



REPUBLIC OF KENYA



**Republic v Mumo & another (Criminal Case 14 of 2018)  
[2025] KEHC 9415 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 9415 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL CASE 14 OF 2018  
TM MATHEKA, J  
APRIL 24, 2025**

**BETWEEN**

**THE REPUBLIC ..... PROSECUTOR**

**AND**

**JANET NTHOKI MUMO ..... 1<sup>ST</sup> ACCUSED**

**SCOLASTICA NDUKU ..... 2<sup>ND</sup> ACCUSED**

**JUDGMENT**

1. The accused persons Janet Nthoki Mumo & Scolastica Nduku mother and daughter are jointly charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that on the night of 20th and 21st May 2018 at about 12 midnight at Uumeni Village Nthangathini Sub location Kako location Mbooni East Sub county within Makueni they jointly murdered Mumo Mutuvi, husband and father.

They each denied the charge before the Hon Ong’udi J .

2. Pw1 Gideon Mbuvi Mutuvi a brother to the deceased told the court how the first accused went to his house around 3:00 AM in the morning on the material night and informed him that his brother had been stabbed and was seriously injured . He woke up his wife and they went there, and using his the light of his phone , he saw his brother lying on the bed. There was blood at the back of his head. He did not see anything on the floor .He asked the wife whether she had money to take him to hospital. She said no . He then called reported to his mother to and his sister Grace .He later attended the post mortem on the 28th of May 2018 where the doctor said that the deceased had been hit at the back of the head.
3. PW 2 Kyule Mutuvi Mary, mother to the deceased told the court how his wife the first accused called her on the 21st may 2018 at about 2am and told her that Mumo her son had fallen and was injured .



- She went to the home in the morning and only found her grandchild one Ngina who told her that the first accused had hit Mumo with the door.
4. She testified that he had previously told her that his wife and daughter were giving him problems and she was aware that they were having family issues . She testified that when he reported this particular issues the family chairperson dismissed him due to his drunkenness.
  5. She told the court that on the material night she refused to go to the home of the deceased when the 1st accused called her because she was aware of their problems .
  6. PW3 Mutuku Mumo a child of the 1st accused and the deceased and a sibling of the 2nd accused
  7. ,testified how on the material night he was sleeping in the sitting room of their two roomed house with some of his siblings .He heard his sister the second accused making noise she was asking their father, the deceased if he had been sent to kill her . He woke up and found that the second accused was in their parents' room though she used to sleep in the sitting room with them .it was dark and he could not see very well but he heard her say that their father was bleeding. It was then that the two accused persons went and called the uncle who came back and said that their father was already dead .
  8. He testified that his sister the second accused used to live with an aunt away from home but that there was a day that she was at home and her father came at night while drunk and she started pointing a knife at him.
  9. These witnesses were heard by Ong'udi J. The rest were heard by Dulu J.
  10. PW4, N M was a minor aged 10 years at the material time, upon the conduct of voire dire was found intelligent enough to understand the need to tell the truth but not the importance of an oath and gave unsworn testimony.
  11. At first she could not recall what happened on the material night .Then she told the court that she woke up and found her father being cleaned of blood by her mother and her sister. she told the court that the father's blood stained clothes were removed and the following day they were washed. In the same breath said that her parents used to assault each other but that they loved each other she also said her sister once told her that she would kill their father. she said their father used to drink alcohol would come home at night but would be quiet.
  12. The judge determined that she should not be cross examined because she had given an unsworn statement
  13. PW5 Sabina Mukulu Mutuku testified that the deceased was her customer at Thome Bar at Thangathini. That on the material night of 20th may 2018 he visited the bar and took alcohol and the next day she heard that he was dead . She testified that when he came he ordered Moon walker Vodka drank it and then left, she told the court that he was not drunk when he came in and they did not talk much when he was drinking . She said he left at around 9:00 PM. She said that there were occasions when he would come after taking alcohol from other bars. That sometimes he would leave that bar and go take alcohol in other bars, but on this particular day she could not tell whether he had taken alcohol from another bar or whether he went and took alcohol in other bars after he left hers
  14. PW6 Alexander Kithula Munyao told the court that on the material night of May 20th 2018 He received a call from Mbuvi Mutuku informing him that Mumo Mutuvi had been injured and that he had fallen on a bottle which cut him .He proceeded to his house and found that there he was already dead .He told the Court that earlier that night he had met the deceased in a bar and he told him that he was having frictions with his daughter who had threatened to show him something he had never seen . When you went to the house he was told by Janet that the deceased had fallen on the stones that



- was used to close the door. He saw a big stone near the door He also attended the post-mortem .On cross examination he said that this was the first time that the deceased was telling him about the friction between him and his daughter.
15. PW7 Baetrice Kamende Mutuvi A teacher at Salama was the deceased's Sister . She told the court that on 18th of May 2018 he called her around 9:00 AM telling her that he was being tortured by his wife and daughter, the accused persons. she told him that she would make arrangements for them to have a discussion about their issues. He told her that his wife and the daughter assaulted him and denied him food and that the wife was denying him conjugal rights and forcing him to sleep on the floor, He further said that his wife had told this daughter the second accused that he was not
  16. her biological father. PW8 informed their mother who told her that she had informed the village elder and the assistant chief who had warned the wife and they had a sitting to discuss the issues So on this material night she said she was rang by her brother who told her that the first accused had gone .to his home to report that the deceased had been injured and was bleeding however the next day she got a report that the deceased had died .
  17. The following day she went home and she said she saw blood in a basin and a small stick that was blood stained. She identified the wooden stick in court. She said the clothes included a dirty pair of trousers which had blood stains and soil.
  18. It was her testimony that her brother had called her about three times in six months telling her that he had problems with his wife and daughter that his daughter had promised to stop the bad conduct
  19. . That thus daughter came with her mother when she was three years old but they had always called her their brother's daughter That her brother was doing casual works was to educate his daughter and did so up to form 4 thereafter she had bought her phone. That the girl became very complicated and she took her home to her parents. That the mother told her that the deceased was not her biological father . On cross examination she said that her brother told her he had reported to their village elder on the issues he had in his family . That he told her he was drinking alcohol to get peace and that meetings were held at the village elder's to resolve the problems and there were minutes of the same there .
  20. PW 8 was Dr Makau Alex a medical officer at Makueni referral hospital who produced a post-mortem report on behalf of Dr Emmanuel Loiposha who had gone for further studies in Cuba. He said the cause of death was severe head injury due to trauma leading to haemorrhagic shock.
  21. PW9 Rafael Kyengo Mativo received a phone call from his brother telling him that the deceased had died. He proceeded to the home where he found a crowd. He stood at the door and he was able to see the deceased lying partly on the bed. He then went and made a report to the chief. He did not know of any issues between the deceased and his wife .
  22. PW10 Margaret Mutua testified that she was a shopkeeper at UUMENI village and that the deceased person used to go to the shop to buy stuff. On 18th may 2018 the deceased went to the shop and ordered some beans some cigarettes and after paying he requested to use the shopkeeper's phone to call his sister. She gave him the phone and he walked out and then he came back and collected his items she said that was the last time she saw him alive.
  23. PW 11 no. 77961 CPL David Awino testified that on 21st may 2018 at 9:00 AM the report of the incident related to the deceased was made at the police station by one Alexander Kilula Munyao. The report was that the deceased had fallen on broken pieces of bottle which he had carried home and which had he injured him. The police officer booked the report and organized a visit to the scene where he proceeded with his colleagues . There they found a body lying on the bed with both legs touching the



- ground . He rang the DCIO to send a photographer to the scene and thereafter they took the body to the mortuary. The post-mortem was conducted and a report issued by the medical officer.
24. He said he recovered from the house a stick, and also collected the clothes of the deceased for further analysis.
  25. According to him on the night of 20th and 21st may 2018 the deceased arrived home while drunk, a quarrel ensued between him his for his wife and his daughter and his wife picked a stick and hit him on the head.
  26. It was his position that the children in the home witnessed the incident but they were threatened by their mother not to say that she and her daughter had done. That the accused persons came up with the story that they deceased had fallen on the broken bottles which story he found to be false because according to him the injuries then would have had to be on the face but not on the back of his head. He said the accused said she removed the bottles for the safety of the children.
  27. He also found out that earlier the deceased had reported to his sister and his mother about the threats from the two; his wife and the daughter. He produced a blood stained stick as the suspected murder weapon, and the clothes from the deceased. They were blood stained pieces of bed sheet He also made the exhibit memo and sent the suspected murder weapon, the samples from the deceased to the government chemist .
  28. He stated that the report from the government chemist indicated that the DNA found on the stick was of an unknown female person.
  29. That he found out that the relationship between the deceased and his wife was not cordial and the material time she had come to his home with three children born out a wedlock.
  30. On cross examination he said that he visited the scene and found that it had been disturbed. That he collected the stick because it was bloodstained and sent it to the government analyst. He said that the threats to the deceased were not reported because they were within the family. He did not know whether any report had been made to the area chief. He said the shirt that was recovered was blood stained but was wet and it was torn .
  31. The prosecution closed its case and via a ruling dated 20th September 2022 The honourable justice Dulu found that the accused persons had a case to answer to warrant their being put on the defence. By the time of the defence hearing he had been transferred and I took over the matter .
  32. Each of the accused persons made a sworn statement and did not call any witnesses.
  33. The first accused person told the court that the deceased left home on 20th may 2018 in the morning and never came back the whole day. That he came back around midnight he was drunk and was carrying a bottle a bottle of spirits or what she referred to as Pombe ya makali .
  34. In her testimony she described the events that led to the death of her husband as follows: that on the material night when he came he knocked on the door and she opened for him he said he would come in. She told him to lock the door. That he did not lock the door but instead just followed her inside . She said as he came into the house behind her hit his leg on a pole he had fixed to hold the roof near the door to the bedroom. As a result, he fell down at the same time pushing her in front, she fell down and hit the stool where she had placed the kerosene lamp. She heard him fall behind her , heard the bottle he was carrying break.
  35. When she fell she hit the stool where the lamp was, the lamp fell down the kerosene spilled and started a fire . From the light of this fire she saw where her husband had fallen. She went and lifted him and sat



- him on the bed . She put off the fire with water. It became dark in the room. She went to look for the torch but did not find it she woke up the children up to ask them for the torch. She also found another wick and put it in the lamp. She found that the matchbox she had was wet having been caught in the water that she used to put off the fire. She has her husband for a matchbox. He told her to check for one in his pockets. She said when she put her hands in his pocket they met with blood . She asked him where he was injured he said on the head, that when he fell he felt some pain on his head. She said on touching him she found a piece of glass which he pulled out and she saw that there was a hole on the side of the head and she took spirit and cleaned him she noted that the bleeding was not stopping. She put salt on the wound and the bleeding stopped.
36. He asked for cigarettes. She did not find them. He told her there was some tobacco ( kilaiku) in the house in the kitchen she said she could not find it and he said he was going to get it himself. She said he went to the kitchen and came back with it and he sat down. He smoked the tobacco and when he had finished how she asked him how he was feeling he said he was feeling okay and that they could go to the hospital the following day. He told her they could now sleep and he got into the bed and they began to talk she said they talked for about an hour and she told him to let her go lock the door. Before she went to lock the door she said he asked her to let him go and help himself outside. He got up he pulled the lesson she had tied around his head and that is when he fell down the second time. The children got up and picked him as he was bleeding she tried to talk to him but
37. he was not talking and she went to her mother in law who told her to wake up his brother. She went woke him up, that was PW1 and when he asked her whether she had money to take her husband to hospital and she said no he just told her he would go by but he never went. She said she waited thinking that he had going to look for a motor vehicle but around 4:00 AM the deceased . She called PW1 who said that his mother had stopped him from going to assist .that is when she told him that her husband had died and he went there to check. She sat till morning with her children and then went to the mother in law to report at the police station. She said that the pieces of bottle she had took taken them and put them aside for the safety of the children she denied using the piece of timber to hurt her husband and denied any struggles with her husband She said they had been married for 19 years and they had eight children that when he got married to him she had three daughters and that 2nd accused was one of them .
38. She stated that the pieces of bottle were not seen by other witnesses because she had removed them
39. She said that she heard the evidence of her children and none of them saw their pieces of bottle she said she had them say that she and her husband were quarrelling and she denied that there was any quarrel.
40. It was put to her that her children had testified against her and she said that their testimony was full of lies.
41. The second accused told the court that the deceased was her father and she denied the charges . That on the material night her father came home around midnight . She said she did not hear him come in but she just realized it was at home that her mother called her and asked her for their torch and when she lit their torch she saw that her father was bleeding from the head. She said she had surgical spirit which she gave her mother which she poured on the father's head and when she asked her father what had happened he told her to ask her mama .She said that he had tripped on the on a post and fallen near the store near the door. That they used salt and the spirit to stop the bleeding then he told her to go to sleep and then she heard her father leave then she heard them talking and about two hours later she had her mother screaming she went and found that her father had removed the lessso that was tying his head and he was bleeding. Her mother and their last born went to call the grandmother she continued using the spirit on the father's head and that her mother stayed for long. She came back with



- the uncle Gideon who found the father seated on the floor with a head touching the bed. He asked what had happened and then left and then their cousin Alexander also came and found them and it was Alexander who told him that their father had passed on and he left about 6:00 AM.
42. They learned that the report had been made to the police and police came around 11:00 AM .
  43. They were arrested on 26th of May 2018 She said that the evidence of PW7 was not true that she and her father had problems that she used to live with her aunt Kamende. That her father wanted to sell land to take her to school and she refused that it was that PW7 who was to buy the land and when she accused refuse the father to sale the land there were problems between her and PW 7 She testified that it was not her who had disagreed with her father but her sister by the name of Winfred
  44. .It is her testimony that when her mother woke up to ask for the torch she went to see her father he was seated on the bed .She was told by her mother what had happened .She said that Gideon found her inside the house and he found that the pieces of bottle have been removed She said she did not know whether it was the mother who hit the father on the head .
  45. At the close of the case for the defence counsel filed written submissions. For the for the accused persons it was submitted that the evidence adduced cannot support the charge of murder. It was submitted it that the state is required to prove the charge beyond a reasonable doubt for the accused persons to be convicted . That there was no evidence brought before the court to show the motive of the killing. Counsel queried why would they accused persons assault the deceased at the same time administer first aid? it was submitted that the first accused went and reported the
  46. incidents to her mother in law PW2 who directed her to PW1 It was submitted that the action of the accused to administer first aid and even to go call for help was not consistent with a person who was executing a murder plan that it is the conduct of PW1 and PW2 that ought to be frowned upon because they never went back to check what happened after they learnt of the incident that PW1 even after seeing that his brother was injured never bothered to make arrangements to take him to hospital he only asked the wife and when she said she did not have he disappeared
  47. It is further submitted that the narrative of alleged disagreements within the family was not substantiated and only amounted to suspicions that the two accused persons that committed their offense and this . it is now settled that suspicion however strong cannot sustain a conviction the defence relied on Joanne CHEBICHII SAWE versus Republic [2003] eKLR .
  48. It was further submitted that the deceased was a victim of his own conduct that was evidence that he used to drink a lot and on this particular day he was drunk as usual. It is submitted that a wholesome analysis of the whole evidence would point out that there was no proof of the murder charge. The court was urged to discharge them under section 322 criminal procedure code .
  49. So the issues for that determination are whether the prosecution has established the case beyond a reasonable doubt that the accused persons here in murdered the deceased .
  50. In order to prove the case the prosecution must establish one, that there was a dead person that that the death of that person was caused by the accused persons in an unlawful manner and with Malice aforethought.
  51. It is not disputed that the deceased died on the material night. Neither is it in dispute that he died in the presence of the accused persons and as a result of injury sustained in the house in his house in the presence of his family his wife his daughter A2 and other children.
  52. The case for the prosecution is that he was hit with a with a piece of stick at the back of his head by the accused persons and a sustained Injuries that caused his death.



53. The I.O collected the piece of stick from the House of the deceased and subjected the same to DNA examination , according to the DNA report or the report from the government analyst the DNA profile generated from the deceased nails and the stick were generated and tabulated and it was concluded that the DNA profile generated from the stick was from an unknown female origin.
54. Hence from the word go the suspected murder weapon was found not to have any connection with the deceased, and the injuries that led to his death .
55. The post-mortem report clearly indicates that the course of death was Severe head injury secondary to blunt force injury leading to severe haemorrhagic shock .
56. The only suspected murder weapon from the scene was excluded by DNA evidence, the question becomes then what caused the injury on the back of the head of the deceased that led to his death? . The accused persons gave an explanation.
57. The wife told the court how her husband came from his drinking spree and arrived at night And that while they were entering the house he stumbled on the pole he had fixed in the middle of the house near the bedroom door and fell down on this stone that was used to hold the door it was also her evidence that he was carrying a bottle which broke and he landed on some of the pieces , and whose pieces she took away.
58. The I. O dismissed this explanation from the accused persons by stating that one, upon visiting the scene he did not find any broken pieces of bottle in the homestead. Secondly that if indeed the deceased had fallen as explained by the accused he would have fallen on his forehead and not on the back, and three, that if he had tripped on the pole as alleged if he had tripped on the pole as alleged he would have fallen on the bed and not in the way that the accused persons had explained. He did not give any supporting evidence to support this, yet he said he photos of the scene taken. He did not produce the same.
59. The witnesses who were present in the house that night who testified were PW3 who woke up and only heard one of the sisters saying that the father was bleeding . He did not see what happened. He spoke of previous quarrels between his father and his sister and that on the night he had his sister asking whether his father had been sent to kill her and that is all. The other witness was the minor PW4 who said she woke up to find her father being cleaned of blood from the head by the mother and the sister. She did not know what had caused the bleeding.
60. It was the I.O 's evidence that on the material night there was a quarrel that turned physical between the deceased and his wife, that wife hit the deceased with a stick on the head. However, these children did not hear that quarrel. His explanation that they were threatened by their mother not to say anything remained an allegation, that was not even put to the witnesses.
61. The IO chose to go with the what he considered to be circumstantial evidence that one there was bad blood between the deceased and his wife over the children she had had out of wedlock, secondly the evidence of the sister PW7 who claimed that his brother was being mistreated by his wife and his children and that he was drinking out of frustration, and three that the deceased had made reports of this mistreatment and threats to him to the local administration .
62. Now while this could be true, that the deceased who was said to drink quite a lot and almost every day had issues within his family, something that even his mother testified to saying that she was aware that they were having problems, this evidence was not placed before the court in a manner that it would support a motive to kill the deceased . What would be the motive for the killing? If it was true that the wife was mistreating him, was that sufficient evidence to support a motive for murder? I find not.



- According to his sister PW7, he had worked to take his step daughter, the 2nd accused to school up to 4th form. What motive would she have to kill him?
63. The prosecution did not avail sufficient evidence to support a motive for the alleged killing. The evidence as presented by the prosecution showed that there were differences in the family but did not establish motive to kill the deceased. The minor testified to this, in her view the parents would insult each other, but she never witnessed anything beyond that. The sister to the deceased, and the mother knew of these quarrels but none testified that they were life threatening or that there was a basis for the murder. All the residents of the house on the material night did not hear any quarrel that night in that house.
  64. The prosecution did not produce photos of the scene to support the positions taken by the I.O. leaving this to be a case where the word of the I.O is pitched against that of the accused person. The I.Os position representing the case for the prosecution requires proof beyond a reasonable doubt.
  65. The accused persons did not have to say anything. Having said something then it is held up against the prosecution evidence and if it creates a doubt in the mind of the court then that doubt must be resolved in favour of the accused.
  66. In this case, there is the possibility that the deceased fell in his house and hit his head on the stone that was used to close the door. The possibility that the stick was used to hit him was ruled out as his DNA was not found on it. The police did not investigate alleged stone, for tell-tale evidence of recent contact with the head of the deceased, yet the I.O was aware of that story which he labelled as false.
  67. Well, the theory he put forward collapsed with the government analyst evidence. The accused person's defence sounded possible.
  68. I find that there is sufficient doubt that the accused persons did not kill the deceased person. I make a finding of not guilty and acquit each under s. 322 of the CPC.
  69. Each is to be set at liberty unless otherwise legally held.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH APRIL 2025**

**MUMBUA T MATHEKA**

**JUDGE**

Court: Assistant Chris Accused 1 Present

Accused 2 Present Kazungu for state Mutia for accused N/A

**SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA**

