



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Omayo (Criminal Case 29 of 2016)
[2025] KEHC 8577 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 29 OF 2016**

**PM MULWA, J
JUNE 16, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

THOMAS OKUMU OMAYO ACCUSED

JUDGMENT

1. The accused, Thomas Okumu Omayo was charged with murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the offense are that on 15th May 2015, at Kiaora area of Juja, within Kiambu County with another not before court murdered Teresia Muthoni Njagi.
2. The accused took plea on 9th June 2015 and pleaded not guilty. The trial commenced before Meoli, J. who heard 6 witnesses. Kasango, J. took over the case and heard the final prosecution witness. I then took over and heard the defense case.
3. The prosecution case as narrated by Pw1 (George Onchiri Oriri) is that on 15th May 2015 he was driving from Juja to the Kenya Nut farm along Juja/Gatundu Road when he observed a woman in a maroon dress seated by the roadside. Shortly after, he passed a man in a blue shirt and a woman in a cream outfit walking separately but did not recognize them at the time. Upon arriving at his residence on the farm around 10:00 pm, he received a call from the security supervisor reporting a female body on the road near the farm. Accompanied by colleagues, he drove to the scene, approximately one kilometre from his home, where they found the deceased lying face down with severe head injuries and blood on the road. One of the workers identified the body as "Mama Mureithi," prompting them to check her locked house before reporting the incident to Juja Police Station. That he later learned the deceased was a farm worker and cohabited with the accused, Thomas Okumu, despite him being lawfully married to another woman.



4. Security guards reported apprehending two individuals later identified as the accused and his wife for entering the farm using the wrong gate. When police arrived, Pw1 said he noticed bloodstains on the accused's blue shirt, matching the description of the man he had seen earlier on the road. During cross-examination, he clarified that he did not stop to assist the woman in the maroon dress nor witness any assault. He reiterated that the body appeared to be the victim of a hit-and-run, though no vehicles were present at the scene. He confirmed that the accused and his wife were employees of Kenya Nut, with the wife working as a casual laborer. He maintained that the couple matched the description of the individuals he had seen earlier, though he did not directly witness the crime. In re-examination, he affirmed his belief that the accused and his wife were the same individuals he encountered on the road, given the matching clothing descriptions.
5. Pw2 - Hamisi Isaboke Cliff testified that he previously worked as a guard at Kenya Nut from 2013 to 2015. That on the night of 15th May 2015, he was stationed alone at Kabati Camp's entry gate when his supervisor, Mochama, arrived at 8:30 pm. Shortly after, two individuals a man and a woman entered through an unauthorized route from Marera Farm. When challenged, the man (later identified as the accused, a fellow guard) stopped, while the woman fled. Mochama questioned the accused about using the wrong entry, but he gave no explanation, only claiming the woman was his wife.
6. Pw2 further testified that about an hour later, an employee reported seeing a bleeding woman near the gate. That, himself and other guards went to the scene and confirmed the presence of a deceased female later identified as Mama Mureithi, a farmworker. Her body lay face down with head injuries. He noted that the accused and the deceased had a known affair, as the accused's wife was away at the time. During cross-examination, he reiterated that the supervisor questioned the accused for using the wrong entry point at night. That the accused failed to explain his actions but insisted the woman with him was his wife. He stated that he did not understand why the accused, who was off-duty that night, would use an unauthorized route. The Juja/Gatundu road was described as a dark, deserted murram road with no electric lighting by 8:30 pm.
7. Pw3 (Margaret Wanja Njagi) testified that in May 2015, she was informed of her mother's passing by his aunt, Jacinta. At the time, she lived in Embu, which was some distance away from her aunt's residence. She stated that she did not know the accused person involved in the case and that her role in the proceedings was to identify her mother's body during the post-mortem examination. During cross-examination she reiterated that her main responsibility was the formal identification of her mother's body.
8. Pw4 - PC David Mulali, attached to CID Juja Police Station testified that on the morning of 16th May 2015, the manager and security supervisor of Kenya Nut Company reported a body found on the Juja/Gatundu Road near the Kabati camp. Together with the duty officer and the reporters they proceeded to the scene where they discovered the deceased lying face down with head injuries, both at the back and front. Despite initial suspicions of a road accident, further observations ruled this out since the area was well-lit. That the security personnel had already marked the scene.
9. Pw4 went on to state that some workers from Kenya Nut recognized the deceased and revealed that she had been in a romantic relationship with the accused. A security officer provided crucial testimony, stating that he had seen the accused attempting to enter the camp through an unauthorized entry earlier that night. When questioned, the accused fled. This information prompted the officers to investigate further. They proceeded to the accused's home, located about 200 meters from the crime scene. During a search, they demanded the clothes he had worn the previous day. The accused handed over a blue shirt (marked as P/Exhibit 1), which appeared torn, bloodstained, and dirty. That they took the shirt and took the accused into custody for further interrogation. That he escorted the bloodstained shirt



to the government chemist for analysis. The subsequent government analyst's report confirmed that the bloodstains on the shirt belonged to the accused.

10. Pw5 - IP Daniel Kamau, presented an identification parade record conducted by CIP Omweri. He stated that the accused, was informed about the identification parade process and he indicated that he had no counsel and claimed he could not nominate anyone to attend the parade. The accused was placed among nine participants. Notably, the witness recognized him. The accused questioned the fairness of the process since the witness who identified him was a colleague. Pw5 affirmed under cross-examination that both individuals had a prior workplace relationship, potentially influencing the identification's reliability.
11. Pw6 (Elizabeth Waithera Oyiengo), a qualified Government Chemist with 26 years of experience, testified that DNA analysis confirmed a 100% match between bloodstains on the accused blue shirt (Item A-1) and a blood sample labeled "Thomas Okumu Omaa" (Item 70). She produced report and Exhibit Memo as P/Exhibits 3 and 4 respectively.
12. Pw7 - Dr. Oduor Johansen, the pathologist testified that the deceased, identified by two witnesses, died from blunt force head trauma consistent with homicide. The autopsy, conducted by Dr. Josephine Muthoni, revealed skull fractures and brain bleeding, with no other significant injuries. He produced the post mortem report as P/Exhibit 5. During cross- examination, he affirmed that forensic analysis focuses on the type of force rather than the exact weapon unless distinctive marks are present.
13. When placed on his defence, the accused elected to give unsworn testimony wherein he explained that he had worked as a security guard at Kenya Nut Company for 10 years. That the deceased was his lover for one year before the incident. That on 15th May 2015, he was sent to Thika to collect NSSF documents. After waiting in a queue, he was served at 5:00 pm after which he boarded a matatu to return home. That at a place called Centre No.4, the driver suddenly braked, causing him to hit his head and sustain injuries. That he received first aid, and his wife was called to the scene then they left together. That on the way home, they passed near his workplace, where he briefly greeted his supervisor. They then went home, had supper, and slept. Later that night, the OCS knocked on his door, asking about the deceased to which he told him she was at her house. He was then taken to the police station to assist in investigations. An identification parade was conducted, where his manager allegedly identified him. He maintains his innocence, stating that he was wrongly accused and has been in custody since.
14. At the close of his case, learned counsel for the accused filed written submissions in support of his defence. Counsel submitted that the prosecution had not proved the case against the accused to the required standard and thus he should be acquitted. The prosecution relied on the evidence adduced.
15. The accused is charged with the offence of murder contrary to Section 203 of the [Penal Code](#) which provides as follows:

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
16. The prosecution in order to prove the charge of murder against the accused must tender evidence proving all the ingredients of the offence. The ingredients of the offence of murder are:
 - i. The fact and cause of death.
 - ii. The unlawful act or omission causing the death
 - iii. That it is accused who caused the unlawful act or omission or inflicted the injuries that caused the death of deceased.



- iv. That the accused committed the unlawful act with malice aforethought.
17. In this case, the death of the deceased is not in doubt. It was proved by the witnesses who vouched that they saw the deceased dead. Additionally, the Medical Doctor who conducted the autopsy on the body of the deceased concluded that the cause of death of the deceased was blunt force trauma.
18. On proof that the accused person committed the unlawful act which caused the death of the deceased, the evidence adduced before this court in respect to this case is purely circumstantial. None of the prosecution witnesses witnessed the commission of the offence.
19. There are many decisions by the superior courts on circumstantial evidence and how it should be treated. In the case of *Abanga alias Onyango v Republic* (2003) KLR 364, the Court of Appeal set out the tests which should be applied when dealing with circumstantial evidence, that is:
- 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.
20. Later in the case of *Nzivo vs Republic* (2005) I KLR 699 the Court of Appeal held thus:
- “In a case dependent on circumstantial evidence in order to justify the inference of guilt the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt. It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.”
21. None of the witnesses saw the accused inflicting any injury on the deceased. It is clear that there is no direct evidence linking the accused to the death of the deceased. The prosecution would only therefor prove the charge against accused by tendering circumstantial evidence of facts from which a court would make an inference of guilt on the part of the accused.
22. I have evaluated the evidence at great length and there is really nothing to connect the accused with the death of the deceased except mere suspicion. The prosecution must prove the case against the accused beyond any reasonable doubt. Thus, it is my considered view, the evidence does not satisfy the legal requirements of circumstantial evidence to warrant or justify the conviction of the accused on the basis of the evidence on the record.
23. Having so found as above, the issue of whether the accused had malice aforethought, is rendered moot.
24. Consequently, the prosecution has not proved, as against the accused, the offence of murder contrary to section 203 of the *Penal Code*. I find accused not guilty and acquit him accordingly. The accused is to be set at liberty unless otherwise lawfully detained.

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

PETER M. MULWA

JUDGE



In the presence of:

Mr. Magero for The State

N/A by counsel for Accused

Accused – present in court

Court Assistant: Julia

