



**Republic v Mutindi (Criminal Case 022 of 2021)
[2025] KEHC 9699 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 022 OF 2021**

**TM MATHEKA, J
JUNE 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PURITY NZILANI MUTINDI ACCUSED

JUDGMENT

1. The accused person is charged with murder contrary to section 203 as read with section 204 of the Penal. It is alleged that on diverse dates between 20/7/2021 and 6/8/2021 at Thome Village, Kee Location in Kilungu Subcounty within Makueni County jointly with others not before court – murdered Rueben Mutisya Mwau.
2. She took plea on 20/9/2021 before Hon. Dulu J and pleaded not guilty. She was represented by Mr. Judah Kioko.
3. The matter never took off for hearing before the judge and when I took over on 2/5/2023 I found that the delay was in the ground that parties were negotiating for plea bargain agreement.
4. Plea bargain agreement negotiation collapsed and we proceeded to hearing on 6/2/2024.
5. The case for the prosecution was presented by 10 witnesses –
6. The accused was married to the deceased for a period of about 3 years - she came with 2 children, and the deceased had her own. They lived together – she ran her business at the Kola Market where she had a vegetable Kibanda while deceased did jobs wherever they were available. He was also a farmer, and he had ploughing oxen, and an ox cart for transport.
7. The couple’s farm was next to that of Susan Musembi, who was married to the brother of the father to the deceased. Susan was also the employer of PW3 Benard Mbusu Mbuva, the persons who came across the remains of the deceased.



8. PW3 testified that on 6/8/2021 he was in Susan's shamba cutting fodder for cattle when he saw a bird [mwewe] eating something. He went to check what it was and found a human head. Susan was within the shamba and he, in shock went to tell her what he had seen. She too went to where the head was. She saw it and then rang one Tito. Tito came, saw the head then rang the chief – PW1 who came to the scene, and made phone calls to the Kola Police Station. The OCS Kola informed the DCIO who rang PW10 the Investigating Officer and directed him to investigate.
9. PW10 No. 82171 CPL Joseph Ratemo was at DCI Kilungu Subcounty. He testified that upon receipt of the call he went to the scene with OCS Nunguni. They found officers from Kola Police Station led by Sgt Kuria and PC Mutune -
10. He began investigations.
11. According to PW3 when officers from Kola Police station arrived they walked around to find out where the skull could have come from. He said he was aware the accused and the deceased were married, he had known deceased for about 3 years. That by the time he saw the head, the deceased had been missing for 3 weeks.
12. According to PW1 Enock Kisoma Mendeni, he received the call from one Justus King'oo Matu to the effect that there was a human head in the shamba of Susan Nziza Musembi. He went to the scene where he found the caller, PW3. They took him to where the skull was he saw that there was a crack on the right side above the right eye, a crack on the back, all the upper teeth were intact, and on the side there was a piece of the lower jaw with teeth. He rang the Sgt Kuria, Kola Police Station who came to the scene, sealed the scene, took photos.
13. He said they then crossed to the deceased's shamba, and in a ditch, found a black trouser, a multi-colored belt and a blue T-shirt. They were identified by relatives, and PW3 said they too belong to deceased.
14. Those present began to ask whether Mutisya [deceased] had recently been seen. It turned out for the last three weeks no one had seen him - yet there was no report of a missing person.
15. It was decided that his wife be looked for to confirm his whereabouts. She was selling vegetables at Kola Market – PW1, PW3 and the police officer from Kola Police Station went to look for her. They found her in a public participation after meeting in the at the borehole of one Peter Ndunda Kithi. They called her and she took them to her home. On the way, she was asked where her husband was, she said he had gone to work for one Joseph Muia Mang'eli [PW4] in Mwea, Makongo Sublocation.
16. At her home, she was asked to open her house. The chief and the officers entered. PW1 said the house was 2 bedrooms and a sitting room. There was a panga whose handle was wooden, but tied with black plastic rubber [otherwise known as bladder]. It appeared to have stains. There was a file [used for sharpening]. It also had stains, there was a mattress. It appeared to be soaked with blood. There was maize placed on top. He identified the items in court – including a lessa, which he said he did not look at the scene. DCI officers came and collected these items. By this time the accused became silent, any question she was asked she answered that she did not know. The PW1 said he did not have any report of a missing person about the said Mutisya. He said when deceased married accused he had three children, and she came with 2 children.
17. On cross-examination he said they found a skull and it was identified as Reuben Mutisya's teeth – [smile] he said Justus and Tito were family members of the family of Rueben Mutisya. He said the clothes were found about 20 m away from the skull.



18. He said he saw the mattress in the house of the deceased. It was not broken. It was on the bed, there were clothes of the accused and deceased in the room. There was a stick in the bedroom.
He said the clothes had wet blood, the mattress was blood soaked and the blood had not completely dried up.
19. PW4 Joseph Mua Mang'eli confirmed that he had employed to Reuben Mutisya at his farm in Mwea. He testified that Mutisya went to him on 1/7/2021 asking for work. They agreed he would go work for him at Mwea at Kshs. 6,000, per month; that he would go with his ploughing oxen so that he could teach the PW4's oxen to plough. He worked for 12 days and said he did not like the work. PW4 paid him Kshs. 3,000 and he left on 13/7/2021. PW4 said he saw him carrying grass with his oxen going to his home. They greeted each other and that was the last time he saw him alive.
20. On 6/8/2021 he heard about the finding of the skull from his uncle Tito [Titus Kivuva] He went to the shamba. He saw the skull; he saw the clothes which he identified as those of Mutisya approximately 50 m from where the head was. He said the police also recovered a blood stained stone on the way to Mutisya's house.
21. He testified that from inside the house police came out with a panga, [blood stained] mattress with blood, jembe with blood.
22. To determine the identity of the bones – found at the scene- police invited Mutisya's sister PW2 Loice Mukulu Mwau to give her DNA for comparison. PW2 told the court that she came home after receiving the news of the discovery of the remains. Police told her they suspected it was her brother's head. She saw the head recorded statement, and later preserved herself at Kenyatta National Hospital for DNA samples. She said when she was shown the head, [skull] she identified it as her brother's teeth the report confirmed it and they were given the remains for burial.
23. She said she had seen the accused once at the funeral of her eldest brother, that she heard she was her brother's wife.
24. PW6 Chief Inspector James Chepchieng was the crime scene investigator - he received a sealed envelope marked "P" from the investigating officer in this case on 10/2/2022 it contained a CD and an exhibit memo form. He was requested to process the CD & produce photographic prints and enlargements. There were 38 photos describing the piece of human skeleton, the skull, the scene inside the shamba. That the skeletonized skull had a visible crack. He produced the photos and the certificate.
25. PW5 Dr. Patrick Mugonya Kihui produced the postmortem report after the postmortem examination on 17/8/2021 of a human skull. There was bone of the arm. The humerus, hone of the lower jaw- the mandible. The skull had a fracture 8 x 3 cm at the front and on the right side – parietal occipital measuring 12 x 4 cm, above the ear [supra auricular area] 6cm in diameter. He concluded that cause of death was a penetrating head injury which could have been caused by sharp object. He could not define the sharp object. On cross-exam he said that the cause of death was the head injury.
26. PW7 No. 235280 C.I Maurice Chemiesis from DCI was time performing general duties at DCI Head Quarter Nairobi Economics and Commercial Crime unit at time of testimony. Before that he was the Subcounty DCIO at Kilungu Subcounty and on 10/8/2021 at 1504 hours he recorded a confession from one Purity Nzilani Mutinda after going through the motion of establishing that she understood what she was doing, and was doing it voluntarily. He testified that he asked whether she wanted anyone present and she gave the name of Emilly Georgina Mwanza Nzioka, who she said was her cousin.
27. The said cousin- PW7 came to the station and sat through the recording of the confession. He cautioned the accused. She proceeded to tell him how she met the said Rueben in September 2020



- when he approached her for friendship – that they moved in together 4/10/2020 as husband and wife although Rueben had not paid dowry – that he treated her as a wife and her 2 children as his. He said she told him that the deceased would take illicit brew, visit her at her Kibanda at Kola insult her in obscene language - he accused her of bringing men to their house for immoral purposes threatened to cut her with a panga forcing her to run to her in laws to report.
28. That on 20/7/2020 he came home, was sober, and after the children went to sleep he locked the bed room door and threatened to cut her with a panga while telling that this was the last time she would bring men to the house. That he raised the panga to cut her but she sprang from the bed, got hold of the hand with the panga pushed him to the edge of the bed disarmed him cut him on the head and hand – he fell down bleeding profusely. Fearing for her life if this was found out, she took a lessa and dragged the body about 300m from the house into trench. She said the killing was in self defence after provocation. She believed her husband would have killed her that day. The Statement was produced as Pexh.10.
 29. PW8 Georgina Wanza Nzioka testified that Purity was her cousin. That on 10/8/2021 she was rang by an officer from Kola Police Station to witness the statement of Purity. She said she said she had not been aware that Purity was at the police station. She was told Purity had asked for her. She said Purity recorded the statement for 45 minutes – she was not in shock; she did so voluntarily.
 30. On Cross-examination by counsel for accused – PW7 said that she signed the statement – but on being shown the statement, instead of signature the accused had written an x at the certificate – PW8 on cross-examination could not show her signature on the statement.
 31. PW9 Henry Kiptoo Sang the Government Analyst from Government Chemist testified that on 19/8/2021 at Government Chemist they received – blue T-shirt, black long trousers, piece of bone, 4 stones, sharpening file panga, jembe, grey piece of mattress, brown less, with black and white stripes pair of open pink plastic shoes, greyish T-shirt, skull, blood samples of the suspect. They also obtained buccal swab from Loice Mukulu Mwau and on 23/8/2021 another buccal swab from Moses Makau sister and nephew of deceased respectively. He found that the T-shirt, trouser, piece of mattress, stone and open shoes were slightly stained with blood of human origin – the rest did not have blood stains. The bone did not produce any DNA. The DNA profiles from the rest [T-shirt trouser, piece of mattress, open shoes, skull all were identical and emanated from the same male person. He found that DNA profiles from Loice Mukulu Mwau matched those of the donor of the blood stained items. He produced the report – Pexh.11, Ex memo Pez 11[a]. The rest were PEX 12 a b c d e f g & h.
 32. According to the Investigating Officer when he visited the scene where the clothes were, the scene was disturbed and he formed the view that there had been animals who ate the body leaving the skull and pieces of bone. That they followed blood stains from the scene that led to the home of the accused person. He testified that the door to the bedroom, the frames, the floor were blood stained, there was a bed with maize on it – Upon arrest she confessed to the offence, and that the lessa she had used was the one she had at the police station. He took the lessa. The following day he went back to the scene in the daytime. The mattress was soaked with blood, was smelling of blood – pink plastic shoes – they picked the panga, jembe, file, the stones –
 33. He said he spoke to the children of accused who told him that accused would often quarrel with their mother. That deceased's family opined that the quarrels were over the title deed. He said the Government Analyst report confirmed that the blood stains belonged to deceased, the skull was his. He produced the statement of confession, the brown lessa and the pink sandals, all the exhibits. He said that the accused did not sign anywhere that the mattress was picked from the house as it was picked the following day.



34. The accused was put on the defence. In her testimony, she made a sworn statement and did not call any witness. She said she was a vegetables seller at Kola Market. She said her husband Reuben Mutisya Mwau was the deceased person. She described her arrest at the Kola Market on 6/8/2021 – by the chief and a police officer. They went to her home. She found another officer there. She was told to open her house – she said they checked all the rooms – and found nothing. They went to the police station where a female police officer locked her up. She said it was on Sunday 8/8/2021 that she was told she was suspect in the murder of her husband she said she was shocked because she had last seen her husband on 17/7/2021. That he came from work, passed by her kibanda, waited for her, they went home had supper and slept. That he told her he was going back to work the following day and that they would not communicate because his phone had a problem, he had no money till the end of the month when he would be paid to repair the phone/buy a new one.

She said she escorted him to the stage the following day and he boarded a matatu as she went to church.

She denied that the mattress was recovered from her house she denied the confession and said that she did not sign the same.

35. On cross-examination she told the court that she did not know that the skull of her husband was found near her home. She denied that a mattress with blood was recovered from her house. She maintained that from 17/7/2021 she knew that her husband was at work. She denied any quarrels with her husband. She said the police only told her that her husband was dead – and nothing else. Cross-examined by Court – she said her husband was working at Kivani – on someone’s land.

36. Upon closure of the case for defence – counsel filed written submissions. The prosecution relied on the evidence on record.

37. On the ingredients of the offence he relied on Anthony Ndegwa Ngari V R – [2014] eKLR: – death of a person, caused by the accused through an unlawful act, with malice afore thought.

38. He submits that death was established through DNA of his remain and that of his sister.

39. That none of the witnesses saw the accused commit the offence. That prosecution relied on circumstantial evidence and argued that what prosecution provided was insufficient – he cited Mohammed and 3 others V R [2005] eKLR where the court defined the circumstantial evidence.

“Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstance which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.”

40. He submitted that circumstantial evidence is only admissible in the circumstances laid out in Abanga alias Onyango v Republic CRA 32/1990

- a. The circumstance, from which an inference of guilty is sought to be drawn, must be cogently and firmly established.
- b. Those circumstances should be of definite tendency and unerring pointing towards the guilt of the accused.
- c. The circumstances taken cumulatively should form a chain to complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused and no one else.



41. Counsel submits that the circumstances placed before court do not tie up – that on the prosecution accusation that accused did not report her missing husband accused has told court she knew her husband was at work, and there was no evidence of any quarrels that went beyond normal marital disputes.

42. With regard to the confession; counsel cited section 25 A of the Evidence Act

“

“[1] A confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in court before a judge, a magistrate or before a police officer [other than the investigating officer], being an officer not below the rank of Chief Inspector of Police, and a third party of the person’s choice.”

Counsel relied on the Evidence [Out of Court Confession] Rules 2009 which provide inter alia

- a. Rule 4 provides that the Recording Officer shall ensure that the rights of an Accused person who intimates to the police that he wishes to record a confession are upheld.
- b. The Recording Officer must caution the accused person that the confession shall be recorded in writing and may be given as evidence. The law further states the cautionary statement that the accused person should be informed and in verbatim; “Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and will be given in evidence
- c. The Recording Officer may record it down or inform the accused person to write it down in his preferred language.
- d. The Recording Officer must ensure that the confession whether written or electronic recording contains a certificate at the end in the original language of the accused person.
- e. The Recording officer must certify in writing that the confession was not obtained through inducement, threat or promise with reference to the charge.
- f. The Recording Officer shall be the proper witness to prove to the court that these rules were observed in recording the confession.

43. He argued that; The Recording Officer admitted that the accused did not sign the certificate by the suspect as required in law. The accused elected to have Georginah Wanza Nzioka as her representative during the recording of the confession. The witness denied the signature on the confession document produced in court and also stated that the document she had signed at the police post was of a different colour. The accused informed the court during her defence that she recorded a statement with the police and not a confession.

44. On what amounts to a confession and their admission Counsel relied on Criminal Appeal No. 124 of 2018; Titus Ngamau Musila Katitu v R [2020] EKLK where the court held that confessions are generally inadmissible unless it is shown that the safeguards of the law were complied with



45. On the proof of murder, he relied on *Roba Galma Wario v Republic* [2015] EKLK where it was held that;
- “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.”
46. That the prosecution needed to establish malice aforethought whose particulars were: Intention to cause death; Intention to cause grievous bodily harm; and where the accused knew that there was a risk that death or grievous bodily harm would ensue from his acts and committed them without lawful excuse
47. The state did not file any submissions.
48. Having carefully considered the evidence on the part of the prosecution, evidence on the part of the accused – and the submissions by defence counsel – the issue for determination is: - Whether the prosecution has established the offence of murder beyond a reasonable doubt – to do so – they must establish- Death of a person; Caused by unlawful by the accused person with malice aforethought.
49. It is not in dispute that the death of Reuben Mutisya Mwau was confirmed by the Pathologist and the government analyst. He went missing, parts of the body and clothes of a person were found in the farm next to his farm. These were collected - DNA was conducted on it confirmed that the parts belonged to a person sharing DNA with Loice Mukulu Mwau – and it was concluded that the body parts belonged to the deceased.
50. The postmortem report confirmed that the bones belonged to a human being. Hence there can no doubt that since there was only a skull and some bones left – the owner of those parts of the body could not be alive.
51. On the cause of death, it was the Pathologist testimony that the skull exhibited evidence of blunt trauma.
52. Hence- the prosecution established death, identified the dead person, and the fact that death was not by natural causes.
53. The accused person was the main suspect in the murder – and although the charge sheet stated that she committed the offence with others not before court, there was no evidence that was led to demonstrate the participation of any other person.
54. The accused was the key suspect for the key reason that her husband had gone missing for some time and she had made no report to anyone – not the family not the police.
55. Her defence was that her husband had left home for work, and did not have a mobile phone, and hence there was no reason for her to worry that he had not reached his destination - or imagine he was missing.
56. According to her, she had last seen him on 17/7/2021 when he left for work to Kivani on someone’s land.
57. The PW4 however testified that the deceased had worked for him at Mwea – that he worked for 12 days, from 1/7/2021 to 13/7/2021 when he left with his oxen to go home.
58. The accused’s defence was that she last saw the deceased on 17/7/2021 – when he came from work and passed by her Kibanda at Kola. The evidence of PW4 is that he left the place of work on 13/7/2021.



It is clear that the deceased left his place of work and went home and was home from the 13th July 2021. The accused's testimony corroborates that fact that the deceased had left his place of work and returned home and was not working away from home as at 17/7/2021 when the accused says he left home. There is no evidence that he went anywhere else after he left the place of work on 13/7/2021 – and the next place he is seen at home is 17/7/2021 according to the accused person.

59. It becomes doubtful that he was going to work yet he had resigned from his job on 13/7/2021. The only conclusion is that he came home and never left the home to work away from home.
60. The only evidence of how the deceased died is circumstantial evidence and confession evidence. Is the confession admissible?
61. The law on confession was clearly set out by the defence. It was argued that the police did not comply with the law.
62. I have carefully perused the confession document. The only part that does not bear the accused person's signature is the certificate, just before the signature of the recording officer.
63. However, the confession clearly indicates that the accused requested for a 3rd party to come, she gave out her particulars – and this 3rd party her cousin arrived, -her name and address and phone number appear in the confession. She testified as PW8.
64. PW8 confirmed that she was rang by a police officer on her mobile number – that her cousin needed her at Kola Police Station. She testified on oath that she was present when the accused person recorded the confession. She stated the Purity recorded the statement voluntarily, and she sat through the 45-minute session. She stated that the accused was not in shock when she was recording the confession.
65. I have looked at the rules – it clearly states that the certificate must be included – is the missing signature on the certificate a fatal omission?
66. In the totality of the evidence surrounding the recording of the confession it is my view that it was not fatal. Every evidence before me shows that it was voluntary, in the presence of the person of her own choice, who witnessed her sign the document. There is no evidence and there was no insinuation that her cousin had any reason to lie the that she had witnessed the accused person's confession.
67. I find that the confession was properly taken, and is admissible against the accused person.
68. In addition to or in the absence of the confession was there any other evidence?
69. DNA evidence from the clothes found at the scene, including the skull identified as that of deceased was found to match that of the mattress that was collected from the house of the accused person.
70. The DNA profiles from those items were found to match the DNA profile of the sibling of the deceased.
71. Hence, there is DNA evidence to prove that the deceased bled in the house and that is the blood that produced the DNA that matched that from his skull and other items.
72. That DNA evidence placed the accused in the same house with the accused when he left that DNA trace in the house- and this goes on the corroborate the confession – that something happened in the house, deceased sustained injuries from which he died.
73. The accused person stated in the confession how she dragged the body of the deceased to the ditch near the home and threw it there. That is corroborated by the presence of the blood in the house – where it all happened – before she took the body to the shamba.



74. I am persuaded from the DNA evidence, and the confession that the accused person killed the deceased.
75. Did she have malice afore thought? Malice aforethought has been defined at s. 206 of the [Penal Code](#).
76. From the confession – it is clear that the accused person and the deceased had an altercation that involved a panga. He had accused her of infidelity before this incident, and according to the confession, he had told her that that would be the last time she would bring men to the house He was the one armed with the panga first, then she disarmed him – and cut him.
77. Hence – it is clear that there were circumstances under which the accused felt threatened and it was the deceased took the panga and threatened to cut her – she disarmed him and cut him – he bled profusely and later died.
78. Her explanation perfectly describes the circumstances. It is clear is that the deceased was killed in the house – fell on the bed or was placed on the bed – as there was blood in the mattress/ and then moved to the ditch- where the stray dogs and other animals and birds mauled the body. Despite the fact that she hid the body- It appears that at the time she killed the deceased she acted on the spur of the moment I would find her guilty of manslaughter contrary to section 202 as read with Section 205 of the [Penal Code](#) and convict her accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY ON 20TH JUNE 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

Accused present

Mr. Kazungu for state

Mr. Judah Kioko for the accused

