



**Republic v Maina (Criminal Case 5 of 2019) [2025] KEHC 8006 (KLR) (10 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL CASE 5 OF 2019**

**RK LIMO, J  
JUNE 10, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SAMUEL KAMAU MAINA ..... ACCUSED**

**JUDGMENT**

1. Samuel Kamau Maina, the accused herein is charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that on 17/2/2019 at Tiwani Village within Trans Nzoia he unlawfully murdered Nancy Wanjiru Maina.
2. The accused denied committing the offence and the prosecution presented 6 witnesses to prove their case. Below is a summary of the evidence tendered.
3. Dr. Alex Barasa (PW1) a Doctor who conducted post mortem examination on the body of the deceased testified that he examined the body of the deceased and noted multiple bruises on the face, elbow joints, chest and right shoulder. He concluded that the cause of death was strangulation and tendered the post mortem report as PExhibit1 to demonstrate the cause of death.
4. Jane Wateto Ndungu (PW2) testified that on 17/2/2019 she was woken up at around 8.30am by her daughter and informed that the accused person was outside calling her. She testified that she went and saw the accused who informed her that he had come from Nairobi to check on his mother but found her absent in her house. The witness stated that she is a sister to the deceased and when she tried reaching her on phone she could not go through.
5. She stated that she told the accused to call but the accused informed her he did not have a phone. She stated that she gave the accused her daughter's phone and advised the accused to go and check where the mother used to work.



6. She testified that at around 10am her other sister named Grace went to her home and he told her what the accused had informed her. She stated that her sister called the accused and then began wailing saying that the accused had informed her that their sister (the deceased) had died.
7. She stated that she together with her sister rushed to the home of deceased and found the accused lying outside and that he opened the gate for them and on entering the house they found their sister lying down dead with her legs near the door. She stated that they wailed and people came. She said that they reported the matter to the police who came and collected the body before arresting the accused.
8. She stated that on 19/2/2019 she attended a post mortem examination where she identified the body of her sister (the deceased). She testified that the accused used to live with the deceased. She recalled that the deceased had told her that she had given money to the accused to go and find work in Narok on Thursday and was therefore surprised to see the accused on that Sunday.
9. She stated that when she asked the accused what he was doing on Sunday he told her that he had forgotten his ID card at home and had only returned that very Sunday. She further stated that her sister (deceased) used to report to her that the accused used to disturb her with demands for money and that the accused also used to pick items in the house without permission.
10. She stated that her sister was strangled to death and though she could not tell who did it, she stated that only the accused and the deceased lived in that house. She further recalled an incident when the deceased told her that the accused had sold her chicken and eggs and when she inquired for the reason why he did it, he slapped her. She stated that the accused had left her house on that material day in the morning and two hours later when called, he reported that the mother was dead.
11. Grace Wangare Ndungu (PW3) testified that on the material date at around 10am she had passed by her sister's place (PW2) to accompany her to church. She stated that she reported to her that the accused person had been to her house that morning telling her that he could not trace his mother. She stated that she picked her phone and called the accused who told her that her mother (deceased) had died. She stated that, together with her sister rushed to find out and found the gate locked. She stated that the accused person was lying under an avocado tree and she asked him to open the gate which he obliged.
12. She stated that she asked the accused where the deceased was and he told her that she was inside the house. She said that she went inside and found the deceased's body lying on the floor and when she touched the body it was very cold.
13. She stated that they then raised alarm and called her other sister to inform her. She stated that they then reported the matter at Kitale police station upon which the police went and collected the body. She recalled that when they found the accused lying under an avocado tree, he did not appear shocked. She stated that the deceased used to stay with a grandchild who then was in school and so at the material time, she was alone with the accused. She further recalled that when they reached the house of the deceased, the deceased body lay near the door to her bedroom and that the bedroom appeared disturbed.
14. Esther Nyaguthii (PW4) a sister to the deceased, recalled that on 17/2/2019 at around 10am her sister Grace Wangare Ndungu (PW3) called her and informed her that the deceased had died. She stated that she rushed to the house of her sister (deceased) and upon confirming the sad news, they went to Kitale police station to report. She stated that the accused went with them to report the murder incident. She stated that the body of the deceased was later taken to mortuary and the accused was arrested.
15. Mary Muthoni Mureithi (PW5) another sister of the deceased testified that on 17/2/2019 while she was on her way to church her sister Jane Wateto Ndungu (PW2) called her telling her that their sister



- was very ill. She stated that she could however sense that her sister was crying and she rushed to where the deceased lived and found many people and motorcycles in the compound. She stated that she then realized that her sister was dead and broke down.
16. She testified that she was taken under a shade to cool down and that the accused went and sat beside her. She stated that she asked the accused what had happened and he repeatedly told her that deceased's blood pressure shot up and she lost control and fell from the bed and that she was hit by the bed around the neck.
  17. She stated that she accompanied the body as it was being taken to the morgue and that when she saw the tongue protruding from the mouth she remarked that the deceased had been murdered and fell unconscious due to shock. She stated that she kept on asking who had murdered their sister and accused kept on replying that the deceased died of pressure.
  18. She stated that she went to the police station and reported what she had observed at the mortuary and that the police went to the mortuary and arrested the accused.
  19. She stated that the police then proceeded to the home of the deceased and recovered clothes with blood stains. She stated that the clothes belonging to the accused were stashed in a store covered with old sacks. She further testified that the clothes of the deceased were under the bed and that she saw a jumper, a striped shirt and a blouse.
  20. She recalled that the deceased who was her elder sister had issues with the accused and that she recalled an incident on 25/12/2018 when the deceased called her and informed her that there was something she wanted to discuss with her. She stated that she later learnt that the accused had slapped her. She also recalled an incident in 2014 where the accused whom she had employed as a casual in her butchery business stole from her and took off. She stated that she did not press charges after he agreed to go back home in Nyeri. She stated that he later came back and that shortly before the deceased was killed, she had been informed her that the accused had gone to Narok to fend for himself.
  21. Polycarp Lutta Kweyu (PW6) an expert witness, from Kisumu Government Chemist testified that on 12/3/2019 Sgt Barasa of DCI Kitale forwarded to him the following 4 items for forensic analysis;
    - i. Blood sample of Nancy Wanjiru Maina (deceased) – ‘A’.
    - ii. A multi-coloured blood stained blouse belonging to the deceased – ‘B’.
    - iii. Blood stained blue jumper belonging to deceased – ‘C’
    - iv. A blue/grey/white stripped long sleeved shirt of Samuel Kamau Maina (accused - ‘D’)
  22. The forensic expert stated that he was requested to conduct a DNA analysis and determine genes relationship and that after conducting the analysis he came up with the following results;
    - a. That Item ‘B’ was heavily stained, ‘C’ moderately stained and ‘D’ was lightly stained with human blood.
    - b. That DNA profiles generated from ‘B’ and ‘C’ matched DNA profile of deceased.
    - c. That DNA profile generated from ‘D’ was for a male person, a male biological child to the deceased.
- He tendered the report he prepared and signed as PExhibit 2(a) Exhibit Memo as PExhibit 2(b).



23. PC Jonathan Otieno (PW7), the investigating officer stated that he took over the investigation duties from Sgt Lennox Barasa. He tendered the statement of the said Barasa as PExhibit 2. He further tendered a blood stained blouse, jumper and shirt as PExhibit 3(a) and (c) respectively.
24. When placed on his defence, the accused denied the charge facing him. He stated that the deceased was his mother. He stated that on the material day on 17/2/2019 he went to where his mother (deceased) lived and when he knocked the gate he got no response. He stated that he went to where she worked at a bar near the Stadium but did not find her there and that the bar was closed.
25. He stated that he last saw the deceased on 14/2/2019. He stated that after failing to see her, he went to his aunt Jane (PW2) but she stated that she had not seen the deceased and tried calling her in vain.
26. He stated that he went back to the house at around 10am and broke the door upon which he found her (the deceased) lying down. He stated that he called his mother's sister who came and called the police. He stated that the police came and collected the body.
27. He stated under cross-examination that his mother's residence was locked from inside and that there was no sign of interferences. He denied having a spare key to the house.
28. He further stated that he did not notice any injuries from his mother's body. He stated that he did not know who killed her.

At the close of defence case, the defence counsel opted not to file any submissions and left the matter for the decision of this court.

29. The accused in this case is charged with the murder of his mother (deceased). He has denied the charge. The prosecution in a case of murder is required to establish and prove the following elements to the required standard which is beyond reasonable doubt;
  - i. Death and its cause.
  - ii. That the unlawful act causing death is linked to the accused (Actus reus).
  - iii. Mens rea or that the act causing death was actuated by malice afterthought.

**(i) Death and the cause.**

30. These 2 elements are uncontested in this case. Dr. Alex Barasa (PW1) testified that the deceased body had bruises on the face, elbow joints, chest and right chest indicating that there was a struggle and that the cause of death was strangulation. He tendered post mortem report as PExhibit 1. The medical evidence revealed that the death was deliberately caused by a person who strangled her after some struggle. The evidence given by her sister Mary Muthoni Mureithi (PW5) that she saw her tongue protruding clearly corroborates the medical evidence tendered by the Doctor (PW1). This court finds that the element of death and its cause was well established and proved beyond any doubt.

**(ii) Actus reus**

31. There were no eye witnesses in this case. No one saw or heard the commotion from the residence of the deceased. The deceased resided alone with the accused. The other person who used to stay with the deceased was away in school at the time going by the evidence tendered by Jane Wateto Ndungu (PW2) and Mary Muthoni Mureithi (PW5).
32. The prosecution's case with respect to this element relied solely on circumstantial evidence. Circumstantial evidence depending on circumstances can be as reliable as direct evidence. In this case



the prosecution brought out the following circumstances from which important inferences can be drawn;

- i. The deceased lived alone with the accused at the time. There was no one else in that compound. That could explain why no one heard any commotion.
- ii. The accused person from the evidence given by the sisters of the deceased (PW2, PW3 and PW4) was an errant son who kept bothering his mother (deceased) demanding for money. PW2, Jane Wateto recalled that the deceased had told her that she had given money to the accused to go and look for work in Narok and that he used to disturb her demanding money and that the deceased also complained that the accused had sold her chicken and eggs and when she confronted him, he slapped her. Those allegations were corroborated by Mary Muthoni Mureithi (PW5).
- iii. The discovery of blood stained clothes belonging to the deceased in her house. The clothes were tendered as PExhibit 3a), (b) and (c). PW5 identified the clothes and saw them being retrieved from under the bed of her sister. She also saw the clothes of the accused being recovered in a store within the compound of the home of the deceased. When the clothes recovered were taken for forensic analysis the results were quite significant and telling. The DNA analysis of blood stains found on the clothes identified to belong to the deceased matched. The blue/black/grey/white striped shirt belonging to the accused was found to have blood stains and the DNA analysis revealed that the DNA profile indicated that the blood belonged to a biological son of the deceased. The accused is a biological son of the deceased. There is no dispute the bruises found on the body of the deceased by the Doctor (PW1) indicated that the deceased bled as a result of struggling for her life. The blood stained clothes found under her bed and tendered as PExhibit 3(a) (b) and (c) are a further corroboration. As observed above, the forensic expert (Polycarp Lutta Kweyu (PW6) connected the blood stains in the clothes with the deceased and the accused. Those clothes were all found at the scene of crime and the only inference that can be drawn from those given circumstances is that the accused and no one else murdered the deceased.

33. This court finds that the circumstantial evidence tendered by the prosecution positively links the accused with the cause of death of the deceased. PW3 (Grace Wangari) and PW5 both stated that the demeanour of the accused was that of a person unaffected by the incident. He was found sleeping under an avocado tree unaffected. PW5 stated that the accused told her that the deceased had died because of blood pressure. This court finds that the conduct of the accused as his aunties wailed indicates that he knew what he had done to the deceased. This court finds that the element of actus reus was well established by the evidence tendered and linked to the accused beyond reasonable doubt.

### **(iii) Mens rea**

34. The prosecution's witnesses in this case testified that the accused person was troublesome to his mother (deceased) and at one time slapped her after selling her chicken and eggs. What is even more revealing in regard to mens rea is the nature of injuries inflicted on the deceased. Inference of malice aforethought can be inferred. Section 206 of the *Penal Code* provides;

Malice aforethought

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances;



- a. an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- b. knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused”.

35. The Doctor (PW1) observed multiple bruises on the face, elbow joints, chest and right shoulder. The trachea and esophagus were transected indicative of strangulation. PW5 saw the tongue of the deceased protruding when she saw the body at the mortuary. This shows that the deceased died a painful death and the person who inflicted the serious injuries was actuated by malice. This court finds that the prosecution’s case against the accused is simply overwhelming. The mother (deceased) tried to get him away by giving him money to go and fend for himself away in Narok and leave her in peace but he was intent at committing a heinous act against his own mother which is very unfortunate and highly regrettable.

He is found guilty as charged and is accordingly convicted.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 10<sup>TH</sup> DAY OF JUNE, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of;

Mwemeke for accused – absent

Samuel Kamau Maina –the accused present

Duke/Chemosop – Court Assistants

