



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Okumu (Criminal Case E130 of 2021)  
[2025] KEHC 3148 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3148 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E130 OF 2021  
SC CHIRCHIR, J  
MARCH 13, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**VINCENT SIMIYU OKUMU ..... ACCUSED**

**JUDGMENT**

1. Vincent Simiyu Okumu (the Accused), was charged with Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of the charge are that on the 21<sup>st</sup> day of August, 2021 in Shamberere village, Shamberere Sub- Location, in Kakamega North Sub- County within Kakamega County, murdered Betty Shiro Kuranya Wakhungu (the deceased). The accused denied the charge and the matter went for full trial.

**Prosecution's case**

3. PW1 was Daniel Wekesa Simiyu. He told the court that on 21/8/2021, at around 9:30pm he was called by his friends to go and pick them, as they needed accommodated from him. When he reached where they were, the friends came out from a bar and together, they left . After walking for about 100 Meters, they saw a man who was crawling . He stated that the deceased and one carole were then walking ahead of him. The man emerged from the bush and started attacking him. They wrestled , and the man cut him on the finger . The two women had ran but the deceased fell , and the man caught up with her and stabbed her. There was faint light , he stated. The deceased was screaming. He went back in an attempt to help her and the man tried to stab him. Some Boda Boda operators came to the scene and told the man to leave the witness alone.
4. He ran towards a security guard , took the guard's club, and ran back to the scene. He chased after the Accused and hit him with a club. The accused dropped the knife There was blood all over . He told carole ( PW2) to pick the knife so that they could take it to the police. He took a handkerchief and



- bandaged the deceased's wound. She had been stabbed on the leg. He moved the deceased away from the ditch. One boda boda operator agreed to carry the deceased to the road, then to hospital. Carol went to the police. The deceased was taken to Malava hospital. They were told the deceased had died. They went back to the police station and filed a report of the incident.
5. He told the court that the Boda Boda operators addressed the attacker as Vincent. He identified the knife in court as the one which had been used to stab the deceased.
  6. He further testified that after making the report, they took the police to the scene. The accused had by then entered a vehicle. The Accused was removed from the vehicle and taken to the police station.
  7. He said that the deceased was a close friend. He saw the accused stab her. He identified the dark brown trousers as the one which was being worn by the accused that evening.
  8. On cross-examination, he told the court that the deceased was his friend. That the deceased and PW2 were in the bar. He did not enter the bar, but waited for them outside. That outside the bar, there were lights which were covering up to a distance of 20 meters. He had seen someone hiding in the bush but could not identify the person then. He stated that the person was wearing a white hat; that the person had first targeted him and not the deceased; that PW1 and the deceased had walked past him. He further stated that the accused had a torch which he kept directing on the witness's face. He noticed then that the man was carrying a knife. By then the deceased and PW2 had fled, leaving him wrestling with the accused. He managed to escape from the attacker and ran, following the two women. The deceased then slipped and fell into a ditch. He ran past her. He stopped after passing the deceased. He saw the accused stabbing the deceased. There was security light from West Kenya Sugar Company. At the time he was busy looking for a weapon. He stated that the accused also cut the deceased's hair. He saw the knife, which had blood on it. Apart from the trouser, the accused was also wearing a green shirt.
  9. He further told the court that the accused was arrested at about 2am. By then he knew him as Vincent. He got the name from the boda boda people. He stated that the security guards were the ones who told them that the accused was inside his vehicle. The vehicle was parked outside the bar. He went towards the vehicle with the police. The accused was forced out of the vehicle by the police. The police had his shoes, while the accused was barefoot.
  10. PW2 was Carole Kaita. She was with the deceased on the night of the incident. She told the court that they met the accused at the bar where the "chama" meeting had earlier been held. The deceased told her that they would be going to the house of Dan, her friend, as it was late for her to go back to her home in Webuye. They stayed on when the other chama members left. The accused went to where they were sited. He bought the deceased beer, and danced with her. The witness refused the offer of the beer. The deceased told the accused that there was a man who was coming to pick her. The accused left, and got into a vehicle.
  11. When PW1 arrived, the accused got out of the vehicle and began walking ahead of them. The man first attacked PW1. She and the deceased ran, but the deceased slipped and fell. By then the attacker and PW1 were wrestling. The man went to where the deceased was and attacked her on the head and the leg. She rushed towards the KK Guards. With the assistance of KK guards, they tied the deceased leg with a lasso. She and PW1 rushed her to hospital but the doctors told them that she had already died.
  12. She further stated that when she later went to the vehicle with the police, the accused told the police that he knew PW2 as he had seen her at the bar. She stated that the knife holster was found in the Accused's vehicle. She identified the trouser the deceased was wearing in court. The accused was wearing safari boots, she stated. She identified the boots in court. She further stated that the accused appeared like he "wanted" the deceased, but he was not saying it. She stated that when the accused was wrestling



with PW1 he heard him say: “ you drank my beer and another man takes you away”. she stated that the accused’s trouser and shirt had blood stains. There was also blood on the knife.

13. On cross- examination, she told the court that she met the accused at the club, for the first time . He heard the accused being called “ Madefu”.He bought them beer and they danced. She described his clothes as a green shirt , brown trouser and boots. He bought beer for the two and left . He went to his vehicle. She further stated that from where they were sited in the bar, they could see what was going on outside. As they left , the man got out of the lorry . Then , she did not notice if he was carrying anything. The bar was about 200 meters from the west Kenya sugar premises.
14. She stated that the man emerged from the bush and faced PW1. PW1 told the two that the man had a knife and that they should run. They ran. She stated that there was light from west Kenya sugar company , that the motorbikes were also moving to and fro . She could see clearly . The man had put his hands at the back and she could not tell what he was holding. After they ran, they left PW1 and Madefu wrestling . she did not see the accused stabbing the deceased , she stated. When she went back, she found both the deceased and the accused lying on the ground, with the accused holding the knife. The deceased was calling out to her . she was telling she was dying. When the accused saw the KK guards, he rose and left. The accused dropped the knife and she picked it. The knife was given to the police. She further testified that the knife holster was found in the vehicle. He saw blood on the accused’s trouser.
15. The 3<sup>rd</sup> witness was the Bar -manager. She told the court that at 4pm on that day, the other chama members left . PW2 and the deceased were left behind. The accused then went into the bar and sat next to PW2 and the deceased. She knew the accused ,as he was a regular customer in the bar. The deceased called her aside and told her she was not comfortable with the accused sitting next to their table. The Accused left the bar, ahead of PW2 and the deceased . He carried three bottles of beer. The Accused’s lorry was parked outside the bar . She did not know what happened thereafter. It was at 2am when her mother called her and informed her about the incident. She further stated that she saw the deceased dancing with the accused. The accused was wearing a green shirt , brown trousers and safari boots. She identified the clothing items in court.
16. On cross- examination , she stated that the accused walked into the bar at about 4pm. By then the chama meeting was on. He later left his table, and went and sat near the table occupied by the deceased and pw2. At about 6pm , he danced with the deceased. By then the deceased had not told her about her discomfort with the accused. The deceased and PW2 left together. The deceased had told her she was to meet her boyfriend. she later saw that the deceased had met with PW1 .By then they were about 20 metres from the Bar.
17. PW4 was the arresting officer, one Barnabas Koech. He testified that they received the report of the incident at about 2.30 am, the same night. The incident was at Shisokoli bar. He proceeded to the scene with one PC Omondi. Outside the bar was a truck registration Number KCW 280, Daihatzu Trailer . It was one of the fleets of TSS company, he stated . He went to where the other drivers were and asked them the name of the driver of the lorry, and it was given to him as Vincent Simiyu. He went back to the lorry and knocked its door . The door was opened by a young man. He asked him if whether there was anyone else inside . The man answered in the affirmative and told him that it was his father and he was sleeping
18. They went in and got him. He was drunk and had no shoes. They searched the vehicle and found a blood- stained knife and safari boots. He further stated that the scene of crime was about 200 metres from the lorry. There was blood stains on the ground . He recovered the safari boots and trouser. Both items were stained with blood.



19. On cross- examination, he stated that there was only one lorry parked near the bar but there were other lorries within the vicinity. The drivers at the Sugar Company yard are the ones who told him that the driver of the Lorry was Vincent simiyu.
20. On re- examination he confirmed that he recovered a knife and a knife holster, though the knife was not found inside the vechile.
21. PW5 was the Assistant- investigations officer. He was instructed to visit the scene by his superior. He did not find the body of the deceased but noted that there was blood on the scene . He was informed that the suspect was hiding in his vehicle . The vehicle was registration No. KCW 280Z, a truck . They found the suspect and his son called pastor, inside the vechile. They searched the vehicle and found safari boots which had blood stains and a knife- holster. The suspect's trouser was also stained with blood . He identified the accused in the dock and told the court , that he was the one he found inside the vehicle. On cross- examination he stated that he searched the vehicle while the accused was standing outside but he could see the search as it went on.
22. PW6 was PC Joseph Mathenge, the investigation officer in the case. He took up the case after the suspect had been arrested. He established that the victim was one Betty karunya. He also established that the accused was a driver with southern Ltd, and had come to carry sugar from west Kenya Sugar Company ,but apparently he did not load the sugar that day.In the truck he was with his son who was a student.
23. He took the exhibits to the government chemist at Kisumu; He attended the post- mortem which was done by Dr. Mchana . He identified the accused in court.
24. On cross- examination he stated that the guards from west Kenya Sugar company assisted PW1 to disarm the accused. He presented to the court a list of the items he handed over for analysis at the Government Chemist.
25. The 7<sup>th</sup> witness was Dr. Mchana. He conducted the autopsy on the body of the deceased on 24/8/2021. He formed the opinion that the cause of death was excessive bleeding secondary to a stab wound. On cross- examination he stated that the wound was on the left thigh . The cut went from one side of the thigh to the other. He produced the post- mortem report
26. The last prosecution witness was a senior government Analyst from the Kisumu laboratory. He presented a report that was done by one Polycarp kweyu who could not come to court due to bereavement. He stated that he worked closely with him.
27. He told the court that they received samples from PC Charles Oyanda . He listed the items as a pair of safari boots, a pair of trousers , a knife and a knife- holster . He further received a nail sample of the deceased and a buccal swap sample from the accused. He stated that the knife and the trouser was heavily stained with blood of human origin, while the safari boot was slightly stained, also, with blood of human origin. The knife- holster had no blood stain and no DNA profile was obtained from it.
28. Upon examination, he established that the DNA profile generated from the blood stains on the knife, the trouser and the safari boots ,marched the DNA profile generated from the deceased's nail sample. He produced the report.( PEXb 5) .
29. On cross – examination he stated that the aim of the analysis was to establish if there was any genetic relationship between the samples, and that of the deceased or the suspect. On the clothes and the shoes, he stated that they never received instructions to extract samples in order to establish the owner of the items; that if sampling had been done thy would have been in a position to establish the owner of the trouser and the shoes. He further stated that save for the labelling of the samples, he could not tell who



the owner of any sample. He stated that from DNA perspective, based on the request given, there was nothing linking simiyu ( the accused) to the death of the deceased.

### **The Defence case**

30. On being put on his defence, the Accused opted for a sworn statement. He told the court that on 21/8/2021 he had come from Nairobi to Kabras factory, to collect sugar. He had been assigned Lorry registration No. KBZ 460A/ TR. ZE 7015. He loaded it with 600 sacks of sugar . He called his son they went into a restaurant to eat. He then went to shisokoli bar . He found some chama people. At 8pm, he left and went to his truck to sleep.
31. He was woken up at 3am by the police , and informed that he had stabbed a woman. He denied killing the deceased. He stated that the exhibits that had been produced in court were in the Truck registration No. KCW 280 which was not his truck. He pointed that no photographs were taken of the alleged vehicle and none of his clothes were taken for DNA testing . He had no relationship with the deceased, he said.
32. At the conclusion of the hearing, the defence filed submissions which I have considered. The prosecution did not file any submissions.

### **Determination**

33. Section 203 of the penal code defines murder as follows:

“any person, who of malice aforethought, causes death of another person by any unlawful act or omission is guilty of murder.”
34. Following the above definition , it is trite law that to secure a conviction for the offence of murder, the prosecution must prove the following:
  - a. That the deceased died and the cause of that death
  - b. Proof that the death occurred as a result of the unlawful act or omission on the part of the accused;
  - c. That the act or omission was accompanied by malice aforethought as defined under section 206 of the *Penal Code*. ( see Anthony Ndegwa Ngari v Republic (2014)e KLR

### **Death of the Deceased and its Cause**

35. The pathologist carried out the autopsy on the body of the deceased. According to the post- mortem report the body was identified by Charles Barasa and Joseph Wafula. He formed the opinion that the cause of death was excessive bleeding due to a stab wound. Thus the death of the deceased, and its cause was proved.

### **Whether the Accused was responsible for the death of the deceased.**

36. In this regard, the testimony of PW1 ,PW2 , PW3 , PW4 and PW5 are relevant. PW1 saw the accused as he emerged from the bush, as he wrestled with him, and as he stabbed the deceased. PW2 had seen the accused at the Bar, and at the point in which he saw him lying down after he had stabbed the deceased. PW2 had also seen the same person leaving the the lorry and going a head of them as they left the bar.



37. The imperative question is one of illumination. Was there sufficient light to allow for positive identification? Pw1 stated that the accused had a torch which the accused kept on directing towards him as the two fought.
38. Further PW2 told the court that there were security lights from west Kenya sugar Ltd, and there were a number of motorbikes which kept on passing by, as the fight went on.
39. Notably also ,PW1 managed to see that the accused was carrying a knife and hence his warning to the two women. A knife was collected from the scene and later established that it had the blood of the deceased. The existence of the knife gives credence to PW1 and PW2'S testimonies that there was enough illumination, to the extent that it enabled one see a knife. Am therefore satisfied that there was sufficient light for the two witnesses to see the accused and positively identify him.
40. Further for PW2 the accused was no longer a stranger to her . The accused had bought beer for her and the deceased while in the bar, and had seen the accused danced with the deceased.
41. Further PW1 and the accused wrestled . After escaping from the accused he came back again in an attempt to rescue the deceased. He managed to grab a club from a security guard and hit the accused. Am of the considered view that the amount of interaction that PW1 had with the accused was sufficient enough to allow positive identification .
42. The other evidence available is circumstantial. In the case of Ahamad Abolfathi Mohammed & another v Republic [2018] KECA 743 (KLR) Circumstantial evidence was described as “evidence, which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form as strong a basis for proving the guilt of an accused person just like direct evidence. Way back in 1928 Lord Heward, CJ, stated as follows on circumstantial evidence in R v. Taylor, Weaver & Donovan [1928] CR. App. R. 21:

“It has been said that the evidence against applicant is circumstantial. So it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undesigned coincidence is capable of proving a proposition with the accuracy of Mathematics.....( Emphasis added).

43. However before circumstantial evidence can form a basis of conviction , it must satisfy certain conditions. In Ahamad Abolfathi case (supra) the court of Appeal went on to state: “ Before circumstantial evidence can form the basis of a conviction, however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the accused person, and to no other person, as the perpetrator of the offence. In Abanga alias Onyango v Republic, Cr. App No. 32 of 1990 this Court set out the conditions 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.”



(See also *Sawe v. Republic* (supra) and [\*GMI v. Republic, Cr. Ap. No. 308 of 2011.\*](#))

44. Turning to the circumstances in this case, PW2 and PW3 gave a description of the clothes that the accused was wearing, obviously having had the benefit of having seen him earlier. The description by the two witnesses was consistent. They both stated that the accused had worn a green shirt and a brown trouser. PW 4 AND pw5 testified that they noted blood stains in the Accused's trouser and on his safari boots. These two items were collected by the police and later taken to the government chemist. The analysis showed that the trouser and the safari boots had the deceased's blood. As for the knife, even if it was not collected from the accused's vehicle or was not taken away from accused, the analysis showed that the blood on the knife was the same blood found on the trouser and the safari boots, and that blood belonged to the deceased. When the accused denies that he fatally attacked the deceased, what explanation could he possibly have had about the deceased's blood being found on his wearing apparel?
45. I have considered the evidence of the Accused. In his attempt to distance himself from the trouser and the shoes, he told the court that Motor vehicle registration No. KCW 280 Z (where the clothes were found), was not his; that the vehicle which had been assigned to him was KBZ 460A.
46. However I don't find this rebuttal plausible at all. Firstly with such a serious charge facing him, how comes the accused did not find it necessary to tender documentary evidence indicating that he had been allocated KBZ 460A? From the description of KBZ 460Z as given by the accused, and the vehicle on the scene as per the description of the prosecution witnesses, these are vehicles used to carry heavy goods. It is a fact of common notoriety that such vehicles would normally have documentation on the assignee of the vehicle, the goods being hauled and the routes being used for instance. Thus it would not have been hard for the accused to present to this court such vital piece of information, in support of his defence.
47. Secondly PW1 and PW2 testified that the Accused lorry was parked near the bar. PW2 and PW3 saw him getting in and later getting out of the same vehicle. It is the same vehicle, still stationed in the same place, when the police arrived, and found the accused inside it. It was from these vehicles that the trouser and the shoes were collected from.
48. Thirdly, PW4 and 5 told the court that they found a young man in the said vehicle, later identified as the accused's son. Pw2 also testified to have seen the young man when she led the police to the vehicle. The presence of the Accused's son was corroborated by non-other than the accused himself, when he testified that he was with his son in the truck. How would the police have known that there was a second person in the truck if they were searching someone's else's truck as submitted by the Accused.
49. Am satisfied, based on the testimony of pw2, pw3, pw4 and pw5, that the police identified the right truck; that the blood-stained trouser and shoes were picked from the Accused's truck; that the said trouser and shoes belonged to the accused; and these items had the deceased's blood on it. All these lead to the only inference that, it is the accused, and none else, who fatally attacked the deceased that night.
50. According to the defence, at least some materials from the the trouser and the shoes should have been subjected to the DNA analysis to establish the owner of the clothes, and hence the attacker. However the prosecution has presented sufficient, and independent evidence which has established that the deceased was seen wearing the said clothes and that the clothes were found inside the accused's truck. Am of the considered view that the said evidence was sufficient to connect the items to the Accused.
51. It is my finding that the prosecution has proved, beyond reasonable doubt, that the accused caused the death of the deceased.



**Malice aforethought.**

- 52. For a killing to constitute murder, it must be accompanied by malice, otherwise known as malice aforethought. Section 206 of the penal code provides the circumstances under which malice aforethought may be inferred. The section provides as follows: “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) .....
  - (d) .....
- 53. In this case , the Accused left the bar ahead of the deceased and her companion, and went into his truck; he went ahead of them when the two began to leave the bar and now joined by PW1. He then waylaid them by staying in the bush only to emerge when his victims approached. It later turned out he had carried a knife , the holster of which was later discovered in his truck. His movements and arming himself in advance shows that the attack was premeditated.
- 54. It is apparent that the accused first targeted PW1 , then turned his attention to the deceased when she fell. It is unknown whether he intended to harm both. However in terms of the provisions of section 206 (a) and (b) of the penal code it matters not whether the malice was directed at one person but a different person gets killed . The accused will still be liable.
- 55. The severity of the injury suffered by the deceased also testify to the presence of malice. The pathologist told the court that the knife penetrated from one side of the thigh to another . The force inflicted was extreme, to be able to inflict that kind of wound. The Accused knew or must have known that the force with which he cut the deceased was likely to cause death or grievous harm.
- 56. Am therefore satisfied that the circumstances of the killing met the threshold provided under section 206 (a) and (b) of the penal code.
- 57. In conclusion , it is my finding that the prosecution has proved the offence of murder against the accused, contrary to section 203 as read with section 204 of the penal code and I hereby convict as charged.

**DATED, SIGNED AND DELIVERED VIRTUALLY ,AT ISIOLO, THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of:  
 Godwin Luyundi- Court Assistant.  
 Ms. Luseno for the Accused.  
 The Accused.

