



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mboggo & others (Criminal Case 1 of 2014)
[2025] KEHC 12898 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 12898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 1 OF 2014
WM KAGENDO., J
JUNE 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SIDI MENZA MBOGO & OTHERS ACCUSED

JUDGMENT

1. This matter comes before me for judgment following a full trial in which six accused persons stand charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the offence allege that on the 13th and 14th day of August 2013 at an unknown place within Kilifi County, the accused persons jointly murdered Moses Tuva Menza.
3. The case has been protracted, spanning several years with numerous mentions, bail applications, and witness testimonies.
4. Having carefully considered all the evidence adduced, the submissions of counsel, and the applicable law, I now render my judgment.
5. The prosecution's case rested primarily on four witnesses whose testimonies I shall summarize in turn. The first prosecution witness, Riungu Kimathi Gilbert, testified as a businessman who had entered into a land transaction with Kadzo Menza, the mother of both the deceased and the first accused.
6. His evidence established that there existed a contentious land dispute within the family, as the deceased had objected to this sale of family land. While PW1 confirmed the presence of several accused persons during these land dealings, he notably stated that he had no knowledge of their involvement in the alleged murder and could not connect them to the death.
7. Hellen Menza, the deceased's daughter, provided crucial testimony regarding the events surrounding her father's disappearance and subsequent death. She recounted in detail how her father had left home



- on the morning of 13th August 2013 to consult his lawyer regarding the ongoing succession dispute, carrying with him important documents relating to the family land.
8. His uncharacteristic failure to return or communicate raised immediate concerns. After extensive searches, his body was eventually discovered at the Coast General Hospital mortuary on 11th September 2013, bearing severe injuries to the head and neck.
 9. PW2's testimony sought to establish motive by detailing a violent altercation that had occurred months earlier between the deceased and some of the accused over the disputed land.
 10. The prosecution's case suffered a significant setback with the testimony of Juma Nzai Ruwa, the village elder who was declared a hostile witness. His retraction of his initial police statement, which had allegedly implicated the third accused in arranging transportation on the day of the murder, substantially weakened the prosecution's narrative.
 11. Despite being given opportunities to reconsider his testimony, PW3 maintained his position that he had merely assisted the third accused in calling a motorcycle taxi without knowledge of any connection to the alleged crime.
 12. The deceased's widow, testifying as PW4, corroborated much of PW2's account while adding further details about the recovery of the deceased's personal effects from the first accused's property. Her testimony included allegations from an unnamed informant regarding the circumstances of the murder and the disposal of the body.
 13. However, these allegations remained uncorroborated as the informant was not called as a witness.
 14. The defense case, while not calling any witnesses, effectively challenged the prosecution's evidence through rigorous cross-examination.
 15. Counsel highlighted several critical weaknesses in the prosecution's case, including the absence of any eyewitness to the alleged murder, the lack of forensic evidence connecting any of the accused to the crime scene, and the heavy reliance on hearsay evidence from an informant who never testified.
 16. The defense also pointed to the complete absence of evidence against the fourth and sixth accused persons.
 17. In evaluating the evidence before me, I have been mindful of the fundamental principles governing criminal trials. The prosecution bears the entire burden of proving the accused's guilt beyond reasonable doubt, as established in the seminal case of *Woolmington v DPP*.
 18. Where the case rests on circumstantial evidence, as this one largely does, the court must be satisfied that the evidence forms an unbroken chain pointing conclusively to the guilt of the accused, following the principles set out in *R v Kipkering Arap Koske*.
 19. Applying these principles to the present case, I find that while the prosecution has satisfactorily established the fact of death and the existence of malice aforethought through the post-mortem evidence, it has failed to prove the crucial element connecting the accused persons to the murder.
 20. The evidence regarding motive, while establishing family tensions over land, does not in itself prove commission of murder. The recovery of the deceased's belongings, while suspicious, does not directly implicate any accused in causing the death.
 21. The informant's allegations remain uncorroborated hearsay. Most significantly, the retraction by PW3 has left a critical gap in the prosecution's narrative.



22. In criminal cases of this gravity, where the liberty and reputation of the accused are at stake, the court must be particularly cautious not to convict on the basis of suspicion, however strong.
23. The evidence presented, while raising questions about the circumstances of the deceased's death, does not meet the high standard of proof required in criminal cases. There remain reasonable doubts that prevent me from safely concluding that any of the accused persons participated in the alleged murder.
24. Accordingly, I find that the prosecution has not proved its case against any of the accused persons beyond reasonable doubt. I therefore acquit all six accused persons under Section 322 of the Criminal Procedure Code.
25. The bail terms for those who had been released on bond are hereby discharged 26.

**DATED AND DELIVERED AT MOMBASA THIS 27th DAY OF JUNE 2025 WENDY KAGENDO
JUDGE**

**IN THE PRESENCE OF MR SIRIMA FOR THE STATE MS OTIENO FOR THE ACCUSED
PERSONS BEBORA COURT ASSISTANT**

**SIGNED BY: HON. LADY JUSTICE WENDY MICHENI
THE JUDICIARY OF KENYA.**

