



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Odinga (Criminal Case E136 of 2021)
[2025] KEHC 8403 (KLR) (16 June 2025) (Judgment)**

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**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E136 OF 2021**

**AC BETT, J
JUNE 16, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN INZOFU ODINGA ACCUSED

JUDGMENT

1. The Accused John Inzofu Odinga was charged with murder contrary to section 203 as read with section 204 of the Penal code. It was alleged that on the 4th day of October 2021, at Mwituma village, Makanga location, Mumias East Sub-county within Kakamega County, the Accused murdered CMM.
2. The Accused denied the charge and the matter proceeded to hearing. The prosecution called nine witnesses.
3. PW1, was the maternal aunt to the deceased. She recalled that on 4th October 2021 between 6.00am and 7.00 am, she escorted the deceased to board a vehicle to Mumias. The deceased who was a form four student, boarded an Eldoret Express vehicle. She had a black bag in which she was carrying some books, sugar and tea. The witness said that she had bought the tea and the sugar for her mother and given the same to the deceased to carry. The witness identified the books that the deceased had in her bag. According to PW1, she kept in touch with the deceased, who had a tablet Lenovo phone and spoke with her at midday and, at 4.00pm she assumed the deceased must have reached home but on calling later, the deceased did not pick the phone. PW1 then called her brother David Wanga and instructed him to wait for the deceased at Shianda Market. At around 7.00pm David Wanga called PW1 to inform her that he did not find the bus at stage. PW1 stated that the deceased later called David and informed him that she was at Butere and on learning that, she directed David to go to Butere to check what was going on since C was not picking her calls. At 10.00 pm, PW1 texted and asked the deceased whether she was safe. She received a text from the deceased at 11.00 pm stating that she was safe, but after that the phone went off.



4. According to PW1, David's search for the deceased did not yield anything and the next morning, her mother, David and Ernest Wanga went to Mumias Police Station to report that the deceased was missing.
5. PW1 further recalled that on the night of 7th October 2021 the deceased's Facebook profile page was updated with the Accused's picture. PW1 said that she did not know the Accused. David then went and showed the Accused person's picture as updated on Facebook to boda boda operators at Shianda Market and the said operators identified the Accused. The boda boda operators arrested the Accused and recovered the deceased's bag from the Accused's home. The bag had the tablet phone, biros, books titled 'Chози la Heri', 'Golden Tips Chemistry' and 'Mirror Biology'. The bag also had 3 packets of sugar and 2 packets of Fahari Tea which were all identified and produced as PExh1 to 8.
6. PW1's evidence was that the deceased was found in a river which is about 300 metres from the Accused person's house. PW1 testified that she travelled to Mumias from Nairobi to record a statement and found that the deceased's body had already been retrieved from the river.
7. On cross examination, PW1 stated that the deceased used to live with her grandmother since she was born outside wedlock. She further stated that she used to pay school fees for the child.
8. PW2 was David Wanga Rupia, an uncle to the deceased. He said that on 4th October 2021, he was waiting for the deceased who was travelling to Mumias, at Shianda. PW1 who used to live with the deceased during the school term gave him the deceased's telephone number to enable him communicate with her. According to PW2, he waited for the deceased until 9.00 pm. At 9.30 pm he called her. The deceased was crying and said that she did not know where she was but it was in Butere. He went to Butere and searched for the deceased to no avail. He went back home where he informed PW1 and Ernest. On 5th October 2021, he reported at Butere Police Station. Ernest also reported at Mumias Police Station. He then continued with the search within the neighbourhood.
9. PW2 recalled that on 7th October 2021, his aunt came and told him that she had seen someone's picture on the deceased's Facebook account. He took the picture to the police station. He said that he knew the person in the picture as he was a boda boda operator at Shianda. The police advised him to search for the person and he traced him to his home at Muraka Market. The police were informed and they came and found the deceased's phone in the Accused's pockets. They went to the Accused's house where they found the deceased's bag. The bag had clothes, sugar, books and tea.
10. PW2 stated that the deceased's body was recovered from a river that is about 500 metres from the deceased's house.
11. PW3 was Ernest Anzoli Wanga, an uncle to the deceased who recollected that he received a call from PW1 asking him to follow up on the deceased. He called the deceased who said that she was at Butere. According to him there were people directing the deceased on what to say. At 9.30 pm, PW3 said that he received a text from the deceased's phone saying "am safe don't worry" then the phone went off. PW3 then called PW2 and asked him to trace the deceased from where she said she was at Butere. PW2's efforts to trace the deceased were fruitless and at 10.00 pm, PW3 advised PW2 to report to the police at Butere that the deceased was missing.
12. PW3 recalled that on 7th October 2021, Maureen, a cousin to the deceased informed him that she had opened the deceased's Facebook page and found a stranger's picture uploaded there and was wondering what had happened. PW3 said that he went to the police station and provided them with the picture via Whatsapp which they used to trace the Accused and the same day, they arrested him.



13. On cross-examination, PW3 said that he did not print out the Accused's picture and only shared it with the police.
14. PW4 was John Lutomia Outomia, a boda boda operator who knew the Accused person as boda boda operator based at Mumias stage while he was based at Posta stage. He recounted that on 7th October 2021 while he was at the stage around 8:30 pm, PW2 came and reported that his niece had disappeared. He and a stranger's picture was on her Facebook page. He showed them the picture which PW4 and other boda boda operators identified. They decided to go to the home of the person in the picture led by Destrio Omanyana. At his home, they were informed that the person had gone to Muraka. They proceeded to Muraka where they found the Accused and on showing him the picture, he claimed not to know anything concerning it. They asked him to accompany them to Shianda police station but on the way, he jumped off PW2's motor cycle and attempted to run away. PW4 said that they pursued the Accused and arrested him whereby they tied his hands and legs after which PW2 called the police who came and on searching him, found a phone in his possession. PW4 identified the phone. PW4 further stated that they and the police proceeded to the Accused's house and in his bedroom, they found a black bag which had sugar, books and other items, placed near the bed. PW4 identified the black bag and the items that were in it. He said that after the bag was recovered, the Accused was arrested and the body of the deceased was recovered 2 days later. On cross examination PW4 said that he was not present when the Accused signed the inventory.
15. Wesley Keter testified as PW5. He said that on 7th October 2021, he received a call from the OCS concerning a report over a missing child. Accompanied by PW2, he was led to Maraba location, Shianda where he met a boda boda rider who identified himself as John Inzolu. He re-arrested him and proceeded to his house where he found beside his bed a bag containing some items. He made an inventory of the said items which included 6kgs of Kabras Sugar, packets of 2 Kgs each, 2 packets of Fahari tea leaves, 1 tablet mobile phone model Lenovo TB7305X IMEI No. 861235043156983 date of manufacture 13.04.2020 , 2 Safaricom Sim cards, 1 Telkom Sim card , I KCSE Mirror Biology 3rd edition, 1 KCSE Golden Tips Chemistry, I set book Chozi la Heri, 5 ballpoints pens and assorted clothing being 3 white blouses , I pair denim jeans suit, and a singlet green top. PW5 said that the inventory was signed by him, the Accused person and PW4.
16. PW5 further testified that he escorted the Accused to the police station where he booked him. PW5 produced the inventory and said that pictures of the perishable items were taken.
17. In response to the questions posed by Mrs. Wilunda in cross-examination, PW5 said that he was only the arresting officer and the missing person report was not made to him. He said that he came to know the suspect through the Facebook account of the deceased. He said that he arrested the Accused and another lady whose name he could not recall.
18. PW6, Richard Ashika Wambia was a watchman who lives in Maraba. He said that on 10th October 2021, he was going to work at Shianda. At a bridge, he saw a body in the water in River Lusumu. He telephoned his brother Joseph Amanda Wambia who came and confirmed that there was a body in the water. The brother then went to look for a rope to help in retrieving the body. As he waited for her brother to arrive, he followed the body as it was being washed down the river. Members of the public joined him and helped him secure the body and retrieve the same from the river. Other people made telephone calls. Some members of the family of the deceased came and identified the body which belonged to a girl. The village elder (Liguru) and the assistant chief came to the scene, as well as the police. The police collected the body. The witness identified photographs of the body.
19. PW7 was a farmer called James Shikule Kenbor from Maraba. He testified that he had entered into an agreement with the Accused whom he knew, to work as a boda boda rider subject to the Accused



- paying him Ksh. 300 per day. The agreement was made on 27th August 2021 but the Accused did not honour the agreement and only sent him ksh100 on 1st October 2021.
20. PW8 was Force No. 118955 PC Mark Too from the DCI. He said that on 7th October 2021 under OB 12/5/20/2021, he was stationed at Mumias DCI when a case of a missing person was reported. According to the witness, during investigations, the Accused was arrested by members of the public and escorted to his house where a search yielded a bag with the assorted items earlier identified and produced in court. On 10th October 2021, the body of the deceased was retrieved from a river.
 21. PW8 testified that the Accused had named Lilian Munyendo and Antonio Biketi but the investigations established that the two were not linked to the death of the deceased. He further stated that the phone that was recovered from the Accused was not subjected to forensic analysis.
 22. The Pathologist, Dr Dixon Mchana testified that on 12th October 2021 at Kakamega County General Hospital Mortuary, he performed an autopsy on a body that was identified by David Wanga and Chrispinus Makozi. The body was a female African about 5'3 inches long which was in the early stages of decomposition with the approximate time of death being 72 hours earlier.
 23. On examination, the Pathologist found bruising on the front part of the neck and chest. The lungs were ballooned and there was food in the stomach with no alcoholic smell. There was a fracture of the neck involving the 2nd and 3rd big bone. The witness formed the opinion that the cause of death was failure to breath due to manual strangulation. He filled burial permit No. 1894174 and took samples of swabs from the private parts for DNA analysis as there was bruising thereon.
 24. At the close of the prosecution case, the court found that the Accused had a case to answer and placed him on his defence. The Accused chose to give a sworn statement. He had no witnesses.
 25. In his defence, the Accused said that on 4th October 2021, Rodgers Andagwa Omuketi asked him to carry him to Sabatia where he had some chores. At Sabatia, he dropped the said Rodgers then went to fuel his motorbike. As he turned the motorbike, Rodgers boarded it with a lady whom he did not know. The said lady had a black bag. On 6th October 2021, on the way from Mutono Primary where he had dropped a passenger, he met Lilian Munyendo who requested him to take her to Mumias which he did. He then continued with his work until 7th October 2021 when he was accosted by some young men while working at Maraba Town. The young men asked him whom or what he had carried to Mumias on 6th October 2021 and he replied it was only Lilian Munyendo. The Accused further stated that while still in discussion with the young men, more motorcycles arrived and he was compelled to hand over his motorcycles and keys to someone else and to take the cyclists to Mumias where he had dropped his passengers on 6th October 2021. He boarded one of their motorcycle and as they were headed to Mumias, they met a private car at Shitoto Secondary School and he was made to get out of the motorcycle and board the private car which had strangers dressed in civilian clothes. He was taken to Mumias Police Station and forced to show them where he had dropped the customers he had brought to Mumias town. On arrival, the police arrested Lilian Munyendo who was later determined not to be the person the police were searching for. The police then asked him whom he carried on 4th October 2021 in the evening and he informed them that it was Rodgers Andagwa Omuketi.
 26. The Accused further stated on 13th October 2021, he was made to sit on the employer's motorcycle and his photograph taken. Later in the afternoon he and Lilian were taken out of their cells to the DCI where there were three pangas and a black bag. The police took them back to the cells. Later, the DCI called him and asked for Kshs 100,000/= in order to discharge him and since he did not have the money, he was later arraigned in court alone.



27. Only the Accused filed written submissions in which he did not dispute the fact that the deceased died. He submitted that there was no evidence as to exactly when the death occurred. He further submitted that the cause of death was not properly proved as there was tampering of the body by the tying of a rope around it during retrieval from the river. In the circumstances, he posited that the marks that were found on the neck during postmortem could have been caused by the rope and the death could as well have been due to drowning.
28. The Accused further submitted that there was no evidence linking the Accused to the death of the deceased as the DNA analysis report was negative and no murder weapon was recovered from the Accused's house. Additionally, it was his submissions that other suspects had been arrested and discharged and the exclusion from the case resulted in a weak prosecution's case. In particular, the Accused posited that Rodgers Omuketi was a person of interest from the onset and ought to have been charged.
29. The Accused further faulted the investigating officer for failing to carry out a forensic audit on the mobile phone allegedly confiscated from the Accused to ascertain whether he had been in communication with the deceased as the said gadget is the only link between the Accused and the deceased and in absence of forensic examination, there is no concrete evidence linking the Accused to the deceased.
30. In respect to the question of mens rea, the Accused submitted that there were no intent established on the part of the Accused to cause harm or death or to do an act that would to his knowledge cause death or injury since the deceased was a stranger to the Accused.
31. The Accused reiterated his defence that he did not kill the deceased but gave her and Rodgers a lift. It was his case that the police did not carry out proper investigations to establish the deceased's exact relationship with Rodgers and how she went to Butere while on an Eldoret-Mumias route. He also pointed out that the bus driver and conductor ought to have given evidence.
32. For the offence of murder to be proved, the prosecution has to demonstrate that the victim named as having been unlawfully killed is actually deceased. Further the prosecution must establish the cause of death and that the Accused person's act or omission directly caused the death and that the act or omission was unlawful. In proving that the cause of death was unlawful, the prosecution is under duty to demonstrate that the Accused person was positively identified as having caused the death and whether the death was actuated by malice aforethought as provided by Section 203 of the [Penal Code](#) which states that:-

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
33. By the end of the prosecution case, it was not in dispute that the victim named CMM was dead. Her body was identified by PW2 who was the deceased's uncle and one Chrispinus Makaka Makari, who was said to be the victim's biological father. The Consultant Pathologist, PW9, also confirmed her death and issued a burial permit.
34. In regard to the cause of death, PW9 performed an autopsy and was of the opinion that her death was caused by asphyxia secondary to manual strangulation. The Pathologist was categorical that the death was not self-inflicted, a conclusion he made due to the presence of an accompanying injury on the chest which he opined was a sign that the deceased tried to save herself. Despite the submission by the defence that the body was tampered with, I find that the tying of the body for purposes of its retrieval from the river could not have been the cause of the bruising and fracture of the neck. The



internal examination of the body pursued that the deceased had contusion of the chest walls as well as hyper-inflated lungs. Hyperinflated lungs are not caused by drowning. It occurs when the airways are blocked thereby trapping air in the lungs. If the deceased had died from drowning as suggested by the Accused, there would have been water in the lungs and not air.

35. That being the case, the Pathologist's evidence being that the deceased met her death through manual strangulation, I find that the third ingredient of the offence of murder being the element of an unlawful act was proved beyond reasonable doubt for the act of strangling a person will often at the very least, lead to serious injury to the victim and in the extreme, to death. Either way, the act of strangling a person is actuated by an intention to cause harm, which is an unlawful act.
36. On analysis of the prosecution's evidence, it is apparent that their case rests on circumstantial evidence since the Accused was never seen with the deceased. What the prosecution sought to prove was that there was evidence to link the Accused to the deceased and her death because the belongings of the deceased were recovered from the Accused's house after the Accused was identified from his photograph that had been uploaded on the deceased's Facebook page.
37. In the case of *Mohammed & Another v Republic* [2018] eKLR, the Court of Appeal rendered itself on the issue of circumstantial evidence and stated as follows:-

“Before circumstantial evidence can form the basis of a conviction, however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the accused person, and to no other person, as the perpetrator of the offence. In *Abanga alias Onyango v Republic*, Cr. App No. 32 of 1990 this Court set out the conditions as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those 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.”

38. In *Republic v Koech & another* [2024] KEHC 13581 (KLR) RN Nyakundi J considered the circumstances under which the court should place reliance on circumstantial evidence in order to convict an accused person and stated as follows:-

“22. The learned author Sir Alfred Willis in his book on circumstantial evidence chapter VI lays down the following rules to be observed in circumstantial evidence:

- a. The facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum*;
- b. The burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;



- c. In all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;
 - d. In order to justify 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;
 - e. If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.”
39. The doctrine of recent possession is a principle of circumstantial evidence that can be invoked in a situation where one is found with stolen items that were recently stolen and the person is unable to offer a reasonable explanation as to how the items came to be in his possession. In absence of a reasonable explanation, a rebuttable presumption can be drawn that the person found in possession of the items is guilty.
40. In order to prove recent possession, the prosecution needs to establish the following elements:-
- a. That the property must have been stolen recently
 - b. That the accused has not offered a plausible explanation as to how they came to be in possession of the stolen property.
 - c. That the property was actually found with the accused.
 - d. That the property actually belongs to the complainant or someone who was a victim of the theft. See the case of *Isaac Ng’ang’a Kahiga & another v Republic* [2006] eKLR and *Erick Otieno Auma v Republic* [2006] eKLR.
41. In the case of *Stephen Omondi Ochieng & another v Republic* [2025] KECA 13(KLR) the Court of Appeal had this to say:-
- “ 30. And in *Peter Kariuki Kibue vs. Republic*, Nairobi Criminal Appeal No. 21 of 2001 (unreported) when dealing with a similar matter where the appellant failed to explain how he came to be in possession of the complainant’s leather jacket and jeans trousers shortly after a robbery, this Court stated that: “The appellant was in law duty bound to offer a reasonable explanation as to how he came to be in possession of the items, otherwise than as the thief or guilty receiver. Since he did not offer any explanation the rebuttable presumption in law raised, based on the provisions of Section 119 of the *Evidence Act*, is that he was one of the people who robbed Damaris of the items together with her car and also robbed Irungu of his car. It is a presumption of fact which courts often refer to as the doctrine of possession of recently stolen property”.
 - 31. In this case, it is undisputed that the complainant was violently robbed and injured on the morning of 27th November 2010 at Arya Nursery School, where various items including mobile phones were stolen from him. The evidence on record shows that three iPhones were recovered from each appellant upon arrest. The same mobile phones were retained as an exhibit and produced in court.



32. In their defence, the appellants did not offer any explanation as to how the complainant's mobile phones came to be in their possession. As a consequence, there is no doubt that the appellants were amongst the gang that robbed the complainant on the morning of 27th November 2010.
33. It is clear therefore that all the ingredients of the offence were established beyond uncertainty, contrary to the submissions of the appellants. The trial court and 1st appellate court, were all justified in concluding that the ingredients of the offence were met as such there is no reason(s) to depart from those concurrent findings.”
42. Additionally, in *Peter Kariuki Kibue vs. Republic* [2001] eKLR when dealing with a similar matter where the appellant failed to explain how he came to be in possession of the complainant's leather jacket and jeans trousers shortly after a robbery, this Court stated that:-
- “...The appellant was in law duty bound to offer a reasonable explanation as to how he came to be in possession of the items, otherwise than as the thief or guilty receiver. Since he did not offer any explanation the rebuttable presumption in law raised, based on the provisions of Section 119 of the *Evidence Act*, is that he was one of the people who robbed Damaris of the items together with her car and also robbed Irungu of his car. It is a presumption of fact which courts often refer to as the doctrine of possession of recently stolen property.”
43. It is clear beyond peradventure that items that were proven to have belonged to the deceased were found in the Accused's possession on 7th October 2021 which was only three days after the deceased's disappearance. These items were recovered after the deceased's Facebook page had been updated with a stranger's photograph. Inquiries led the investigations to the Accused and it is from him that the items belonging to the deceased were found placed beside his bed. Shortly thereafter, the body of the deceased was found in a river which was said to be about 300 metres - 700 metres away from the Accused's house.
44. The primary issue for determination in a murder trial is to prove the act of killing. However, where stolen property is found in the suspect's possession in a murder trial, the possession becomes relevant as it links the suspect to the crime. Alongside the evidence of recent possession thereof, the court must consider other circumstances in order to arrive at a conviction.
45. Once the prosecution established that the victim's personal items were found in possession of the Accused, the burden fell on the Accused to tender a reasonable explanation as to how the items came into his possession. In his defence, the Accused claimed that he first saw the black bag with Rodgers and his lady companion whom he had ferried as passengers, and later at the police station. He said that he was not present when the bag was recovered from his house and he does not know how the bag found its way to his house.
46. In the case of *Joseph Otieno Luvanda & another v Republic* [2023] KECA 1139(KLR) the Court of Appeal held as follows:-
- “ 50. The observations in the Supreme Court of Uganda in *Bogere Moses & Another v Uganda*, Cr App No 1 of 1997 are pertinent; “It ought to be realized that where evidence of recent possession of stolen property is proved beyond reasonable doubt, it raises a very strong presumption of participation in the stealing, so that if there is no innocent explanation of the possession, the evidence is even stronger and more dependable than eye witness evidence of



identification in a nocturnal event. This is especially so because invariably the former is independently verifiable, while the latter solely depends on the credibility of the eye witness.”

51. Additionally, the case of *Geoffrey Kinyanjui & another vs Republic* [2020] eKLR made it clear that, the fact that the appellants were found with the stolen motor vehicle connected them to the robbery, thereby conclusively determining the issue of identification.”
47. PW4 a fellow boda boda rider who accompanied the police to the Accused’s house testified that they went to the Accused’s bedroom where they found a black bag which had sugar, books and other items. He said that he signed the inventory. His evidence was fortified by that of PW5, PC Wesley Keter who conducted the search. It was not put to PW4 and PW5 that the bag was not in the Accused’s house on 7th October 2021. It was also not put to PW5 that the police planted the bag in the Accused’s house. Upon considering the evidence, I find the evidence of the prosecution’s witnesses on the recovery of the bag to be cogent and credible and the Accused’s explanation to be an afterthought, unbelievable. I therefore hold that the Accused failed to discharge the burden and provide a reasonable explanation as required under Section 111 of the *Evidence Act*. The fact that the Accused was found in possession of the deceased’s property links him to the deceased.
48. Having established that the Accused was linked to the deceased by virtue of the deceased’s property that was found in his house, the court needs to weigh the evidence to determine whether the Accused was the one who killed the deceased. The prosecution’s evidence was that the body of the deceased was discovered in a river which is 300 – 700 metres from the Accused’s house. PW2 who accompanied the police as they searched the house of the Accused and recovered the deceased’s personal items, said that he went to the river to identify the body and the body was about 300 – 700 metres from the Accused’s house.
49. The discovery of the deceased’s body about 300 – 700 metres from the Accused’s house six days after she had been reported missing, coupled with the fact that the Accused had posted his pictures on the deceased’s Facebook account on 7th October 2021, as well as the recovery of the deceased’s personal effects from the Accused’s house are what led to the conclusion that it is the Accused who killed the deceased. This conclusion is fortified by the Pathologist’s opinion during the post-mortem that the death occurred approximately 72 hours before.
50. Regarding the Accused person’s contention that the DNA analysis was negative and since forensic analysis was not done on the phone that was recovered, the prosecution failed to prove its case, the court will examine whether the same are fatal to the prosecution’s case.
51. PW9 testified that he took samples of swabs from the body of the deceased for DNA analysis. The investigating officer merely stated that DNA analysis was done but did not produce the exhibit memo form to confirm his testimony. No DNA report was referred to nor produced. Curiously, the investigating officer also did not conduct a forensic analysis of the phone that was recovered from the Accused and from which presumably the Accused person’s photograph was taken and updated as her Facebook status. The investigating officer’s actions or inaction are an unfortunate pointer to the casual way in which the DCI handles criminal investigations at times.
52. Be that as it may, I hasten to say that whereas a DNA report is an important evidential document in a criminal trial, its absence does not automatically render the prosecution’s case futile. A DNA report will bolster the prosecution’s case but there may be other evidence that can equally strengthen the prosecution’s case. Such evidence could be physical, circumstantial, or direct witness testimonies.



53. In *GPM v. Republic* [2024] KECA 1287 (KLR), the Court of Appeal considered the effect of failure to carry out forensic examination and stated thus:-

“Turning to the appellant’s submission that the prosecution’s case could not stand on account of failure to carry out forensic examination of the blood stains on the stone found near the deceased’s body, the body itself, the items found on the scene, and other scientific investigations to establish the identity of the assailant does not by any means affect the credibility of the prosecution evidence. In *David Kahura Wangari vs. Republic* [2016] eKLR, this Court held that:

“DNA testing or forensic examination of a perpetrator of any offence is done in the course of investigations, but that is purely the choice of the investigating officers, and failure to do so particularly in this case did not affect the credibility of the evidence that was before the court.”

54. Although the investigating officer failed to carry out a forensic analysis on the phone, there was no dispute that the phone belonged to the deceased. The evidence was that the deceased’s Facebook page was updated with the Accused’s photo on 7.10.2021 which was three days after the deceased disappeared and it is the Facebook status update that led to the Accused’s door step. In his defence the Accused said that he did not take the photo that was posted on the deceased’s Facebook but it is the police who took it. The defence lacks credibility as the status update happened before the Accused’s arrest. In fact, his arrest was a citizen’s arrest as PW2, who was the deceased’s uncle armed himself with the photograph from the deceased’s Facebook page and after reporting to the police, proceeded to the Shianda boda boda operators’ stage and showed the photograph to PW4 while informing him and his colleagues about the situation whereby his colleagues directed PW2 to the Accused.

55. Despite the absence of forensic analysis of the phone, the evidence of the prosecution regarding how they zeroed in on the Accused was credible, consistent and sufficient to infer that the Accused was connected with the disappearance of the deceased.

56. I have carefully considered the Accused’s defence and his submissions. His attempt to lay the blame on Rodgers Andagwa Omuketi and to claim that he was framed by the police because he could not raise a bribe cannot hold in the face of the overwhelming evidence against him. Rodgers Andagwa Omuketi was a mere passenger who fell victim of the Accused’s ploy to evade justice. The prosecution’s evidence was so interlinked that there was no possibility that any other person was responsible for the killing of the deceased.

57. Notwithstanding the fact that no one saw the deceased being killed, there was conclusive evidence from PW9 who personally performed the autopsy and produced the post-mortem report that the deceased died of manual strangulation. The only inference the court can make is that the Accused strangled the deceased before dumping her body in the nearby river in an effort to cover up the crime. That is the only hypothesis that is credible in view of the chain of evidence linking the Accused to the deceased. I am fully persuaded that the chain of evidence unerringly links the Accused to the offence.

58. Regarding the question as to whether the Accused harboured malice aforethought in killing the deceased, the court is guided by Section 203 of the *Penal Code* which states:-

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”



59. In Nancy Moraa Onyiengo v. Republic [2025] KECA 337 (KLR), the Court of Appeal considered an appeal wherein the Appellant was said to have strangled the deceased before drowning him and held thus:-

“26. On the issue of malice aforethought, the respondent submits that the learned Judge relied on the nature and cause of death to find that malice aforethought was proved; that the act of strangling a child leading to suffocation is a very personal and deliberate act which was intended to cause the death. The actions after the death of attempting to disguise the murder as an accidental drowning further showed the malice on the part of the appellant. In support of this argument, reference is made to the case of Paul Muigai Ndungi vs. Republic [2011] eKLR.

27. In this regard, we agree with the respondent’s that the act of strangling the deceased was a deliberate act intended to cause death. The appellant went even a step further to try and disguise the murder as accidental drowning. This points to the willful intention to cause grievous harm or even death on the appellant’s part.”

62. I am in total agreement with the views of the Court of Appeal. The act of manually strangling the deceased to the extent of leaving a fracture of the neck was an extremely violent and vicious act that was calculated at ending her life. The subsequent act of dumping her body in the river was in further actuation of the malicious intention to end the life of the deceased and to cover up the cause of death. The Accused had committed what he thought was a perfect crime and he may have gotten away with it if he had not succumbed to the temptation to take a photo which ended up being uploaded in the deceased’s Facebook page as a status update.

63. Taking into account all the circumstances surrounding the offence, I am convinced that the prosecution proved beyond reasonable doubt, that the Accused, and nobody else committed the offence. The Accused is convicted of the charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF JUNE 2025.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the Prosecution

Mr. Adeka for the Accused

Court Assistant: Polycap

