



**Republic v Juma (Criminal Case 10 (E031) of 2021)  
[2025] KEHC 10736 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10736 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL CASE 10 (E031) OF 2021**

**RK LIMO, J**

**JULY 22, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**BONIFACE JUMA ..... ACCUSED**

**JUDGMENT**

1. Boniface Juma, 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 of the charge are that on 18/3/2021 at Umoja Village, Kwana Sub-County within Trans-Nzoia County he jointly with another not before the court murdered Barnabas Murei Too (who shall hereinafter be referred to as the deceased for ease of reference).
2. The accused person denied committing the offence and the prosecution has presented a total of 7 witnesses to prove their case against the accused. The accused person defended himself on oath and denied being connected with the murder. The prosecution's case is hinged on circumstantial evidence and below is the evidence tendered during trial.
3. Joseph Cheruiyot Kuttuny (PW1) testified that on 17/3/2021 at around 11pm (material time and date) he was headed home and boarded a *boda boda* owned by one Dennis. He stated that a few metres from Umoja Centre he saw someone lying down on the left side of the road. That they stopped and noted that the person was bleeding from injuries on his head and groaning in pain. He stated that the *boda boda* rider, Dennis went to see one Cosmas who lived nearby to come and identify the victim. He stated that Cosmas came and stated he had heard voices of Ian Juma and the accused herein shouting appearing like they were beating someone. He stated many people then converged at the scene and among them was one Diblo who identified him and stated that the victim was the deceased who was nicknamed "oria".



4. He stated that they called a relative who went to the scene and identified him. He stated that the deceased died at the scene and a KPR Officer went and called the police. He stated the police from Kwanza police station went and collected the body. He further stated that they looked for the murder weapon at the scene which they found to be a piece of wood with blood stains. He identified the piece of wood in court. He further stated that the accused was arrested the same night but his accomplice one Ian Juma fled and escaped arrest.
5. Dr. Dennis Nanyingi (PW2) a doctor who performed post mortem on the body of the deceased, stated that he performed the autopsy on the body of deceased on 20/3/2021 adding that the body was identified by Stephen Kiprop and Joan Kemboi. He stated that the findings made upon autopsy were as follows;
  - i. Two fractures on right upper limb with one on the middle.
  - ii. Fracture of the radial-ulna bone.
  - iii. Fracture of proxid third of right radial-ulna bone and left radial –ulna bone of the left hand.
  - iv. Bruises of right mid zone of the chest.
  - v. Large bruise on right mid zone of the chest which deformed right chest wall.
  - vi. Swelling on torso of the head with 2 cut wounds.
  - vii. Multiple anterior right rib fracture involving R2, R3, R4, R5 and R8 ribs.
  - viii. Fracture of the skull from right to left temporal areas.
  - ix. Hematoma between skull, scalp and meninges.
6. The doctor formed the opinion that the cause of death was head injury and lung fracture secondary to assault. He tendered the Post Mortem Report as PExhibit 1.
7. Julius Rotich (PW3), a former NPR (National Police Reservist) recalled that on 18/3/21 at around 1.26am one Joseph Kuttuny notified him that there was someone lying dead on a road. He stated that he went to the scene and on arrival he found the deceased lying dead with blood all over him. He stated that there was a piece of wood and a pink shoe at the scene. He stated that he called a police officer called Tirop who was nearby and that they both went to the home of the accused and found him in a blue trouser, a yellow T-shirt and a jumper. He stated that they noticed that the trouser the accused was wearing was blood stained and when he asked him about the same, he told him that he usually nose bleeds. He stated that they took him to the scene and met the DCI officers together with the OCS. He also confirmed that the house of the accused was about 20 metres away from the scene.
8. Benjamin Kimwayi Murei (PW4) on his part testified that on the material date at around 1am he was woken up by his son Stephen Murei and informed that his brother, the deceased herein had been injured. He stated that they rushed to the scene using boda boda and on arrival they found many people including the police at the scene around the deceased who was lying dead.
9. Stephen Kiprop Murei (PW5) testified that on the material night a person he knew at “Diblo” called him and asked him to check if the deceased was home. He stated that when he inquired why he was asking, he informed him that someone resembling the deceased was lying dead on the road. He stated that he rushed to the home of the deceased and found out from his wife that he was not there. He stated that Diblo asked him to rush to the scene which he did and found the deceased lying dead. He



- stated that an NPR officer who was at the scene helped them to arrest the accused adding that they found him with a blood stained trouser.
10. Nicholas Onyango Otieno (PW6), the investigating officer in the case testified that on 18/3/2021 at around midnight his boss DCIO George Otieno called him to attend a scene of murder at Umoja Village, Kwanza.
  11. He stated that on arrival he found the body of deceased lying on the road side with a head injury and broken arm. He stated that he recovered a piece of wood with blood stains at the scene and a pink slipper which he suspected was left behind by the assailants. He tendered the piece of wood as PExhibit 2.
  12. He further stated that photographs were taken at the scene and tendered them as PExhibit 3(a) to (g). And a certificate for the same as PExhibit 3h.
  13. He stated that suspect was arrested by an NPR Officer and that he wore a jeans trouser with blood stains. He stated that he recovered the blood stained jeans and sent it to Government Chemist together with the piece of wood also recovered at the scene believed to be the murder weapon. He tendered the blue jeans trouser as PExhibit 3.
  14. He stated that he interrogated the accused at the scene with respect to the source of blood stains on his trousers and he reportedly told him he had slaughtered a chicken. He ruled out contamination of blood stains from deceased on the trousers of accused when he was transported from the scene saying that the body of the deceased was placed in a body bag.
  15. Salvin Cheruto Katukoi (PW7) Senior Government Analyst attached to Kisumu Government Chemist Laboratories testified that on 20/4/21 she received an exhibit memo from Cpl Nicholas Onyango from DCI Kwanza police station. She said that she received blood samples marked “A” from the accused and blood sample marked “B” from the deceased. She also stated that she received a blue jeans trouser marked ‘C’ and a piece of firewood marked “D”. She stated that Item “C” was moderately stained with human blood while item “D” was lightly stained.
  16. She stated that on 26/10/2023, she carried out analysis and made the following findings;
    - i. That the DNA profiles from Item “D” marched the DNA profile of “B” (deceased).
    - ii. That the DNA profile from “C” was mixed with DNA profile of “B” (deceased) and “A” (accused).She tendered the Exhibit Memo as PExhibit 5(a) and Analyst Report as PExhibit 5(b).
  17. When placed on his defence, the accused denied committing the offence. He also denied owning the jeans trouser saying it was not his. He denied knowledge of the piece of wood recovered at the scene or any knowledge of the murder.
  18. This court has laid out both the prosecution’s case as well as the defence. The accused as observed above is charged with murder contrary to section 203 of the *Penal Code*. For a charge of murder to be sustained under the law, the prosecution must establish and prove the following elements beyond reasonable doubt;
    - i. Fact of death and its cause.
    - ii. *Actus reus*.
    - iii. *Mens rea* or malice aforethought.



**(i) Fact of Death and Its Cause.**

19. The evidence of PW1, PW3, PW4 and PW5 all who found the deceased lying dead on a road within Kwanza Sub-County at a village called Umoja established the fact of death. The medical evidence of doctor Nanyingi (PW2), the doctor who performed post mortem examination on the body of deceased, proved beyond doubt that the deceased was killed and the cause of death was head injury and lung failure secondary to assault. The doctor tendered the post mortem report as PExhibit 1 as proof of the cause of death and the fact that the deceased was murdered. The question as to who murdered brings me to the next question for consideration.

**(ii) Actus Reus**

20. The prosecution's case on the element is hinged on circumstantial evidence. There was no witness who saw the accused beating or inflicting the serious injuries noted by Dr. Nanyingi (PW2) in his evidence. It is however now settled that circumstantial evidence is like any other evidence. It can be good and reliable at times more than direct evidence depending on circumstances. In *R -vs- Ahmed Abolfatbi Mohammed & Anor* (2019) eKLR the Supreme Court inter alia made the following guiding observations;

“On its application, circumstantial evidence is like any other evidence. Though it finds its probative value in reasonable and not speculative, inferences to be drawn from fact of a case and, in contrast to testimonial evidence. It is conceptualised in circumstances surrounding disputed questions of fact, circumstantial evidence should never be given a derogatory tang..... with circumstantial evidence everything depends on contests: circumstantial evidence can at times amount to overwhelming proof of guilt.....as where DNA match between the accused's control sample and genetic material recovered from the scene of the crime.....”

21. This court finds that from the evidence tendered by the Government Analyst (PW7), the DNA samples of the blood found on the jeans trouser and blood samples of the deceased matched. The prosecution's witnesses to wit PW3 (an NPR Officer), PW5 and PW6 all testified that they found the accused wearing the blood stained trouser (PExhibit3). The piece of wood had blood stains which revealed that it was for the deceased. The prosecution's case on the element of *actus reus* had been proved beyond doubt. The accused is one of the persons who killed the deceased and there is no doubt whatsoever given the overwhelming evidence tabled during trial. He tried to evade responsibility when he was asked at the scene to explain the source of blood stains on the trousers he was wearing. He told PW3 that he used to nose bleed and when PW6 interrogated him over the same, he said he had slaughtered chicken. This court finds his defence that the trouser does not belong to him to be evasive. He did not say who the owner was and why he was found wearing it. Four prosecution witnesses as observed above saw him wearing the trousers and that is why the investigating officer (PW6) recovered it and sent it over for forensic analysis.

**(iii) Mens Rea.**

22. There was no evidence from the prosecution witnesses that the accused harboured ill motive against the deceased but from the nature of injuries sustained by the deceased, malice can be inferred under the provisions of Section 206 of the *Penal Code*. The section 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”.

This court finds that the deceased suffered serious injuries to his head and chest. From the broken limbs it can be discerned that he tried in vain to protect himself from the assault but the brutal intentions of the assailants saw him subdued and later succumb to the injuries.

23. This court finds that the prosecution’s case against the accused is simply overwhelming. The prosecution has established and proved all the three elements/ingredients of the offence against the accused and he is hereby found guilty as charged and he is convicted of murder under Section 215 of the *Criminal Procedure Code*.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 22<sup>ND</sup> DAY OF JULY, 2025.**

**HON JUSTICE R. K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the absence of Defence Counsel

Mugun for the State

Duke/Chemosop- Court Assistants

