



REPUBLIC OF KENYA



**Republic v Wanasamba (Criminal Case E003 of 2023)
[2025] KEHC 8732 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8732 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE E003 OF 2023**

AC MRIMA, J

JUNE 20, 2025

BETWEEN

REPUBLIC STATE

AND

MOSES BULALO WANASAMBA ACCUSED

JUDGMENT

Introduction

1. Moses Bulalo Wanasamba, the accused persons 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 diverse dates between 28th day of October 2022 and 3rd day of November 2022 at Sinoko Village in Motosiet Sub location in Kiminini within Trans-Nzoia East Sub county of Rift Valley region, jointly with others not before Court murdered Salome Nasiebanda (hereinafter ‘the deceased’).
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. Zacharia Wanyonyi Simiyu, a casual labourer and a farmer from Shimakho village was PW1. He recalled that on 27th October 2022, her mother, the deceased herein, left home for a funeral at Biribiriet Village that was scheduled for 28th October 2022.
6. On 29th October 2022, her mother had not returned home. Concerned, he asked her children to inquire from one Redemptor, a neighbour of his, if she had seen her. She was not there.



7. On 1st November 2022, he personally went to Redemptor's home. She confirmed that his mother was at the funeral. Redemptor shared a contact from the home where the funeral was. On calling that contact, he was informed that his uncle Moses, the accused herein, had left with his mother using his motorcycle.
8. He testified that he called the accused. He informed him that the deceased alighted at St. Paul's Secondary. He called his kinsmen all of whom claimed they had not seen the deceased. He posted photographs of the deceased on social medial appealing for help.
9. On 4th November 2022, the accused went to his home. He wasn't there but met his son. On Sunday, they reported the incident to the Police Station. The Police informed him that there was a person who was found in a dam at Kipsigoni.
10. He visited a home near a dam where he found a man called Yego. He informed him that the person who was found in the dam was an elderly lady with white hair and had a red Jacket on. He suspected it was her mother. He called his siter.
11. They went to the mortuary where they were shown the clothes and confirmed that indeed it was his mother's. They then saw the body and confirmed that it was her through the marks of her legs, toes and teeth. He could not through the face because she had been defaced.
12. It was his evidence that he then reported the matter to the Police Station. He stated that the accused told him that he dropped her off at St. Paul's secondary School, which is three kilometers from home and one kilometer to the dam. He stated the accused was a brother to the deceased and they related so well. Their family had no problem with accused. He is a very good person and did not think he participated in killing he deceased.
13. On cross-examination, he stated that the deceased was mentally fit and even walked alone from home to the funeral, which was about 20 kilometers away. He confirmed that there was no animosity between the deceased and the accused.
14. He stated that his brother Timothy Juma (also known as Maahi Juma) did not relate well with her mother and had severally threatened to kill her over land which the deceased did not want him to sell.
15. It was his position that there is a time he threatened to cut her using a panga and as at the time of her death, there still was bad blood between him and the deceased. During the time the deceased got lost, Timothy was within home area. He asserted that high are chances that it is him who killed the deceased and the accused was a victim of circumstances.
16. On re-examination, he stated that Timothy sold some land when the deceased died but the matter was reported to the Assistant chief where who stopped the transaction.
17. Jane Naliaka Wanasamba was PW2. It was her evidence that as she was about to leave the funeral, the deceased who is her aunt, wanted to leave as well. However, she told her to remain behind with the family.
18. The deceased, however, wanted to leave since there was no one home. Concerned that the distance she was to cover on foot was 20 kilometers, she sourced a motorbike rider who happened to be the accused person.
19. The accused person said that he had a lot of duties at the funeral home and he opted to get another cyclist. However, PW2 insisted on the accused taking the deceased home since he knew her unlike other cyclists.



20. The accused did not have fuel. She gave him KShs. 200/-. The deceased settled to take a meal as the accused finished up some chores. She then left.
21. Two weeks later, the accused called her bearing the information that the deceased had been found in a dam. The deceased told her that he had taken her home as agreed but the deceased insisted on alighting on the way.
22. It was her position that she did not know how the accused and the deceased related.
23. On cross-examination, she decided to assist the deceased since she had wanted to return to her home on foot. She stated that the accused had initially declined to take her citing a lot of duties. She claimed that the deceased left after she had left and was mentally fit.
24. Josephat Wamalwa was PW3. He stated that he is a watchman at Kipsing'oe at the residence of one Mrs. Malakwen and a member of Nyumba Kumi at Sinoko village.
25. She stated that the deceased was her neighbour and had children among them, Juma Maalim and Zachary. They were involved in a land dispute and they used to bring the dispute to him. He used to urge them to maintain peace. He emphasized to them that the land belonged to the deceased and the children ought to respect that.
26. It was his evidence that the distance from home to where the deceased was found dead was quite long, about three kilometers. He stated that he did not know the accused in the case since he only dealt with the deceased and his children.
27. On cross-examination, he stated that the deceased was mentally stable and used to walk long distances. He claimed she had issues with her son Juma Maalim over her land, who used to threaten her with death since he wanted to sell it but the deceased refused.
28. He testified that at some point the wife to Zacharia, son of the deceased, reported to him that the deceased was about to be attacked by Maalim. On rushing to the scene, he found Maalim but he was not armed. He stated that Maalim used to say everyday that he will kill the deceased and after the death of the deceased he wanted to sell her land.
29. Lokichar Ebei was PW4. He stated that he herds cattle at the farm of Major Cheruiyot. He recalled that on 3rd November 2022, at about 11.30AM, he was informed by someone that there was cow in the dam. He went there only to learn that it was a person. He informed the farm manager, Mr. Yego who rushed to the dam and reported the matter to the Police. He left before the body was retrieved.
30. On cross-examination, he stated that he did not know the deceased.
31. Isaac Yego was PW5. He stated that he is a farm manager at Major Cheruiyot's farm. He testified that in 3rd November 20122, PW4 informed him of what he had seen at the dam. He visited the scene and upon confirming that it was a human being, he reported it to the Police Station. The police retrieved the body on 4th November 2022 in his presence and took it to the mortuary.
32. He described the body as that of an elderly woman who could be identified by persons who know her.
33. Dr. Dennis Nanyingi, a Senior Medical Officer at Kitale County Referral Hospital was PW6. He testified that he graduated from Kenyatta University on the year 2014 with MBChB. He conducted autopsy on the deceased on 15th November 20222 and observed that externally, the body had decomposed and had fatty changes and Saponification.



34. He estimated that the death was 2 weeks before preservation and the time of death was within 4 – 6 hours after her last meal as there was food content in her stomach.
35. He further testified that her neck was loose, head darker as compared the rest of the body, eyes and parts of her lips missing, probably eaten by fish or organisms in water.
36. It was his observation that her left wrist was dislocated, missing hair on scalp due to old age or falling off due to decomposition, disfigured face and missing teeth at the lower and upper jaw as a result of being hit or hitting a surface.
37. Internally, it was his evidence that both lungs were collapsed, the heart was floppy with no blood, stomach had semi digested food and intestines semi-decomposed.
38. She stated that her uterus was missing due to prior removal but her vagina was present. Part of her intestines had gone through the posterior wall of the vagina due to bloating, a normal process after death. He stated that there was no sign of strangulation.
39. It was his conclusion that the cause of death was spinal cord injury secondary to assault. He stated that samples had been taken from the body for further analysis. He produced the post mortem report as PExh. 1.
40. On cross-examination, he stated that the injury on the neck could also be as a result of a fall and not necessarily assault.
41. Jackline Chepteek Wamalwas was PW7. He testified that he is the acting chief of Motosiet Location. She did not know the accused but knew the deceased.
42. She testified that the deceased's son went to her office at some point and asked to be allowed to sell part of the farm of the deceased for medication. To that end, he requested her to talk to the deceased. She talked to her and agreed to sell a faction of the land for Kshs. 90,000/- through the office of a village elder.
43. One week later, he returned again with a similar request but she refused since the deceased raised concern on how he squandered the initial purchase price.
44. On different occasion, she stated that the son requested to be allowed to sell part of the land so that he could relocate since he felt like the community did not like him.
45. It was her evidence that later he returned to his office with a loan form. He wanted her to guarantee him Ksh. 90,000/- from a shylock and the ancestral land to be security. She stated that he was determined to sell his mother's land.
46. On cross-examination, she stated that the deceased and his son did not relate well due to frequent request to sell the land.
47. No. 63XX8 CPL Victor Jumamosi, the Investigating Officer, was PW8. He stated that on 4th November 2022, upon being informed of the incident, they recovered the body and took it to Kitale Referral County Hospital for preservation. PW1, Zachary Wanyonyi, the deceased son, identified her.
48. It was his evidence that the deceased left her home on 27th October 2022 to attend a funeral. When she wanted to return home, her aunt Jane Naliaka sympathized that she wanted to walk back home. She asked the accused to take her home using her bodaboda and to that end, she gave her Kshs. 230/-.



49. He testified that the accused left with the deceased on his motorcycle to Sinoko village. She, however did not reach home. Zacharia, the deceased's son, called the accused who confirmed being with the deceased. The accused told him that he had left the deceased along the way.
50. He stated that he interrogated Maalim and the accused who had been adversely mentioned. It was his evidence that Maalim was not close to the deceased on the fateful day. It was his testimony that the last person to be seen with the deceased was the accused. He produced the accused motorcycle as PExh. 2.
51. On cross-examination, it was his testimony that the deceased was of good mental health since there was no evidence to the contrary. He stated that PW1 had claimed that Maalim Juma had threatened to kill the deceased over land disagreements and it was possible that he had killed her.
52. He conceded that it was not the accused who initiated to take the deceased to her home. He only was requested but was hesitant on fuel. He confirmed that the accused had no issue with the deceased and did not come from the same village.
53. He confirmed that he did not ascertain where Maalim was on the fateful day and that he disappeared and has no leads as to his whereabouts.
54. On re-examination, he stated that he arrested Maalim, took his statement but he left home and has no known fixed abode. He stated that he charged the accused.

The Defence

55. The accused testified that the deceased was his cousin because their fathers are brothers. As regards the fateful day, it was his evidence that after the burial, PW2 asked him to take the deceased home using his motorcycle.
56. Since he was busy, he offered to take her to the stage so that she could take another bodaboda. On the insistence of PW2, and upon being paid KShs. 200/- he left with the deceased. The deceased requested to alight at Sinoko so that he could get back to the funeral.
57. It was his evidence that the deceased told him that she had reached her destination and she insisted it was safe to walk home. He stated that he was mentally fit and he related very well with her and had no reason to kill her.
58. During cross-examination, he stated that initially he was not ready to take the deceased owing to his duties. He was given money for fuel to enable him get her home.
59. He reiterated that it was the deceased who asked to alight at Sinoko Shopping Centre, about 2 Kilometers, not 5 kilometers from her home and he returned to the funeral to ensure that the tents and the chairs were returned before going home.
60. He stated that he dropped off the deceased at Sinoko at about 3.40PM, he admitted that he did not call to find out if the deceased had reached home.
61. It was his testimony that upon learning of her death, he joined the search party but bore no success. She asserted that she left her alive and did not know what had happened to her.
62. Earnest Wamalwa Wekesa was DW1. It was his evidence that he is a retired mechanic now doing farming.
63. According to him, the deceased and the accused lived well. He stated that on 28th October 2022, he was at a funeral at his uncle's wife. At about 3PM, the deceased wanted to be taken home. The accused was requested to do that.



64. He then walked home and at the main road, where he met the accused. They talked briefly and he went back to the funeral. It was his position that the accused is a very respectful and kind person. He claimed that he is a peace-loving person and could be the one to have killed the deceased.
65. On cross-examination, he stated that the accused was initially not ready to take the deceased home. He reiterated the evidence of the other witnesses but hastened to add that he was not sure whether the deceased went to the funeral after meeting him at the main road. He only saw him go in that direction.
66. Jane Wanjala Juma was DW2. She stated that the accused is his uncle and the deceased was her mother's cousin. He stated that he lived with the deceased. He is the one who brought her up.
67. It was her evidence that the deceased and the accused were good friends who never deferred. The accused left with her in a motorcycle after he (the accused) was given Kshs. 200/-. She stated he walked home with Earnest that they met the accused at the main road.
68. On cross-examination she stated that the deceased was given Kshs. 200/- for fuel via M-Pesa. It was her case that they met with the accused at the main road and he told them that he had reached the deceased home and left her there.
69. She stated that she does not live with the accused any longer since she is 62 years old. It was her position that the deceased did not kill the deceased.

Analysis and Determination

70. Having reproduced and appreciated the parties respective cases, 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 diverse dates between 28th October 2022 when the deceased left home to attend a funeral and 4th November 2022 when her body was recovered in the dam.



76. Before autopsy was conducted, PW1, the deceased's son, identified the body of the deceased. He recognized her. PW6, a Senior Medical Doctor performed the autopsy and concluded that the deceased died as a result of spinal cord injury secondary to assault.
77. 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 fact of death was indeed proved.

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

78. From the outset, is it clear that the entirety of the prosecutions' case is founded on circumstantial evidence. Not a single witness saw the act that resulted in the death of the deceased.
79. This court must, therefore, appreciate the evidence and make its determination within the confines of the principles of circumstantial evidence.
80. The principles observed while assessing circumstantial evidence were set out 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.
81. 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.'

82. 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.....



83. 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....

84. I now turn to the evidence.

85. It came out from the evidence of PW1, PW2 and PW3, witnesses personally known to the deceased that, the deceased was a person of sound mind. She was able to cater to her needs among them her own safety.

86. This Court, therefore, rules out the possibility that the deceased died as a result drowning due to her failure to comprehend the danger posed by her mental incapacity.

87. The incidence of drowning is further weekend by the evidence of the PW6, the medical doctor when he made the assessment that that the deceased died due to spinal cord injury secondary to assault.

88. In any case, if the deceased had drowned as result of an accident occasioned by her mental unfitness, the evidence of PW6 would point to that fact by among other things, presence of water in her lungs. That was not the case.

89. Deductively, therefore, the deceased was killed prior to her body being dumped in the dam.

90. From the entirety of the evidence, the thrust of the Prosecution's case against the accused rides on the principle 'the last seen with the deceased'.

91. It is notable from the evidence of both the prosecution and the defence that it is not the accused who initiated the process of dropping off the deceased to her home. To the contrary, it is PW2.

92. The accused had even turned down the invitation to take the deceased home because he was heavily engaged at the funeral. When he testified, it came out that after he dropped off the deceased, he informed her that he was supposed to get back to the funeral to ensure the tents and chairs were returned. That was corroborated by the evidence of PW2, the very person that sought the accused to help take the deceased home. She stated that the accused told him that he would not be in a position to help. He even suggested another rider but PW2 insisted that he is the right person for the job since other motorcyclists did not know the deceased.

93. Further to the foregoing, it emerged from both the prosecution and the defence witnesses that the deceased and the accused were not only enjoyed a cordial relationship, but they were relatives.

94. Before the eyes of this Court, the circumstances from an inference of the accused's guilt was sought was not even established, let alone the requirement that it ought to be cogent and firm.



95. To the contrary, the evidence of PW1, PW3, PW7 and PW8 pointed greater inference of guilt towards the deceased's son, Juma Maalim, while concurrently speaking to the innocence of the accused person.
96. Juma Maalim had a troublesome relationship with the deceased related to land which had yielded several death threats.
97. Taken cumulatively, the chain of transactions that preceded the death of the deceased was riddled with loopholes that vindicated the accused's participation. It could not be said to be incompatible with the innocence of the accused.
98. More importantly, as was observed by the court in *Musoke v. R* (1958) EA 715 citing with approval *Teper v. R* (1952) AL 480, a position ratified by the Court of Appeal *Musii Tulo vs. Republic* (2014) eKLR, the threats Juma Maalim issued to the deceased, the fact that he attempted to sell the land after the disappearance of the deceased, and the unchallenged fact that he disappeared after he was interviewed by the investigating officer are co-existing factors that weaken the prosecution's case.
99. The accused person must benefit from such extenuating, co-existing factors clawing back on his culpability. The charge of murder was not made out against him.
100. With the foregoing, it follows that the standard of proof did not meet required threshold and as such, a consideration of the limb of malice aforethought is overtaken.
101. In the end, the accused person is hereby found not guilty of the offence of murder. He is hereby discharged under section 215 of the [Criminal Procedure Code](#) and shall forthwith be set at liberty unless otherwise lawfully held.
102. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

A. C. MRIMA

JUDGE

Judgment: Kitale High Court Criminal Case No. E003 of 2023 Page 13 of 13

