



Republic v Akoli (Criminal Case 5 of 2018) [2025] KEHC 10985 (KLR) (22 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 5 OF 2018**

JM NANG'EA, J

JULY 22, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID EBETET AKOLI ACCUSED

JUDGMENT

Charge facing the accused person

1. This is a very long pending case instituted way back in 2018. The above named (hereinafter referred to as “the Accused”) was on 15th March 2018 arraigned in this court on information and charge of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence state that on the 10th December 2018 at Ol-Rongai Shopping Centre, Rongai Sub County , within Nakuru County he murdered Joyce Chemilil (hereinafter referred to as “the Deceased”).
2. The Accused denied the offence.

The Prosecution case

3. Part of the prosecution evidence was recorded before two other judges (Justices Joel Ngugi and H.M Nyaga) who have since transferred to other work stations. This court took over the case on 3rd October 2024 and directed that hearing would continue from the point the previous court left off.

Prosecution Evidence

4. The Prosecution evidence is that on 10/12/2017 at around 6:30 a.m. PW1, a Petrol Attendant, woke up and went to her church. Later she went to her work place and noticed signs of fire. As she cut some twigs nearby for use to sweep, she saw a body of a person in the bushes and informed a passerby (PW6). They then notified the area Chief who together with Police Officers arrived and took away the body. PW 1 and PW 6 stated that they could not recognize the Deceased.



5. PW3 testified that on 9th December 2017 he and the Accused performed casual jobs at the home of one Jackson. They were paid their dues at around 8:00 p.m. and they parted. Later at 2:30 a.m. the Accused is said to have gone to PW3's house while drunk. He requested him to escort him home claiming that some people were pursuing him. PW3 suggested that he instead spend the night at his home. The following morning PW3 went to the local Shopping Centre, leaving the Accused still asleep. He met with PW1 who told him of discovery of the body. They called the area Chief who arrived at the scene with police officers. PW3 further told the court that he gave them the information of his hosting of the Accused the previous night.
6. PW 6 confirmed the evidence of PW1 and PW3, and so did PW5 who was the area Chief informed of the body's discovery.
7. PW 10, a Police Officer, testified that he took over the police investigations file after investigations had been completed. According to him, the Accused was suspected to have committed the offence because he had allegedly expressed interest in engaging in sexual intercourse with the Deceased. The Officer added that there was evidence of sexual assault of the deceased.
8. The accused was put on his defence at the close of the prosecution evidence. He confirmed working with PW 3 for one Jackson on 9th December 2017. After receiving his pay at about 8:30 PM he went to drink at Farmers Choice Bar at Ol-Rongai Trading Centre. As he returned home at about 10:00 p.m., the Accused testified to meeting 3 strangers who started assaulting him. He sought refuge at PW3's home where he spent the night. Police officers arrested him the following day at PW3's home for allegedly killing the Deceased. According to him, the police took some samples from the Deceased's genitalia and blood from him for DNA profiling. The analysis result were not, however, given to him.
9. The Accused denied killing the Deceased saying that the charge against him is malicious. He believes that the case was orchestrated by his brother with whom he had differences and who was a close friend of the Chief who caused his arrest. The Accused added that he was initially charged with others for gang raping the deceased but the case was dropped in unexplained circumstances.

Analysis and Determination

10. I have perused the Defence submissions as well as the evidence on record in relation to the charge facing the Accused. It is noted that the Prosecution chose not to offer final submissions. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the Accused murdered the Deceased, actuated by malice aforethought.
11. There is no direct evidence linking the Accused to the killing as none of the witnesses testified to seeing the Accused commit the offence. Determination of the case therefore wholly depends on circumstantial evidence. In *Mwangi vs Republic* (Criminal Appeal No. E054 of 2023) [2024] KEHC 3113 (KLR) 15 March 2023) (Judgment) this court explained that for circumstantial evidence to be reliable it must be inconsistent with the accused person's innocence.
12. In the case of *Ahamad Abolfathi & Another vs Republic* (2018) eKLR it was elaborated that;

“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.”



13. In a much older case (*Republic vs Taylor, Weaver & Donoram* (1928) Cr. Application R 21), it was observed that;

“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 is circumstantial.”
14. In the often quoted case of *Sawe vs Republic* (2003) KLR 364, it was stated that circumstantial evidence must satisfy three tests, namely;-

“the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; 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.”
15. As in the case of *R vs Kipkering Arap Koskei* (1949) EACA 135 Counsel further made reference to, the prosecution must also show that there existed in-culpatory facts that were incompatible with the innocence of the accused and incapable of any explanation upon any other reasonable hypothesis other than that of guilt.
16. Section 206 of the *Penal Code* provides that malice aforethought is proven by one or more of the following circumstances;-
 - a. Intention to cause death or do grievous harm whether the death actually occurs or not.
 - b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.
 - c. An intention to commit a felony.
 - d. An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.
17. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive (see Case law in *Robert Onchiri Ogeto vs Republic* (2004) KLR (1a)
18. It is trite law that in homicide cases, death is presumed to have been unlawfully caused unless it is otherwise accidentally caused in circumstances that make it excusable (see inter alia case law in *Uganda vs Lydia Draru Alias Atim* HCT-00-CR-SC-0404 High Court of the Republic of Uganda, *Akol Patrick & Others vs Uganda* (2006) HCB (Vol. 1) 06 and the Court of Appeal for East Africa in *R vs Gusambiza s/o Wesonga* 1948 15 EACA 65).
19. In *Republic vs Gideon Wambua Kioko & 2 Others* (2019) eKLR three essential elements of the offence of murder were listed as hereunder;
 - i. The death and cause of death of the deceased.
 - ii. That the accused caused the death through an unlawful act or omission.
 - iii. The accused possessed the intention to cause harm, or kill, or malice aforethought.



20. In Republic vs Ali Suleiman Ali (2021) eKLR it was held that circumstantial evidence must always be examined narrowly because it may be fabricated to unfairly cast suspicion on another person. According to this case law, before drawing an inference of guilt the court should be sure that there are no co-existing circumstances weakening or destroying that inference.
21. I find the prosecution evidence not credible. There is no eye witness to the killing as already noted. The fact that the Accused sought refuge in the home of PW3 on the date the deceased died is not sufficient to show that that he was the murderer. It would appear from the evidence of PW 10 and the Accused that it was suspected that the Deceased was sexually assaulted before being killed. Any forensic evidence linking the Accused to the sexual attack has not been presented, however, despite evidence that relevant samples could have been extracted for analysis. Indeed no medical evidence including Post-Mortem examination report on the Deceased's body has been presented in court. Investigations into the case were evidently poorly conducted notwithstanding the seriousness of the case and the interest of the public. The Investigating Officer's evidence is only speculation and hearsay.
22. In the premises, the circumstantial evidence herein is very weak and cannot found a conviction. I therefore find that the prosecution failed to prove the charge beyond reasonable doubt and the Accused is accordingly acquitted thereof pursuant to the provisions of section 215 of the [Criminal Procedure Code](#).
23. Any bond security deposited by or on behalf of the Accused is discharged for release to the owner.

J. M. NANG'EA,

JUDGE.

JUDGEMENT DELIVERED THIS 22ND DAY OF JULY, 2025.

In the presence of:

Mr. Wakasyaka for the Director of Public Prosecutions.

Mr. Ooga Advocate for the Accused.

Court Assistant (Jeniffer).

J.M. NANG'EA, JUDGE.

