



**Republic v Miano alias Muthoni (Criminal Case 76 of 2019)
[2025] KEHC 8452 (KLR) (Crim) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8452 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE 76 OF 2019
K KIMONDO, J
JUNE 17, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

BETH ROSE KARONA MIANO ALIAS MUTHONI ACCUSED

JUDGMENT

1. On 10th October 2019, at Matopeni in Githogoro shanties, the lifeless body of David Ngugi Mwaura was hanging by a lessa in a small one-roomed bar styled Busy Bee.
2. The accused, who was a waitress at the pub, claimed that she took some orders from a customer who was seated with the deceased and another man but that when she returned from the counter, the two had vanished; and, the deceased was now hanging dead.
3. When P.C. Kevin Bwire (PW6) studied the scene he doubted that it was a suicide. For instance, the deceased's feet were supported by a green plastic chair and not hanging freely.
4. The Republic thus brought information to the High Court charging the accused with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
5. The particulars were that on 10th October 2019 at Matopeni area of Githogoro slums within Nairobi County, jointly with others not before court, she murdered the deceased.



6. She pleaded not guilty. The prosecution called nine witnesses. Seven of them appeared before my predecessor, Ogembo J. On 16th October 2023, and, pursuant to section 200 (3) of the *Criminal Procedure Code*, the accused elected to proceed from where the matter had reached.
 7. PW1 was Corporal Bidalla Ali. He and Inspector Allan Mogera (PW7) found a crowd milling outside the Busy Bee Bar. Inside, he saw a male adult hanging on the wall: the feet were on top of a green chair (exhibit 2). There was a yellow kikoy (exhibit 1) tied around his neck and suspending him from the frame on the wall.
 8. The witness said that shortly thereafter, the accused came to the bar. Upon questioning, she said that the deceased was a regular customer and was on the material day accompanied by two men. She claimed that when she returned with their order, the two other men had disappeared; and, the deceased was hanging by the kikoy. That when she shouted for help, the responders were hostile shouting, “ameua, ameua”. Fearing for her safety, she left the bar.
9. The witness said that the bar was a single room constructed with timber and iron sheets. The drinks were kept behind the counter, less than 10 metres from the entrance. He testified that the police doubted the explanation offered by the accused and thus arrested her.
10. Under cross-examination, he stated that in view of that distance, the deceased could not have hanged himself without notice by the accused. He added that the post mortem report opined that the cause of death was “head injuries and not hanging”.
11. According to PW7, the accused admitted that the Kikoy belonged to her but she had left it on the plastic chair. When she was asked to demonstrate the time it would take from the counter to where the deceased was, PW7 said it took less than two minutes. But under the cross, the witness said that it took three police officers to bring down the body and that accordingly, “the accused could not have done this alone; she could not have suspended the body alone”.
12. The investigating officer was Inspector Kathurima Kiome (PW9). He testified that the body was “hanging from the roof; on the neck was a yellow lessa; He was stepping on a green plastic chair”. He made some sketch plans of the bar (exhibits 7 a-c). He said that he had over 23 years’ experience and that the evidence did not support the suicide theory. Upon cross examination, he stated that the accused was not intoxicated and failed to give “a proper account”. He however conceded that it was possible that the deceased “was attacked by more than one person”.
13. The scene was processed by P.C. David Otieno (PW5), a gazetted scene of crimes officer. He produced a bundle of 12 photographs (exhibit 5). Upon cross-examination by learned counsel Mr. Ayuo, he stated as follows-

Based on the knot, I am convinced that the knot did not exert pressure on the neck. When I viewed the body, there was no sign of suicide. Photo No. 7, 8 and 13, the deceased’s trouser had fresh dirt. The same dirt is also on the left hand. This shows that there was a commotion. Photo No. 8, shows hand of the deceased. They are in a straight position. Had the pressure been exerted on the neck, the deceased’s hands would have been clenched. This removes the possibility of suicide...



14. Like I stated earlier, that version was largely supported by P.C. Kevin Bwire (PW6). He theorized that the deceased did not hang himself because his feet were supported by the plastic chair and not hanging freely.
15. There is then the evidence of Simon Mwaura (PW2), a brother to the deceased. When he arrived at the scene, the body was hanging on the wall “with a lezzo and a chair was on the ground”. He did not see any evidence of a struggle or commotion in the bar. The body was removed by the police to the City Mortuary. According to this witness, the body did not have any visible injuries. He later identified the body for postmortem purposes.
16. The autopsy was conducted by Dr. Peter Ndegwa (PW8). His opinion was that the cause of death was “head injuries due to blunt force trauma with secondary hanging”.
17. From the evidence of Elizabeth Njeri (PW3), the accused was her sole employee at the bar. She had picked keys to the bar at noon that day. In cross-examination, she said the deceased was a regular customer. After the incident, she got in touch with the accused who “was very drunk and could not tell [her] anything”. The witness said that the entire bar measured 12 x 15 feet. On cross-examination, she said that the stock is displayed behind the counter. There is a wire mesh around the counter through which one can see the sitting area.
18. According to Dr. John Gatere (PW4), a consultant psychiatrist based at Mathari Teaching and Referral Hospital, the accused’s “mental status was normal” and was fit to plead. He produced the medical report dated 16th December 2019 (exhibit 3).
19. When the accused was placed on her defence, she denied killing the deceased. She knew him well as a customer and claimed to have once saved him from a lynch mob. On the material day, the deceased came to the bar accompanied by two men. She said they invited her to their table and they started drinking. One of the men sent her to the counter for a drink. She said that when she returned she had lost consciousness and did not even lock up the business.
20. The material part of her evidence went as follows-

On 10/10/2019 I was in Matopeni, Githogoro in a club. A customer (the deceased) who I know from 2009 was carrying bananas for sale in a lezzo. He was with the 2 other people and they were saying they did not know where to sell. I told them they could not do it at the club but to go sell and come to the club for normal business. That was 11.00am.

I and the deceased and the 2 people started drinking at 4.00pm. One of the customers asked me to get him a drink from the counter. When I returned, I lost consciousness. I did not even lock up the business. I came to Runda Police the next day. I did not kill the deceased. Even before, I had saved him from mob-justice. The persons he was drinking with were his friends and used nicknames. I really do not know what caused the death of the deceased. I used to be a bar-tender. The deceased and his colleagues invited me at their table for a drink.
21. But when cross-examined by learned prosecution counsel, Ms Kigira, she was hard put to explain how the deceased could have been hanged on the lezzo in the tiny bar without her knowledge. While the accused said that they drank until well after 4:00 p.m., her employer (PW3) had reached the scene at 3:00 p.m., by which time the deceased had died.
22. Learned counsel for the accused filed detailed final submissions dated 20th March 2025 together with a list of 28 authorities and an accompanying case digest.



23. Learned counsel submitted that the accused was not at the scene of the crime; and, had no motive to kill the deceased. According to learned counsel, the alibi was set up early at the point of arrest but the prosecution failed to discount it. Furthermore, the prosecution led no evidence to show the accused was the principal offender or part of a joint enterprise to kill the deceased.
24. In a nutshell, the defence contends that the quality of evidence fell far short of the required standard of proof; and, accordingly, the accused should be acquitted. Reliance was made on a number of precedents including, Republic v Abdi Ibrahim Owl, Garissa High Court Criminal Case 6 of 2011 KEHC 2122 (KLR); Limbabula v Republic, Kisumu Court of Appeal, Criminal Appeal 140 of 2003 [2003] eKLR; Republic v Simon Kagiri, High Court, Kerugoya, Criminal Case 9 of 2015 [2019] eKLR; Wangombe v Republic [1980] KLR 424; Republic v Prazad [1979] 2A Crim R. 45 and Parvin Singh Dhalay v Republic, Court of Appeal, Nairobi Criminal Appeal 10 of 1997 [1997] eKLR.
25. I take the following view of the matter. The burden of proof that the accused murdered the deceased lay squarely with the Republic. Woolmington v DPP [1935] AC 462, Bhatt v Republic [1957] E.A. 332.
26. Section 203 of the Penal Code provides that any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
27. There are three key ingredients that must be present: first, the prosecution must prove beyond reasonable doubt the death of the deceased and the cause of that death; secondly, that the accused committed the unlawful act that led to the death; and, thirdly, that the accused was of malice aforethought.
28. There is no doubt about the death of the deceased. The body was identified by the deceased's brother, Simon Mwaura (PW2). A good number of witnesses saw the body hanging in the bar including PW1, PW3, PW5, PW6, PW7 and PW9.
29. Doubt is completely erased by the evidence of the pathologist, Dr. Peter Ndegwa (PW8). His opinion was that the cause of death was "head injuries due to blunt force trauma with secondary hanging".
30. I thus readily find that the death was unlawful. The next question then is whether the Republic proved beyond reasonable doubt that the accused, of malice aforethought, killed the deceased.
31. There is no eye-witness account of the accused assaulting or hanging the deceased. The prosecution's case is entirely based on circumstantial evidence. In order to convict on such evidence, the entire chain must be complete and point to the guilt of the accused "incapable of explanation upon any other reasonable hypothesis than that of his guilt". R v Kipkering arap Koske & another 16 EACA 135 (1949). See also Sawe v Republic [2003] KLR 364, Mutua v Republic, High Court, Machakos, Criminal Appeal 198 of 2013 [2015] eKLR, Republic v Richard Itweka Wahiti, High Court, Kiambu, Criminal Case 9 of 2016 [2020] eKLR.
32. There are a number of incriminating pieces of evidence in this case. Firstly, the accused admitted in her defence that on the material day, she was at the locus in quo as early as 11:00 a.m. and that the trio returned to the club, ordered alcohol and invited her to share the drink at their table. I accordingly find that her alibi is unfounded.
33. Secondly, and as confirmed by her employer (PW3), the accused was the sole employee at the bar. She had picked keys to the pub at noon on the material day.
34. Thirdly, the accused and the deceased were not strangers. In her defence she said she knew him from as far back as the year 2009 and had saved him once from a lynch mob. She conceded that she encountered the deceased and two men "carrying bananas for sale in a lesso". She advised them to do it away from



- the club and return “for normal business”. It was then about 11.00 a.m. I have kept in mind that the accused picked up the keys to the business at noon. Although the accused denied owning the lesso tied around the deceased’s neck, she admitted in the cross that she told Wanjiru (PW3) to tell police “that the lesso was mine”.
35. Fourthly, there were only four people at the establishment when the homicide occurred: The accused, the deceased and the two other men. Although the accused feigned ignorance of their names, she conceded in the cross that she knew them by their aliases as “Muyahudi” and “Mukuri”. Like I stated, the three invited her to the table and offered her a drink. The accused said the drink was miti ni dawa.
 36. Fifthly, and as is clear from the photographs produced at the trial (exhibit 5), there was only one table in the bar. It was a tiny room measuring approximately 12 x 15 feet. When cross-examined, the accused stated that the counter was next to the table where she, the deceased and two men sat. It is then inconceivable that within a short span of fetching a drink at the adjacent counter, the deceased would have managed to hang himself without the knowledge of the accused. It is also unbelievable that Muyahudi and Mukuri also vanished without her knowledge. I equally did not believe her line of defence that when she “returned [from the counter she] lost consciousness”. It was too convenient and a red herring.
 37. Sixthly, the forensic evidence did not support the suicide theory. The truth and according to the testimony of the pathologist is that the cause of death was “head injuries due to blunt force trauma with secondary hanging”. Paraphrased, the deceased who was alive when the accused first saw him at 11:00 a.m. or when he returned to the bar in the afternoon was killed: The hanging scene was a poor cover-up. The only persons who had a clear opportunity to do so were the accused, Muyahudi and Mukuri. The accused was either a principal actor or part of the joint enterprise to kill the deceased.
 38. True, the accused never escaped from the locus in quo. She is also not obligated to say more than she did in her defence. It is equally true that the motive for the murder remains a puzzle. Whereas presence of a motive may be useful in understanding why the accused acted in a certain manner, it is not an ingredient of the offence of murder. Fundamentally, the prosecution is not obligated to prove it. See *Nzuki v Republic*, Court of Appeal, Nairobi, Criminal Appeal 70 of 1991 [1993] eKLR.
 39. Upon the digest of all the circumstantial evidence, I readily find that the defence is a sham and completely evasive. I have reached the conclusion that the accused either alone; or, in concert with others not before the court, killed the deceased and stage-managed the scene to look like a suicide.
 40. I find that the conduct of the accused is inconsistent with her plea of innocence. From the set of circumstances that I have highlighted, the accused had malice aforethought as defined in section 206 of the *Penal Code*. The deceased died as a direct consequence of her conduct and that of her accomplices. I find no defence or hypothesis that exonerates her.
 41. The upshot is that the prosecution has proved beyond reasonable doubt that the accused, of malice aforethought, caused the death of the deceased by an unlawful act. I accordingly enter a finding of guilty and convict her accordingly.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF JUNE 2025.

KANYI KIMONDO

JUDGE

Judgment read virtually on Microsoft Teams in the presence of: -



The accused.

Ms. Kigira for the Republic instructed by the office of the Director of Public prosecutions.

Mr. for the accused instructed by David Ayuo Advocates LL.P.

Mr. E. Ombuna, Court Assistant.

