



**Republic v Okuto (Criminal Case E011 of 2020)
[2025] KEHC 6829 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6829 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E011 OF 2020
WM KAGENDO., J
MAY 15, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEOFFREY OKUTO ACCUSED

JUDGMENT

1. Geoffrey Okuto was initially charged alongside Hon. Aisha Jumwa who was the second accused person in the information dated 21/12/2020. Three witnesses gave evidence and then vide a letter dated 15/12/2022, the DPP forwarded a request to withdraw the charges against Hon. Aisha Jumwa under Section 87(a) of the *Criminal Procedure Code*. She was to record a statement and testify as a prosecution witnesses.
2. The court granted the request, and the information dated 21/12/2022 was amended. The remaining accused person was then charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that; on the 15 th day of October 2019 at Pendurani, Ganda Ward, Malindi in Kilifi County, Geoffrey Okuto murdered Ngumba Jola.
3. The offence occurred on the eve of the by-election for the Gamba Ward which was set on 16/10/2019.
4. Politics played a key role during the incident and even in court, it was alleged that the charges were politically instigated. A total of twelve witnesses testified in the prosecution case whilst the accused person gave his own defence.

The Law

5. Article 26 of *the Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by *the Constitution* or written law.



6. Section 203 of the *Penal Code* gives the elements of the offence as follows: - “203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
7. In the case of Republic v W.O.O. [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) the elements of murder were explained, as guided by the Court of Appeal in the case of Anthony Ndegwa Ngari vs Republic [2014] eKLR, as follows:

“For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are:

 - (a) the death of the deceased and the cause of that death;
 - (b) that the accused committed the unlawful act which caused the death of the deceased and
 - (c) the intention.

Analysis

The Death and Cause of death

8. The Government Pathologist, Dr. Johansen Oduor gave evidence as PW 8. He produced the police 23A – Postmortem Form dated 19/10/2019. It shows that the postmortem was conducted at the Malindi hospital, and the adult body had been refrigerated.

He opined that the cause of death was chest injury due to gunshot fire of low velocity.

Firearm

9. Basically, the death and that it was caused by a firearm is not contested. What the accused person disputes is that he is the one who discharged the fatal bullet.

Was the accused person responsible for the death?

10. On the turn of events of that fateful day, we have two versions of events even from amongst the prosecution witnesses. That is the version of the people who were initially present at the homestead where the shooting occurred and the version of those who arrived later with Hon Jumwa.
11. As earlier noted, the events took place against a political background. The scene was the homestead of one Hon. Reuben Katana – Mwamuwe – the ODM candidate in the by-election. The other candidate was Abdilrahiman who was then an independent candidate but aligned to UDA, and the one who was being supported by Hon. Aisha Jumwa.
12. According to PW 1 – Alfred Jola Kahindi, PW 2 -Kabunde Joseph Chonjo and PW 9 – Sammy Nyundo Mwamule, the gathering was organized for sensitization of the agents who were to monitor the by-election on behalf of the ODM party.
13. The trainers were Maureen Arua Alago (PW 10) and Michael Otieno Nyagaya PW 11 from the ODM Secretariat in Nairobi. According to these witnesses, all was well until some police officers arrived, and shortly thereafter the Hon. Aisha Jumwa’s team arrived.
14. The police officers who testified were PW 4, PW 5 & PW 7 No. 233592 – Solomon Kiprotich Kosgei. No. 112290 PC Nicholas Mbithe, Snr. Sgt. Jullius Maina.



15. Their version of events was that the sub-county commander instructed them Mr. Wambugu to respond to a scene of an unlawful gathering at the homestead of Reuben Mwawile. They proceeded there and found a gathering of about five hundred people being addressed by ODM Officials.
16. While there, that was when Hon. Aisha Jumwa and her personal aide and other people arrived, and she stormed into the meeting while demanding to know why it was going on. According to both sides, which is the group on the ground – represented by PW 1, PW 2 and PW 9, and the police officers PW 4, PW 5, and the arrival of Hon. Jumwa was the turning point of the day.
17. Witnesses PW 1, PW 2 and PW 9 point an accusing finger at Hon. Jumwa and her group as the ones who disrupted the meeting and pelted them with stones and other crude weapons. The police officers and the accused person, on the other side, testified it is the crowd on the ground which started pelting Hon. Aisha Jumwa and her team with stones and sand.
18. All in all, the situation deteriorated into chaos and anarchy. There were noise, violence and people were running helter-skelter and stones and chairs being thrown all around. It is in this commotion that some firearms were discharged.
19. PW 4 testified that he had ceska pistol and he fired one round of ammunition into the air. That Senior Sgt. Maina had a ceska pistol and he fired one round of ammunition into the air. PC Nicholas had an AK47 rifle, and he fired one round of 7-62 Special ammunition into the air. According to the other witnesses about 10-gunshots were heard.
20. From the twelve prosecution witnesses, it is only PW 2 who testified that he saw the accused person shooting at the deceased person. This is at page (96 B) of the handwritten proceedings. He said- The crowd started throwing sand at each other. The coconut husks were also pelted. The commotions made one police officer fired (sic) in the air to scare the crowd. It is Afande Kosgei, and the other Officer shot in the air.
21. After the shooting in the air, some people left running for their homes. I remained at the scene. After the officer shot in the air, Hon. Aisha’s bodyguard also produced pistol and shot two times. The third shot hit a member of the public. I heard people shout ‘ameua,” “ameua.”
22. I have reproduced this evidence verbatim because of what transpired during the cross examination of this witness. At page 99 of the proceedings PW 2 testified Jeff shot in the air.... Then – Both Fondo and Jeff produced pistols, and it is Jeff who fired in the air.
23. Mr. Omare and Mr. Wambui for the accused person then questioned the witness further and it turned out that he had recorded two statements. The first one on 20/10/2019 and then a further statement on 15/11/2019.
24. It emerged at (page 103) that in the statement recorded on 20/10/2019, he indicated that the accused person shot twice, then on 15/11/2019, he wrote the statement indicating that the accused person shot three times. So, clearly this eyewitness account was not credible.
25. We now had to turn to the forensic evidence.
26. PW 3 reconstructed the scene, but according to Mr. Magolo, the advocate for the accused person, in his submission, the reconstruction cannot be accurate as PW 3 was aided by incredible people especially PW2.
27. Mr. Magolo highlighted the remarks made by both PW 1 and PW 2 to the effect that Hon. Aisha Jumwa, on arrival at the scene, scolded the police officers. According to PW 1, Hon. Aisha said she



- had sent the officers to do the job and since they were unable, she had arrived to do it herself. PW 2 added the twist in that she is said to have said that she had paid the officers to go disrupt the meeting and they had let her down.
28. Mr. Magolo contrasted the evidence of both PW 1 and PW 2 with that of PW 4, CIP Kosgei who said that they had been instructed by their boss and it is the crowd which attacked Hon. Jumwa first.
 29. The forensic witnesses were PW 3 and PW 6 – Mr. Alex Mutindi Mwandawiro. PW 6 was the Forensic Ballistics Lab DCI.
 30. According to the Investigating Officer, they visited the scene thrice to look for spent cartridges. On 16/0/2019, they recovered three cartridges of 9mm – ext. – PEXT 2.
On 19/10/2019, 3 more spent cartridges – 2 of them 9mm – calibre and one 1.7.62 mm special calibre were recovered.
 31. PW3 testified that the police used bullets which had red colour on the percussion cap whilst the civilian firearms had green colour on the percussion cap. He said that from the scene reconstruction, the spent cartridge with a green cap was close to the place where body was and therefore – could be the one that killed the deceased. It is noteworthy that the bullet that killed the deceased exited, and it was not recovered and there was no shrapnel for comparison purposes.
 32. The accused person in his defence admitted that he was at the scene, he was armed, and he discharged his firearm. He however stated that he shot in the air. He denied shooting at anyone. He also pointed out that the bullets of the firearm that he had do not ordinary exit the object and if it were his gun, the bullet would have been found in situ. Further the projection of the bullet in the body of the deceased shows someone who was at a lower place and there was ricocheting time he bent down. The ballistic report also indicated that the injury was from a direct hit and not as a result of any ricochet.
 33. From all the above, we note that No one saw the accused person discharge his firearm and shoot at the deceased or into the crowd. PW 2's evidence was not credible as he recorded two contradictory statements. Even in court, he talked of two gunshots. He then later recalled a third one.
 34. Further ,PW 10 stated that when the gunshots were heard, she was with the accused person who was trying to calm Hon. Aisha down after, she Hon. Aisha slapped her (PW10). That the accused person was urging her not to agitate the said Hon. Aisha further as she was drunk. This was also confirmed by PW 11 who said that Hon. Jumwa punched him, and the accused person tried to restrain them by telling them that something was disturbing the Mheshimiwa.
 35. PW 10 was very clear that they heard that someone had been shot when they were with the accused person and Hon. Aisha Jumwa. PW 11 also said that it was after this that the accused person went to the car to pick his gun.
 36. Therefore , the only evidence that would link the accused person to the shooting is the colour of the cartridges and the fact that one was said to have been found near where the body of the accused lay.
 37. We however note that the scene was disturbed and in particular PW 7 testified that the injured person was moved after the shooting. PW7 said the victim was shot at a corner of the house. That he was then brought to where they were so that he could be assisted to get to hospital. This is at page 179 and 180 of the handwritten proceedings. He repeated this even under cross examination.
 38. We also have the evidence of PW 2, that he picked one spent cartridge and gave it to then William Baraka Mtego. He identified it as PEXT. 12. This cartridge was not examined nor linked to any of the guns which were fired that day.



39. From all the above , we do not have either direct or circumstantial evidence linking the accused person to the death of the accused. We must also bear in mind that the standard of proof in such as case is that of beyond reasonable doubt and in this case, the prosecution fell short.
40. As earlier mentioned, the elements of murder are:
- a) the death of the deceased and the cause of that death;
 - (b) that the accused committed the unlawful act which caused the death of the deceased and
 - (c) the intention.
41. Since it is not proved that the accused person committed the unlawful act which caused the death of the deceased, we need not go into proving intention.

Conclusion

42. The accused person is therefore acquitted of the charge of murder contrary to section 203 as read with 204 of the penal code.

It is so ordered accordingly.

JUDGMENT DELIVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 15TH. DAY OF MAY , 2025.

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HON. LADY JUSTICE W. M. KAGENDO

(JUDGE)

HIGH COURT OF KENYA AT MOMBASA (CRIMINAL DIVISION)

In the presence of:

The accused person and his advocate Mr. Magolo .

M/s. Bebora, Court Assistant. Mr. Ngiri... State Counsel.

SIGNED BY: HON. LADY JUSTICE WENDY MICHENI

