



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Makheti (Criminal Case E026 of 2021)  
[2025] KEHC 8624 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8624 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL CASE E026 OF 2021**

**AC MRIMA, J**

**JUNE 20, 2025**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**DAVID WANYONYI MAKHETI ..... ACCUSED**

**JUDGMENT**

**Introduction**

1. David Wanyonyi Makheti the accused person herein, was 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 are that; on 16<sup>th</sup> day of February 2021 at Big Tree area in Kiminini sub county location, Kiminini Sub County within Trans-Nzoia County jointly with others not before Court murdered Geoffrey Wanyonyi.
3. The accused persons pleaded not guilty.
4. At the close of the prosecution's case, a prima facie case was made out against the accused. He was placed on his defence.

**The Prosecution's case**

5. Nickson Wafula was PW1. It was his evidence that he is a Bodaboda rider. On 16<sup>th</sup> February 2021 at about 8PM, he was heading home from work with Bukpa, another bodaboda rider.
6. On reaching the area called Big Tree, he saw two people. One was standing and the other one was seated. The one on the ground was bleeding. He requested to be taken to hospital.
7. It was his evidence that they put him in Bukpa's motor bike and took him to hospital. As they were leaving the hospital, they were told that the deceased had died.



8. He testified that when they were leaving the scene, the accused came and started beating Wilson Simiyu who had just arrived there. He stated that he went with both the accused and the deceased to hospital but Wilson Simiyu did not accompany them.
9. He stated that they were four who went to the hospital. He claimed that they found two people at the scene, the accused and the deceased. The deceased was bleeding from the chest. He did not say anything.
10. On cross-examination, he stated the he knew the accused before the incident. He used the motorbike headlight and on stopping he requested him to take the deceased to the hospital. He stated that he did not know what had happened.
11. It was his evidence that the accused did not have any weapon. The deceased was bleeding from the chest area and his clothes were blood soaked.
12. He further testified that he knew Wilson before the incident since he was a bodaboda rider as well. He stated that he arrived first at the scene and Bukpa also stopped. He claimed that Wilson arrived and the accused started assaulting him with kicks and punches.
13. He stated that the accused was holding the deceased on the motorbike and he left the deceased and started beating Wilson. It was his position that he did not know what had caused the death of the deceased and did not hear any screams from the scene.
14. Wilson Simiyu was PW2. It was his evidence that he is a bodaboda rider from Big Tree, Kiminini. On 16<sup>th</sup> February 2021, he was in his house when he heard screams from the road. He went there and saw two motorbikes. Bukpa, Bakio and the accused were on the motorbike. He stated that PW1 was on another motorbike and he was beaten by the accused for reasons he did not know and he (the accused) then ran away.
15. On cross-examination it was hie evidence that on rushing to the scene upon hearing screams he saw two motorbikes and the accused, known by the nickname ‘madvd’ started to attack him.
16. He stated that there were four people at the scene and when he reached there, they became five. He claimed that there was moonlight and the motorbike’s headlight was on. He stated that he had not spoken a word before the accused started assaulting him.
17. He asserted that he did not know what had happened and that the deceased could have been hit by a car. He stated that the deceased was seated on the motorbike with the accused.
18. Patrick Wanyama Kakai was PW3. He stated that the deceased was his son. It was his evidence that on 23<sup>rd</sup> February 2021, he went to Kiminini Cottage Hospital to identify and to witness the Postmortem of the deceased. He stated that the deceased had been stabbed on the chest with something like a piece of metal.
19. On cross-examination, he stated that he knew the accused as friend to the deceased. He stated that he is the one who called him after the incident. He did not know the wife of the accused but claimed to have met her once. He stated that the said wife did not want the accused to relate with the deceased.
20. He testified that the accused is the one who came to pick the deceased from home and he never returned. He claimed that the accused is the one who killed the deceased. He however admitted that he neither knew nor witnessed what had happened.
21. Philip Waswa Mutama was PW4. He stated that he is a Bodaboda rider and lives within Big Tree area. It was his evidence that on 16<sup>th</sup> February 2021, at bout 8PM he was at home when one Nixon came and informed him that his brother had been stabbed at the Centre.



22. He accompanied him to the scene and on arrival, the deceased was injured. He was rushed by another bodaboda rider to Ndalu Hospital but was pronounced dead on arrival. He stated that he reported the matter to Big Tree Police Station.
23. It was his evidence that he met several people at the scene including Robert, Nixon and David and many other people came later.
24. On cross-examination, he stated that he knew the accused person whom he said was very close friend of the deceased. He did not know of any differences between them.
25. It was his evidence that he was called by Nixon about the incidence and on reaching the scene there were many people among them the accused. He stated that he had no idea what had happened and does not know who had stabbed his brother.
26. Robert Chaprukha Mauyo was PW5. He stated that he lives in Big Tree and is a pick-up driver. It was his testimony that on 16<sup>th</sup> February 2021, he was seated at the centre seated outside a bar having his drinks. He saw the accused, a neighbour of his, enter the bar. Shortly, the accused left with three male friends and two ladies. They greeted him and went towards the road.
27. It was his evidence that the accused then returned into the bar shortly, went inside and came out. He asked for a lift in his vehicle to where his friends were. He dropped him off and returned to the bar and thereafter left to his house.
28. He testified that he later received a call from a neighbour that the deceased had been stabbed and had died. He accompanied the village chairman to the hospital where he found the deceased lying on a bed, dead.
29. On cross-examination, he asserted that of the five people that left the bar, he only knew the deceased and the accused. It was his position that there seems to have been no problem when the five left. It only was the accused who returned to the bar and he later dropped him off to join his friends. The accused alighted just next to where the deceased was, in the company of one of the ladies. The other two were there and they all were alive when he dropped the accused.
30. It was his case that he did not know what happened when he later. He was categorical that he did not know who injured the deceased.
31. Dr. Dennis Nanyingi was PW 6. He stated that he is a Senior Medical Officer attached to Kitale County Referral Hospital having graduated from Kenyatta University in the year 2014.
32. It was his evidence that on 23<sup>rd</sup> February 2021, he conducted a post mortem on the deceased upon the Patrick Wanyama (PW3) and Risper Mugundo identifying the body.
33. He testified that externally, the deceased had a wound on anterior chest measuring 1 cm located lateral to the left side of the 1<sup>st</sup> and 2<sup>nd</sup> ribs of the chest.
34. He stated further that internally, the surface wound had a downward and inward inclination and a pool of blood of more than 1 ½ litres on the chest cavity.
35. He opined that the cause of death was penetrating chest injury hematoma secondary to assault. He produced the Postmortem Report as PExh.1.
36. On cross-examination, he stated that there was no struggle. The wound was only one. He claimed that the injury could not have been self-inflicted since it was at the back of the shoulder.



37. No. 88268 CPL Faith N. Kishoin was PW7. He recalled that on 17<sup>th</sup> February 2021, he was on duty when the DCIO to investigate herein of suspected murder. He commenced investigations and established that the deceased, the accused a person known as Sam and others two ladies were in a drinking spree in a Shaggs Pub in Big Tree Trading Centre.
38. He stated that the 5 people then left the pub but the deceased and the accused returned to the pub where the accused entered and the deceased remained outside.
39. It was his testimony that the deceased followed the ground that had left and about 5 minutes later, the accused came out of the pub and found PW5 who had been taking his drinks outside. He requested that he be taken to where the rest were. The accused entered PW5's car and he was taken to where the rest were, a distance of about 100M.
40. It was his evidence that shortly afterwards, PW2 heard screams from the scene. He went there but the accused beat and chased him away. He testified further that PW1 narrated how he was on his way home with another rider when on reaching at the scene they were stopped by the suspect. The deceased was lying down profusely bleeding.
41. It was his evidence that the suspect asked PW1 to take the deceased to a nearby Chemist but since it was close, they rushed him to Ndalu Health Centre. It was is evidence that PW1 returned to the scene and was yet again chased away by the accused.
42. It was his position that based on the last person seen with the deceased principle, and other associated evidence, he charged the accused.
43. On cross-examination, he stated that he only interrogated the accused and other people and not the deceased. he stated that he did not take any photographs.
44. He admitted that the accused was in the company of the accused, two ladies and a man as they left the bar and they were in a good mood. He agreed that there had been no altercations among them. He conceded that no witness stated that the accused was armed.
45. He stated that the scene of crime was a public road which had no lighting and that the crime happened between 8PM and 9 PM. It was his testimony that the two ladies left the scene leaving the accused behind. He claimed that the other man had already left leaving the deceased and the accused at the scene.
46. PW7 admitted that the accused had the option of also fleeing or assisting the deceased. He stated that PW1 was stopped by the accused to assist in taking the deceased to the hospital but was arrested as he assisted.
47. As regards the two ladies, Everline and Irene, it was his evidence that he made efforts to trace them. It was his position that it was not possible that they committed the offence.
48. In the end, it was his position that no one saw the accused stabbing the deceased.
49. On re-examination, she stated that she was not able to get the two ladies, they fled and switched off their phones.

## **The Defence**

50. The accused was DW1, it was his evidence that he is a mason from Tulwet Village. He recalled that on 16<sup>th</sup> February 2021, he was called by his friend, the deceased, but he informed him that he had gone to work at Makhani Primary School and would get back to him later.



51. Upon completing the day's job he went home, showered and called the deceased. He told him that he was at Sharks Club where two ladies had decided to buy them beer. He proceeded to the club and met him. He was alone.
52. It was his testimony that the deceased called the ladies who came and bought them more drinks. He stated that at about 7PM he asked the deceased to allow him to leave since he had work the following day. They, however, decided to finish all their drinks and then left.
53. At the gate, he was told that the proprietor of the club wanted to see him for purposes of fixing some tiles in the club. The rest were outside as at that time. He gave him quotation. As he left, it was his evidence that he met a friend who had a car. He was Jeff Chepruka. As they drove, they met Jeff and the two ladies on the road. He alighted and joined them. The car returned to the Big Tree.
54. On seeing the deceased, he said that that he had been stabbed by his wife. He asked him where his wife was. The deceased stated that she had been there a while ago.
55. It was his evidence that the deceased used to joke a lot. He then fell as he coughed. The two ladies disappeared. He attended to the deceased and attempted to take him to the hospital. Two motorcycles arrived at the scene and later a third one.
56. He explained that one of the cyclists, William, was hostile to him and wanted to know what had happened to the deceased. He pulled him and he did the same. He then rushed the deceased to the hospital only to be told that he had died on arrival.
57. It was his evidence that he was aware that the deceased and his wife did not relate really well. She did not want his friendship with the deceased and he used to assist him with money. It was his evidence that his wife alleged that the deceased used to give him girls.
58. He claimed that there was a time his wife threatened to kill the deceased whom she dissociated with him. He stated that his wife and the two ladies left and had not returned to date.
59. He claimed that he did not kill the deceased as he was his true friend. He stated that if he had, he would have as well escaped just like his wife and the two ladies.
60. During cross-examination, it was his evidence that when PW5 took him to where the deceased was, the deceased was just standing with the two ladies. He stated that his wife was not among them. He had left her at home as he went to the club.
61. It was his position that the deceased did not lodge any complaint against his wife. It was his case that he did not know if there were any sexual relations between his wife and the deceased. He stated that his wife suspected that Irene and Everline are the girls who the deceased would bring to him.
62. He stated that his wife left home on the day of the incident and never returned. He stated that the deceased told him that it is his wife who had stabbed him.
63. As regards the altercation with PW2, it was his evidence that he pushed him away as he was restraining him from taking the deceased to the hospital. He was trying to save his life. He stated that he was not fixing his wife for the offence.
64. On re-examination, he stated that his wife is still at large.
65. Andrew Watiliko Mariti was DW2. It stated that the accused is his son. It was his evidence that on 16<sup>th</sup> February 2021, the accused called him to go to his house. Thereat, he found his two grandchildren alone.



66. He rushed to the hospital and found many people among them his son. He did not tell him anything. Shortly, he was arrested by the police and they collected the body of the deceased.
67. The following day, the two grandchildren were taken to the Police Station, they had spent the night alone. They reached the accused's wife in vain. He went to the home of the accused's wife and did not find him to date.
68. On cross examination, he stated that his son and his wife had issues. He however stated that he did not know what those issues were.
69. The Prosecution and the accused filed their written submissions that contained an analysis of the evidence and authorities in support of their respective positions. The arguments therein are duly incorporated into the analysis section of this judgment.

### **Analysis**

70. The only issue for determination is; whether the Prosecution proved the charge of Murder to the required standard.
71. The offence of murder is provided for by section 203 of the *Penal Code* as follows;
  203. Murder  
Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
72. The punishment for the offence is provided for by section 204 in the following terms;
  204. Punishment of murder  
Any person convicted of murder shall be sentenced to death.
73. In Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari -vs- Republic [2014] eKLR the Court of Appeal reiterated the provision of section 203 and 204 of the *Penal Code* on the elements which must be proved beyond reasonable doubt in order to sustain the charge of murder. It observed;
  - (a) the death of the deceased and its cause;
  - (b) that the accused committed the unlawful act which caused the death of the deceased; and
  - (c) that the accused had malice aforethought.
74. I will hence interrogate each of the elements in turn.

#### **a. The fact of death and its cause**

75. The fact of death of the deceased is not in contest. Both the prosecution and the defence attested to the fact that it happened on 16<sup>th</sup> February 2021. The evidence of PW3 and PW7 all of who were present during the process of postmortem speaks to the fact of death.
76. The post-mortem report was produced as PExh. 1. It was in respect of the deceased's body. I have interrogated it against the evidence of PW6, the medical doctor. The two tally as to the fact and cause of death. A penetration to the chest secondary to assault caused the deceased's death.



**b. Whether the accused committed the unlawful act which caused the death of the deceased**

77. Right off the bat, is it assailable that the entirety of the prosecutions' case hinges on circumstantial evidence. Not a single witness saw the act that culminated in the death of the deceased.
78. This court must, therefore, appreciate the evidence and make its determination within the confines of the principles of circumstantial evidence.
79. The principles observed while assessing circumstantial evidence were circumscribed in the locus classicus case of R -vs- Kipkering arap Koske & Another (1949) 16 EACA 135. It was held;
- i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
  - ii. The circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
  - iii. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.
80. The Court of Appeal in Musii Tulo vs. Republic (2014) eKLR expounded the above principles. It expressed itself as follows:-

In order to ascertain whether or not the inculpatory facts put forward by the prosecution are incompatible with the innocence of the appellant and incapable of explanation upon any other reasonable hypothesis than that of guilty, we must also consider a further principle set out in the case of Musoke v. R (1958) EA 715 citing with approval Teper v. R (1952) AL 480 thus: -

'It is also necessary before drawing the inference of accused's guilty from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.'

81. In Sawe- vs- Republic [2003] KLR 364 the Court of Appeal circumstantial evidence:
- .... 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. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution and always remains with the prosecution. It is a burden, which never shifts to the party accused.....
82. In Ahamad Abolfathi Mohammed and Another -vs- Republic [2018] eKLR the Court of Appeal embellished circumstantial evidence as hereunder;
- .... 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, CJ 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....

83. I now turn to the evidence.
84. PW1 arrived at the scene just when the deceased had been stabbed. He was bleeding. He did not see the incident. The deceased did not tell him anything. On the request of the accused, he took the deceased to hospital only to be pronounced dead on arrival.
85. The evidence of PW2 was that when he heard screams, he ran to the scene. He found PW1 and the accused in a scuffle. Whereas an inference of guilt of the accused can be deduced though sparingly, the accused explained in his defence that the scuffle ensued because PW1 wanted to know what had happened to the deceased while the accused wanted him to start the emergency journey to the hospital to save the deceased's life.
86. PW4's evidence did not in any way establish the inculpatory elements of circumstantial evidence. If anything, it brought to light the close friendship that existed between the deceased and the accused person.
87. Similarly, the evidence of PW5 was exculpatory. In a detailed manner, he stated how five people left the bar that evening; the deceased, the accused, one male and two females. It was his case that they were happy and there seemed to no problem amongst them.
88. On cross-examination it was his position that the accused returned to the bar and shortly thereafter, he dropped him off to where his friends were. They all were alive.
89. The accused explained the reason he went back to the bar. The owner needed him to fix the tiles in the bar. The accused gave a quotation to that end.
90. Taken cumulatively, from the testimonies of PW1, PW2, PW4 and PW5, there is no tangible inference of guilt that can be drawn against the accused.
91. Further, and more important for this case, is the absolute coherence and consistency of the accused's testimony as considered against the evidence of PW5 and the events of the fateful night.
92. He (the accused) testified that after leaving the bar for the second time, he was dropped off at the road where his other friends, among them, the deceased, were.
93. The deceased then told him that he had been stabbed by his wife. At first, the accused thought he was joking only to realize that he was bleeding. He coughed and fell the ground.
94. In addition to the evidence by DW1 and DW2 that the accused's wife harbored some animosity towards the deceased, the uncontroverted evidence of PW7, the accused's and DW2's to the effect that she fled after the incident must be viewed favourably towards the accused. It was a cogent co-existing factor that cannot be wished away.
95. As was stated by the court in *Musoke -vs- R* (1958) EA 715, *Teper -vs- R* (1952) AL as well as the Court of Appeal in *Sawe -vs- Republic* (2003) KLR, the evidence that the deceased made a dying declaration that he was stabbed by the accused's wife as considered alongside the fact that the deceased's wife fled,



not be found again, and not forgetting the fact that the accused is the one who took the deceased to hospital in a bid to save his life are co-existing circumstances that completely weakened the inference of guilt against the accused.

96. It is also worth mentioning that pertinent questions linger on the participation of the three other persons who were last with the deceased and the accused person. They vanished from the scene and were never traced again. Their evidence would have shed more light on the case.
97. In this Court's assessment, the accused could not have had the desire or intention to inflict harm on the deceased and be the same person to rescue his life.
98. As I come to a close, it is clear that the charge of murder was not made out against the accused person. The standard of proof did not ascend to the required threshold. A consideration of the limb of malice aforethought therefore falls by the wayside.
99. In the end, the accused person is hereby found not guilty of murder and is hereby discharged under section 215 of the [Criminal Procedure Code](#). He shall forthwith be set free unless otherwise lawfully held.
100. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE, 2025.**

**A. C. MRIMA**

**JUDGE**

