforethought. What constitutes malice aforethought is defined in section 206 of the *Penal Code*. One, it is a direct intention to cause death, usually signified by a verbal expression of a desire to kill. Two, it is an intention to cause grievous harm, or to cause a bad injury, which results in death. This is usually inferred from the circumstances. Three, it is knowledge that the act causing death could cause death, or grievous harm, but the perpetrator is indifferent to the consequences. Four, it is an intention to commit a felony, such as assault or battery or whichever. These four would suffice for the purposes of this discussion.
  24. The question then is, were the injuries inflicted on the deceased so inflicted with an intention to kill her, or with an intention to cause to her a bad injury, or were the injuries caused recklessly and indifferently, or was the intention to commit some sort of felony? The killer blow was the injury to the liver, which led to the massive bleeding into the abdomen, so massive that it fatally compromised blood circulation, according to PW1. There is ample case law that an injury caused to any part of the body, which houses a vital organ, such as the liver, would be deemed, should it cause death, to have been so inflicted with the intention of causing death. See Republic vs. David Mweha Waweru [2015] KEHC 2190 (KLR) (Lesiit, J), Republic vs. Ambrose Katharu M’Itubiri alias M’Muraga, Seberio Kobia Munoru alias Zeberio Mugambi Kabuseria & Dominic Muchiru Munoru alias Kobia Munoru [2019] KEHC 10401 (KLR) (Ong’injo, J) and Republic vs. Wainaina [2022] KEHC 12672 (KLR) (Kimondo, J). The injury in this case was to the liver, which is a vital component in the blood circulatory system. A blow, to that area or region of the body, must have been calculated and intended to cause death, or to cause a very bad injury. I am persuaded that the death was caused with malice aforethought.
  25. None of the witnesses, presented by the prosecution, were present when the injuries were inflicted. However, witnesses placed the accused and the deceased together, minutes before she died. The accused himself conceded that he was with the deceased when she sustained the fatal injuries. There was evidence of a strained marital relationship, with allegations of infidelity mentioned by PW4, levelled against the deceased by the accused. He had a motive to kill the deceased, or to cause her a very bad injury, out of passion, jealousy.
  26. In the end, it is my finding and holding that the offence of murder has been sufficiently proved, against the accused person herein, and I do hereby find him guilty, and convict him, under section 322 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, of the murder of Carren Auma Achieng, contrary to section 203, as read with section 204, of the *Penal Code*.
  27. For the purpose of sentencing, I do hereby direct the Busia County Director of Probation and Aftercare Services, to evaluate the circumstances of the accused, and thereafter prepare and file a pre-sentence report, within 14 days. A sentencing hearing, where the accused shall have a right to make a statement in mitigation, shall be conducted thereafter.
  28. It is so ordered.

**DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA ON THIS 14<sup>TH</sup> DAY OF MARCH 2025.**

**W MUSYOKA**

**JUDGE**



Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Ouma, Advocate for the accused person.

