



**Republic & another v Musembe (Criminal Case E016 of 2024)
[2025] KEHC 10517 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E016 OF 2024
WM MUSYOKA, J
JULY 18, 2025**

BETWEEN

REPUBLIC 1ST PROSECUTION

DIRECTOR OF PUBLIC PROSECUTIONS 2ND PROSECUTION

AND

FELIX OKUA MUSEMBE ACCUSED

RULING

1. In this case only 4 witnesses testified. A civilian, 2 police officers and a medical officer.
2. The civilian, PW1, was not at the scene, when and where the deceased was killed. She was informed of the death and went to the scene to view the body. The 2 police officers were also not at the scene when the fatal attack happened. PW2 was informed of the death, went to the scene, saw the body but did not find the accused there. PW3 was instructed to investigate the matter. By then the accused had already been arrested by other police officers. PW4 was the medical officer who did post-mortem on the body of the deceased. He gave an opinion on the cause of death.
3. There are 4 elements to the offence of murder, being the fact of the death, the cause of it, the role of the accused person in the causation, and whether the causation was with malice aforethought.
4. The fact of the death of the deceased was established, for her dead body was seen by PW1 and PW2. PW3 conducted an autopsy on it. It was established, beyond reasonable doubt, that the deceased died. The cause of the death was also established. It was due to a head injury, caused by trauma.
5. On causation, none of the witnesses were present when the injury was caused. They all testified of events after the death. None of the witnesses placed the accused person at the scene where and when the injuries were inflicted, and none of them testified to witnessing the accused do anything to the



deceased. None of the witnesses testified on how the accused and the deceased related, to provide basis for consideration of the application of the principle of circumstantial evidence.

6. Overall, the material, presented by the prosecution, did not establish a case upon which the accused person could be called upon to explain himself. A *prima facie* case was, therefore, not made out. The accused person has no case to answer. I accordingly acquit him, under section 306 of the [Criminal Procedure Code](#), Cap 75, Laws of Kenya, of charge of the murder of Sharon Dagire, contrary to section 203, as read with section 204, of the [Penal Code](#), Cap 63, Laws of Kenya.

DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA, ON THIS 18TH DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates.

Mr. Antony Onanda, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Tyson Otieno, instructed by Masiga Otieno & Associates, Advocates for the accused.

