



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Macharia (Criminal Case 27 of 2019)  
[2025] KEHC 2630 (KLR) (5 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2630 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 27 OF 2019  
HI ONG'UDI, J  
MARCH 5, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ANTHONY KARANJA MACHARIA ..... ACCUSED**

**JUDGMENT**

1. Anthony Karanja Macharia hereinafter referred to as the accused stands charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars are that the accused on 17<sup>th</sup> /18<sup>th</sup> May, 2019 at Tayari Village in Molo within Nakuru county murdered Monica Wacuka Muigai. He denied the charge and the case proceeded to full hearing with the prosecution calling seven witnesses and the defence one witness.
2. PW1 Regina Wambui the aunt to the deceased testified that on 18<sup>th</sup> May 2019 at 12 noon while at her place of work, she was called by her cousin who told her to go home since the deceased had died. Upon reaching home Margaret told her that the deceased had been killed. She went to the scene where she met many people at the kitchen garden and the deceased lay there. She saw her mother at some distance and chief Macharia the father to Karanja (accused) who arrived and went to his compound.
3. Thereafter she went inside the compound where she saw blood at the doorstep and frame of the accused's house. The floor looked as if it had been washed and the house was in a mess. She also saw a maroon hairband on top of a side board, a skirt which was white, black and red in colour, a blood-stained t-shirt and a seat cover which had been knot tied.
4. She later went to the mortuary and viewed the deceased's body. She saw scratches on the face, marks on the neck and blood on the nose. She then recorded her statement at Molo police station.
5. On cross-examination, she stated that she did not know who killed the deceased and it was her house help who told her about the incident. She confirmed that the t-shirt which was stained with blood



- belonged to the deceased. She also stated that she had never seen the deceased wear the said t-shirt. She said both the deceased and the accused used to take alcohol. She further stated that the deceased's body was outside the compound.
6. PW2 John Macharia Muhia, the area chief testified that the accused was his son and the deceased was the accused's friend. He stated that on 18<sup>th</sup> May 2019 he received a call around 11am from one David Muniu who informed him that there were many people at his home because someone had died. He arrived at the scene at 12 pm and there were blood stains outside but he did not enter the house. The deceased's body and clothes were brought outside. Thereafter, he went to record a statement and the accused was arrested at his brother's place in Naivasha. He further stated that the deceased and the accused were lovers and they used to drink together.
  7. In cross-examination he confirmed that there was no one in his compound and that only him and his wife had the keys, to the premises. However, the accused could access the compound if he came before 9pm. He stated that he had requested the deceased's family to take the deceased since someone called Gitau claimed that the deceased was his wife. He confirmed that he did not know who killed the deceased and that it was not the accused who killed the deceased.
  8. PW3 Virginia Njambi testified that the deceased was her aunt and on 24<sup>th</sup> May 2019 she was called to go and identify her body during the post mortem.
  9. PW4 Polycap Lutta Kweyu employed at the Government chemist in Kisumu testified that on 20<sup>th</sup> May 2019 he received an Exhibit Memo Form from the DCIO Molo. He also received samples of swab sticks with red stains marked A, B and C, white t-shirt marked D and blood samples for the deceased marked D. He carried out a DNA analysis and concluded that the said samples belonged to a human being and samples A, B and C matched with the deceased's blood. The one on the t-shirt belonged to unknown male person. He produced his reports dated 22<sup>nd</sup> January 2020 and 26<sup>th</sup> January 2020 the same were marked as PEXB 2 (a) and (b) respectively.
  10. PW5 Monicah Wachuka Mungai the deceased's grandmother testified that on 17<sup>th</sup> May 2019 she was together with the deceased at around 6pm in their house. Thereafter, deceased left the house and she saw her standing with the accused at the gate. She told the deceased to come back and prepare potatoes but she refused and left with the accused who was her boyfriend. She stated that the deceased never returned that evening. The next day on her way to town she met a lady who told her that the deceased had died at the chief's house. She visited the scene where she saw the deceased's body and there were blood stains on the floor and the door. She later recorded her statement at the police station.
  11. In cross-examination she said she did not know if the deceased used to drink alcohol. She confirmed not knowing anyone by the name Gitau and that PW2 had called her before the deceased died and told her to stop the deceased from going to his house. She confirmed that she did not know who killed the deceased.
  12. PW6 Dr. Susan Wamala produced the post mortem report by Dr. Nkaraame dated 24<sup>th</sup> May, 2019 as PEXB 3. The cause of death was severe head injury from blunt trauma resulting in bleeding.
  13. PW7 No. 236202 C.I Hassan Yatani formerly of DCI Molo police station was the investigating officer in this case. He visited the scene of crime on 18<sup>th</sup> May 2019 where they found the deceased's body and they took it to the mortuary and thereafter recorded statements. He established from the crowd at the scene that the accused had been seen with the deceased. The accused person had picked the deceased from her grandmother's house. They arrested the accused in Naivasha. He said that apart from the t-shirt which was marked as PEXB 1 they did not recover anything else from the accused.



14. In cross-examination, he stated that he recorded statements from several witnesses but there was no eye witness. He confirmed that the accused was the last person seen with the deceased.
15. The accused in his sworn defence stated that he last saw the deceased on 6<sup>th</sup> May 2019 when they had gone to a chang'aa den in Molo. He further stated that the date the deceased is alleged to have died he was in Naivasha for work. His cousin one Samuel Kamau had called him to do painting on 7<sup>th</sup> May 2019. That he was there from 8<sup>th</sup> May 2019 and the police arrested him on 19<sup>th</sup> May 2019. He confirmed that in May, 2019 he was staying at his dad's home in Molo.
16. He stated that Gitau visited their home and told the accused's mother that he had lived with the deceased for six (6) years. He added that sometimes back he found Gitau at their home and he was later informed that there had been a quarrel between him and the deceased. He confirmed that he did not know who killed the deceased and that he had recorded his statement at the police station.
17. In cross- examination, he stated that the deceased and Gitau were lovers and he was never happy about it. He also stated that he never escaped to Naivasha.
18. In re-examination he testified that he had lived together with the deceased as husband and wife from April 2017 to April 2019.
19. Both parties filed written submissions to the case.

#### **Prosecution's submissions**

20. These were filed by M/s Emma Okok principal prosecution counsel and are dated 31<sup>st</sup> October, 2024. Counsel reiterated the contents of their earlier submissions on case to answer dated 16<sup>th</sup> June, 2023. Referring to the defence by the accused, counsel submitted that the accused's defence of alibi was an afterthought and the court should disregard the same. Further, that PW5 was the one who last saw the accused with the deceased. Furthermore, that the accused never called his cousin Samuel Kamau as a witness to corroborate his evidence. She urged the court to invoke the doctrine of "last seen with" in inferring guilt on the accused.

#### **Accused's submissions**

21. The same were filed by Murunga Mwangi & Associates for the accused and are dated 21<sup>st</sup> January, 2025. Counsel did a summary of the evidence by the prosecution and the defence. He identified two (2) issues for determination. On whether the prosecution conclusively established that the accused caused the deceased's death, counsel submitted that the prosecution evidence was based entirely on circumstantial evidence and therefore the same did not meet the threshold to prove the accused's culpability beyond reasonable doubt. He placed reliance on the decision in *Sawe v Republic* [2003] eKLR where the court emphasized that circumstantial evidence must be consistent and leave no doubt in the court's mind.
22. The second issue is whether the prosecution had satisfied the ingredients of murder under section 203 of the *Penal Code*. Counsel submitted in the negative and contended that the discrepancies on the location of the body outside the compound, unexplained third-party DNA and lack of eyewitnesses created reasonable doubt. He placed reliance on the case of *Abuga alias Onyango vs Republic* (Criminal Appeal No.32 of 1990) where the court held that suspicion, however strong, cannot substitute proof. He added that the accused had provided plausible and consistent alibi and that the prosecution had failed to prove the accused's guilt beyond reasonable doubt. He urged the court to find the accused not guilty and acquit him.



## Analysis and determination

23. I have carefully considered the entire evidence on record, both parties' submissions, case law and the law. Murder is defined under section 203 of the penal code which provides that:

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

24. The punishment for murder, is set out in section 204 of the penal code as follows:

“ Any person convicted of murder shall be sentenced to death”

25. For a charge of murder to be proved the following ingredients must be proved: The death of the deceased and the cause of death. That the accused committed the unlawful act which caused the deceased's death (actus rea) That in committing the unlawful act the accused had malice aforethought (mens rea)

26. On the first issue of proof of death and its cause, PW1, PW2, PW3, PW5, PW6 and PW7 confirmed the death and there is no issue about that. PW3 identified the body for post-mortem. The report by Dr. Nkarame and produced by Dr. Susan Wamala (PEXB3) confirmed the cause of death to have been severe head injury from blunt trauma resulting in bleeding. It is therefore clear that the deceased did not die out of a natural cause.

27. On the second issue on whether it is the accused who caused the injuries that led to the deceased's death, the record is clear that no eye witness testified before this court as to what really happened to the deceased. The deceased was found dead on 18<sup>th</sup> May, 2019 outside PW2's compound. PW5 told the court that on 17<sup>th</sup> May 2019 at around 6.00 p.m. the accused came to their home and the deceased joined him at the gate. They later left together despite her opposition to that. That was the last time she saw her. There is a possibility that this was the last interaction the deceased had before she met her death.

28. The circumstantial evidence in the prosecution's case is that the accused person was the one last seen with the deceased. The accused on the other hand has placed his pursuit for acquittal on the grounds that the ingredients for the offence of murder had not been proved by the prosecution and that he had raised an alibi.

29. The leading decision on circumstantial evidence is *Rex vs Kipkering Arap Koske & 2 Others* [1949] EACA 135 where the Court held as follows:

“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”



30. The factors to be considered when considering circumstantial evidence were further discussed by the Court of Appeal in *Joan Chebichii Sawe vs Republic*, Criminal Appeal No.2 of 2002 [2003] KLR where Kwach, Lakha & O’Kubasu JJ A held as follows:-

“In order to justify, 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. There must be no other co-existing circumstances weakening the chain of circumstances relied on.” (Emphasis mine)

31. Having looked at the circumstantial evidence relied on by the prosecution, it is only PW5 who last saw the accused and the deceased alive, together on 17<sup>th</sup> May, 2019 6.00 pm outside her gate. From the evidence of PW2 and PW5 there is a mention of one Gitau who used to come to the accused’s parents’ home where the accused stayed with the deceased and claimed to have married the deceased. He however was not as a witness in this case. Further, PW7 told the Court that the only thing they recovered from the accused’s house was the t-shirt stained with blood. This t-shirt was produced in court as an exhibit (EXB1). The report by PW4 (PEXB 2(b) indicated that the blood on the t-shirt belonged to an unknown male person. This does not necessarily mean the accused person. The blood samples taken to the Government chemist were only matched against those of the deceased. No blood sample was collected from the accused to match it against the blood stains on the said t-shirt. Why was that never done yet he was a suspect?

32. There is evidence that the accused and deceased were known to visit chang’aa and/or alcohol dens and were also known to be drunkards. After leaving PW5’s home its not known where they went to though PW5 said they took the direction of the alcohol den. The accused denied having been with the deceased on the material day as claimed by PW5. He told the court that the last time he was with the deceased was on 5<sup>th</sup> May, 2019, when they were out together consuming a lot of alcohol. The prosecution case is that the deceased was killed in the accused’s house and the body taken through the gate to the outer part of the compound.

33. There is no evidence of traces of blood from the house up to the gate or even on the gate itself. Infact if this had been done and tests undertaken by the Government chemist on this plus the accused’s DNA and the blood stains on the t-shirt the prosecution would have had a better standing on this issue. Secondly the accused’s mother lived on that compound belonging to PW2. She did not testify. Why was she never interrogated and called as a witness? PW2 had not been at the home yet he was called as a witness. It does not add up.

34. In view of the foregoing and in line with the authorities cited above, I opine that there are glaring gaps which cast doubt to the prosecution case. The murderer may be the accused or some one else. The court in the case of *Joan Chebichii Sawe* (supra) held that in order to justify circumstantial evidence, there must be no other co-existing circumstance weakening the chain of circumstances relied on. In the instant case there are co-existing circumstances weakening the chain of circumstances relied on by the prosecution to prove that it is the accused who caused the injuries that led to the deceased’s death.

35. In the *Republic vs Danson Mgunya* [2016] eKLR, the Court of Appeal cautioned about interferences based on circumstantial evidence as follows:

“Turning now to the merits of the appeal, we must reiterate that the burden was on the prosecution to adduce evidence, which would prove its case beyond reasonable doubt. In the absence of credible evidence proving the guilt of the accused, the prosecution cannot invite the trial court to convict on the basis of inferences and conjecture...



The fact of the matter is that the prosecution did an woefully shoddy job in this case. There was no witness who saw the respondent shoot the deceased. There was no evidence to link the deceased's injuries to the appellant's pistol.”

36. This being a criminal case the burden fell on the prosecution to prove its case beyond reasonable doubt. My finding is that, there are gaping holes in the evidence before this court. The accused gave evidence on his whereabouts which has not been rebutted.
37. The upshot is that the charge against accused has not been proved to the required standard. I find him not guilty and acquit him under section 322(1) of the *Criminal Procedure Code*. The accused will be released unless otherwise lawfully held under a separate warrant.

Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 5<sup>TH</sup> DAY OF MARCH, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

