



**Republic v Langat (Criminal Case 15 of 2018)  
[2025] KEHC 6198 (KLR) (19 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6198 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE 15 OF 2018  
JK NG'ARNG'AR, J  
MAY 19, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**WESLEY CHERUIYOT LANGAT ..... ACCUSED**

**JUDGMENT**

**The Charge**

1. Wesley Cheruiyot Langat (Accused) was charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars were that on 2<sup>nd</sup> September 2018 at Kapsimotwa Sub-Location in Bomet Sub-County within Bomet County, he murdered Judy Chemutai Bii.
2. The Accused took plea before this court (Muya J.) on 20<sup>th</sup> September 2018. The case proceeded to trial where the Prosecution called ten (10) witnesses. Muya J heard five prosecution witnesses, Dulu J. heard the 6<sup>th</sup> and 7<sup>th</sup> Prosecution witnesses and Korir J. heard the 8<sup>th</sup> Prosecution witness and the Accused's defence before I took over the case after the Accused had closed his defence.
3. I now proceed to summarize the Prosecution case and the Defence.

**The Prosecution Case**

4. The Prosecution stated that the Accused and the deceased were lovers who would quarrel frequently. That on the material day, the deceased and the Accused took alcohol, got drunk and the deceased proceeded to her brother's home (PW2) where she stayed for about 10 minutes and then went to her other brother's home on foot. The Prosecution further stated that the deceased was found naked in a shamba the following morning by Judy Tonui and Carren.



5. It was the Prosecution's case that the deceased was still breathing when she was found in the shamba. That the deceased was taken to her brother's (PW2) house where she passed away.
6. No. 110544 PC Victor Katuta (PW8) who was the Investigating Officer stated that he recovered a red African print skirt, a stripped handkerchief, a blood-stained blue jeans and pink underwear from the Accused's house and the same were presented to the Government Analyst (PW7) for forensic examination.
7. Dr. Richard Kimutai Langat (PW7) determined that blood-stained handkerchief had the DNA profiles of both the deceased and the accused. He further determined that the blood-stained jeans and the pink underwear had the DNA profile of the deceased.
8. Dr. Ronald Kibet (PW6) conducted a Post Mortem examination on the deceased and determined the cause of death as closed head injury secondary to blunt object.
9. After the Prosecution had wrapped up their case, this court ruled on 28<sup>th</sup> September 2021 that the Accused had a case to answer and put him on his Defence.

### **The Defence Case**

10. The Accused (DW1) gave sworn testimony and denied committing the offence. DW1 testified that on the material day, he found the deceased slightly drunk and he gave her money to buy food. That she went and bought food, came back and they proceeded towards Kapsimotwa.
11. It was the Accused's case that he bought two beers and they proceeded towards their home. That along the way, they found the deceased's mother (PW5) and sister-in-law (PW3). It was his further case that the deceased gave her what she had bought and she left with her mother and sister. That he was informed in the morning that the deceased had been found dead on the road.
12. The Accused stated that he was with the deceased on the material day but parted ways later. That she left the deceased with her mother and sister-in-law at 8 pm on the material day. He also stated that he had lived with the deceased for over 8 years and that she had all her clothes in his house.
13. The Accused closed his case without calling any witness.

### **Ingredients of the offence**

14. The offence of murder contains two elements, the actus reus encapsulated in Section 203 of the [Penal Code](#) and the mens rea provided for in Section 206 of the [Penal Code](#).
15. Section 203 of the [Penal Code](#) provides: -  
Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
16. Section 206 of the [Penal Code](#) provides: -  
Malice aforethought shall be deemed to be established by evidence proving anyone 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.

17. For the offence to be established, the Prosecution must prove the above elements beyond reasonable doubt. The Court of Appeal in *Chiragu & another vs Republic* (Criminal Appeal 104 of 2018) [2021] KECA 342 (KLR) (17 December 2021) (Judgment) held: -

“The prosecution in an information of murder has the singular task of proving the following three ingredients in order to secure a conviction; that the death of the deceased occurred; that the death was caused by an unlawful act of commission or omission by the accused and that the accused had malice aforethought as he committed the said act.”

### **The fact of death**

- 18. Khalif Cheruiyot Kirui (PW1) who was the area Assistant Chief testified that he found the lifeless body of the deceased in Josiah’s (PW2) house. Josiah Kiplangat Kiprono (PW2) testified that the deceased’s body had head injuries, bruises on the neck, had blood oozing out and appeared to have been strangled.
- 19. The above testimony was corroborated by the Investigating Officer (PW8) who testified that he found the deceased’s body in PW2’s house. That he documented the scene and the body was moved to Longisa Hospital Mortuary. Dr. Ronald Kibet (PW6) testified that he conducted a Post Mortem Examination and PW6 produced the Post Mortem Report as P. Exh 4. Additionally, the deceased’s brother (PW2) testified that he identified the deceased’s body for the purpose of the Post Mortem Examination.
- 20. It is my finding from the above evidence that the death of the deceased was established. Indeed, the fact of death was not contested.

### **Cause of death**

- 21. Evidence on the cause of death was given by Dr. Ronald Kibet (PW6). He testified that upon examining the deceased body, he found the deceased had blood oozing from her right eye, bruises on the face, 1 cm count wound on the forehead, bruises on her left upper arms, left chest region and left side of her waist. PW6 further testified that there were fingernail marks on the deceased’s left neck region and strangulation marks on her front left neck. It was PW6’s professional opinion that the cause of death was closed head injury secondary to blunt object.
- 22. When PW6 was cross examined, he reiterated that the cause of death was closed head injury secondary to blunt object and that there was attempted strangulation.
- 23. As earlier stated, PW6 produced the Post Mortem Report (P. Exh 4). I have looked at the Post Mortem Report and I have noted that the findings contained in the Post Mortem Report mirrored the testimony of PW6. It is my finding therefore that the cause of death was a closed head injury secondary to blunt object. The death was clearly unlawful.



## Whether the Accused caused the death of the deceased

24. From the outset, there was no eye witness account on how the offence was committed. The Prosecution case as presented relied entirely on circumstantial evidence. In the case of *Ahamad Abolfathi Mohammed & another v Republic* [2018] KECA 743 (KLR), the Court of Appeal held: -

“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, C.J. 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.’”

25. In *R vs. Kipkering Arap Koske & Another* (1949) 16 EACA 135, it was held that: -

“In order to justify circumstantial evidence, the inference of guilt, and 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.”

26. It was the Prosecution’s submission that there was circumstantial evidence that pointed to the fact that the deceased came into contact with the deceased before her demise. That pursuant to section 111(1) of the *Evidence Act*, the Accused had the burden of explaining how he came into contact with the deceased but failed.

27. In analyzing the evidence, it was an undisputed fact that the Accused and the Appellant were together on the material day during the day. The point of divergence was how the each of them left the deceased on the material day. The deceased’s mother (PW5) testified that after meeting the deceased and the Accused quarrelling along the road, she decided to take the deceased to her brother’s (PW2) home where she left her. Josiah Kiplangat Kiprono (PW2) testified that his mother (PW5) brought the deceased home and the deceased appeared drunk. PW2 further testified that the deceased stayed for about 10 minutes and left heading to her other brother’s house on foot. Winnie Chebet Langat (PW3) testified that she was the deceased’s sister-in-law and wife to PW2. PW3 corroborated PW2’s evidence that the deceased stayed in their house for 10 minutes and left. All these testimonies regarding the deceased leaving PW2’s and PW3’s house at 8 pm were uncontroverted.

28. On the other hand, the Accused admitted that he was with the deceased but left her in the hands of her mother (PW5) and her sister-in-law (PW3). However, when the Accused was cross examined, he testified that the deceased fell on the way. When he was re-examined, he testified that he only differed with the deceased on the route to follow and that the deceased fell on the way before they branched to PW5’s house. This evidence in my view is contradictory. I say so because it was evident from the evidence of PW3, PW5 and the Accused that they all met along the way and the deceased left in the company of PW3 and PW5, a fact that has been admitted by PW3, PW5 and most importantly the Accused. The question that this court asks itself is the connection between the above event and the



deceased falling. Could it be an attempt to explain the cause of death of the deceased or could it be a guilty mind? This could be answered in the succeeding paragraphs.

29. No. 110544 PC Victor Katuta (PW8) who was the Investigating Officer testified that he recovered a blood-stained skirt, blood-stained handkerchief, blood-stained blue jeans and a pink underwear from the Accused's house. He produced them as P. Exh 6d 5a, 6b and 6c respectively. Richard Kimutai Langat (PW7) testified that he received the aforementioned exhibits alongside a blood sample from the deceased and the Accused for forensic analysis.
30. PW7 testified that upon forensic analysis, he found the blood-stained handkerchief (P. Exh 5a) to have DNA profiles of both the deceased and the Accused. PW7 further testified that the blood-stained blue jeans (P. Exh 6b), pink underwear (P. Exh 6c) and blood-stained skirt (P. Exh 6d) had the deceased's DNA profile. PW7 produced the Government Analyst Report as P. Exh 6. I have looked at the Government Analyst Report and I have confirmed that it mirrored PW7's testimony
31. What then was the link between the exhibits above and the Accused? When Josiah Kiplangat Kiprono (PW2) was cross examined, he testified that the following morning, the Accused had worn a blood stained trouser. This was corroborated by Winnie Chebet Langat (PW3) and Tabutai Chesang (PW5) who testimonies remained uncontroverted after cross examination.
32. Flowing from the above, it is clear to me from the above, that the blood-stained jeans (P. Exh 6b) linked the Accused to the deceased as it had the deceased's blood and it was found in the Accused's possession. This link demonstrated the fact that the Accused and the deceased were in close contact before the deceased's death thereby placing the Accused at the scene. It is my finding therefore that the Accused caused the unlawful death of the deceased.

#### **Whether the Accused acted with malice aforethought.**

33. I have already set out the circumstances under which malice aforethought may be inferred under section 206 of the *Penal Code*.
34. The Court of Appeal in *Roba Galma Wario v Republic* [2015] KECA 521 (KLR) held: -

“For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”
35. Similarly, the Court of Appeal in *Waweru vs Republic (Criminal Appeal 98 of 2020)* [2023] KECA 622 (KLR) (26 May 2023) (Judgment) held: -

“In the case of *Nzuki v Republic* [1993] eKLR, this court defined malice aforethought as:  
“...a term of art and is either an express intention to kill, as could be inferred when a person threatens another and proceeds to produce a lethal weapon and uses it on his victim; or implied, where, by a voluntary act, a person intended to cause grievous bodily harm to his victim and the victim died as the result. See the case of *Regina v Vickers*, [1957] 2 QB 664 at page 670. An intention connotes a state of affairs which the person intending does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition. See the case of *Conliffe v Goodman*, [1950] 2 KB 237.”



In the same case, the court went on to state:

“Before an act can be murder, it must be aimed at someone and in addition it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused:

- i. The intention to cause death;
- ii. The intention to cause grievous bodily harm;
- iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from these acts, and commits those acts deliberately and without lawful excuse the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not and in none of these cases does it matter that the act and the intention were aimed at a potential victim other than the one who succumbed.

Without an intention of one of these three types, the mere fact that the accused’s conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder....” (Emphasis added)

36. The above provision of the law and authorities were self-explanatory. The Prosecution had to prove that the Accused had to prove that the Accused had malice when committing the offence. Having gone through the entire record, I find no such evidence. I therefore find that the ingredient of malice aforethought was not proven beyond reasonable doubt.
37. In the end, I apply the provisions of section 172 of the [Criminal Procedure Code](#) to substitute the charge of murder with that of the lesser charge of manslaughter.
38. The Accused is convicted of the offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).

**JUDGEMENT DELIVERED, DATED AND SIGNED THIS 19<sup>TH</sup> DAY OF MAY, 2025.**

.....

**J.K.NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of Mr Njeru for the state and Ruto holding brief for Kipnetich for the Accused. Siele/Susan (Court Assistant).

