



REPUBLIC OF KENYA



**Republic v Wambui (Criminal Case E014 of 2022)  
[2025] KEHC 12802 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12802 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E014 OF 2022  
JM NANG'EA, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DORCAS WAMBUI ..... ACCUSED**

**JUDGMENT**

**Charge facing the Accused person**

1. The above named [hereinafter referred to as “the Accused”] was on 28<sup>th</sup> February 2022 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 30<sup>th</sup> day of May 2021 at around 2330 hrs at Eveready area, within Nakuru West Sub County, in Nakuru County she murdered Leah Njoki [hereinafter referred to as “the deceased”].
2. The Accused denied the offence.

**The Prosecution Case.**

3. The prosecution case is that on 29/5/2021 the deceased left her home at Wanyororo area saying she was going to meet up with someone at Umoja area. She never returned, prompting a search for her by her relatives who included her daughter [PW3] and grandchildren [PW1 and PW2]. On 1/6/2021 a report of the deceased going missing was made at Wanyororo and Kiugoini Police Stations. The deceased’s body was later found at Kwa Jack Hospital Mortuary where it was reportedly taken on 30/5/2021.
4. PW6 testified that on 30/5/2021 at about 6:00 p.m. he was at his metals workshop at Eveready, Nakuru, when he saw a woman spotting a “Mkorino” headscarf supporting an elderly lady. It appeared to the witness that the elderly woman was under arrest. There were other people there as well. The “Mkorino” lady excused herself to get a vehicle, apparently to help transport the old woman, but she



- did not return. It started raining and PW6 rang up a police officer she knew at Kaptembwa Police Station informing him of the plight of the woman. Soon police officers arrived at the scene and took away the woman who appeared to have died. PW6 further stated that she later identified the “Mkorino” woman at an Identification Parade organized by the police. The witness denied a claim that she had taken a photograph of the woman in police custody before the parade.
5. PW7 told the court he was among those at the scene and confirmed PW6’s testimony. He too claimed to have picked out the “Mkorino” lady at the police Identification Parade.
  6. PW4, a minor, gave an unsworn statement following his voire dire examination conducted by the court. Saying that the deceased was his grandmother, he stated that sometime in the year 2020 the accused he named as Dorcas visited his grandmother with whom he lived at the time. The Accused carried a paper bag containing a bottle that had a plant material. The two women spoke for a while in the kitchen before the Accused handed the bottle and its contents to the deceased. The deceased gave the Accused some money and poured the contents into a cup and drank the same before going to sleep that day. In the morning, the deceased vomited and became unresponsive. Other relatives went to her rescue and took her for medication. When she recovered her relatives warned her against taking such substances.
  7. According to the deceased’s neighbour [PW5], on 15<sup>th</sup> April 2021 at around 10:00 a.m. he heard noises emanating from the deceased’s home. He rushed there to find out what the matter was and found the deceased’s children quarrelling the Accused, warning her not to visit the deceased again and selling her herbs. The Accused was said to be in possession of a bag whose contents PW5 could not tell.
  8. PW 11 is the case Investigating Officer. He testified to receiving a report of the death of a person at Eveready area, Nakuru, on 30/5/2021. He rushed to the scene and found a crowd that had gathered there. PW11 learnt that the deceased’s body had been removed to the mortuary where he saw it. He was also told that the deceased was with another woman who disappeared from the scene. With the help of CC TV cameras in a building near the scene, the officer could see a woman wearing a headscarf throwing something into a thicket. He and other officers with him searched for the item and found a soda bottle containing a blue liquid. The bottle and the liquid were submitted to the Government Chemist for analysis. The witness did not produce the exhibits in court saying the Government Chemist retained them. PW11 added that the police managed to arrest the Accused.
  9. PW9 from the Government Chemist in Kisumu testified that he was the one who examined the bottle and its contents forwarded to them by the police. They had also received some human stomach contents; a piece of human liver preserved in formalin and a blood sample. The police wanted the Government Chemist to ascertain if the liquid found in the bottle in question is the same substance that caused a bluish substance post mortem examination of the deceased showed to be present in the stomach. It was also desired to ascertain if the liquid was toxic.
  10. The analysis showed that an organo-chloride based pesticide was present in both the liquid in the bottle and the contents of the deceased’s stomach. PW9 opined that the pesticide is fatal and poisonous if ingested. The analysis report was tendered in evidence. Despite stating that the noted pesticide is poisonous and fatal, PW9 also told the court that he could not confirm its effect on the body.
  11. PW8 is the Pathologist who conducted Post Mortem examination of the deceased’s body. Among observations he noted on the body was a blue semi-solid and semi-digested substance in the stomach. There were features of cyanosis which are symptomatic of brain injury. The heart was enlarged. The Expert Witness formed the opinion that the cause of death was an ingested noxious substance that led to severe hypertension and neurotic gastritis. Samples of the deceased’s stomach contents, kidneys, liver and blood were ordered to be taken for further investigations. According to the Pathologist results



- of toxicological tests on the samples would be important for him to update the cause of death. The toxicological results would help him tell what the substance found in the stomach does to the body.
12. PW10 produced electronic evidence relating to the CCTV footage obtained at the scene of the alleged murder. The evidence includes still photographs extracted from the footage. The evidence purports to place the accused at the scene.
  13. PW12 told the court that he was the one who conducted an Identification Parade at which the Accused was allegedly identified as the woman who was with the deceased before her demise. PW6 and PW7 were the two witnesses who took part in the identification parade as per their own evidence.
  14. The Accused tendered sworn evidence and called one witness. She stated that the deceased is her distant relative since her grandmother and the deceased were married by brothers. According to the Accused, on 30<sup>th</sup> May 2021 at around 6:00 a.m. she left her home at Eveready, Nakuru, and travelled to Londiani to buy maize. She was accompanied in the trip by her sister called Esther with whom she parted later at around 5:00 p.m. after their return to Eveready. The Accused asserted that she never left home that evening after returning from Londiani.
  15. The Accused further told the court that she last visited the deceased at her home in the year 2021. During the visit the deceased's children assaulted her claiming that she was gossiping about their family. She complains of malicious prosecution saying the police arrested her as she came from church at Eveready. The Accused alluded to a conflict in the deceased's family over land.
  16. The Accused faults her purported identification by PW6 and PW7 for the reason that the two witnesses saw and photographed her at the police station before the Police Identification Parade. She denied poisoning the deceased with whom she claimed to enjoy good relations. While acknowledging that the CCTV evidence tendered in court features her image, she explains that at the time she was walking home. The Accused denies throwing away any bottles as alleged and stated that she only carried a small bag.
  17. The Accused's mother [Rahab Wanjiru Muturi] supported her daughter's evidence. She also makes reference to disputes in the deceased's family over property which caused the deceased much stress. The witness exonerates the Accused from responsibility for the deceased's death.

### **Issues for Determination**

18. The Prosecution and Defence Counsel filed final written submissions which I have carefully perused together with the evidence adduced by both sides. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the Accused murdered the deceased, actuated by malice aforethought. There is no direct evidence linking the accused to the killing as none of the witnesses testified to seeing the accused killing or poisoning the deceased. Determination of the case therefore wholly depends on circumstantial evidence.
19. In *Mwangi v 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.



20. In the case of *Ahamad Abolfathi & Another v Republic* [2018] eKLR also cited by the Prosecution and Defence Counsel, 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.”
21. In a much older case [*Republic v 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.”
22. In the often quoted case of *Sawe v. 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.”
23. As in the case of *R v 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.
24. 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.
25. 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 v Republic* [2004] KLR [1a].
26. 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 v Lydia Draru Alias Atim* HCT-00-CR-SC-0404 High Court of the Republic of Uganda, *Akol Patrick & Others v Uganda* [2006] HCB [Vol. 1] 06 and the Court of Appeal for East Africa in *R v Gusambiza s/o Wesonga* 1948 15 EACA 65].
27. In *Republic v 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.
28. In Republic v 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.

**Determination.**

29. The Accused appears to put herself at or near the place at which the deceased allegedly died. She, however, denies any complicity in the death. The prosecution evidence as presented by the deceased's relatives who testified seems to indicate that it was suspected that the Accused sold some herbs to the deceased which she took and died as a result. Autopsy evidence offered by the Pathologist suggests that the deceased ingested a toxic substance that could have caused her death. The expert witness recommended further forensic testing of samples he extracted from the deceased's body, and after seeing the result of the examination, he would update his opinion as to the cause of the death.
30. The Government Chemist who conducted the forensic analysis of the samples also noted evidence of poisoning in the form of a pesticide known as organo-chloride. He, however, stated that it was not his expertise to tell the effect of the poison to the human body.
31. The Prosecution did not recall the Pathologist to comment on the Government Chemist's report and shed more light on the effect of the discovered toxin on the body as he had promised. There is therefore no reliable forensic evidence showing the nature and effect of the said toxic substance on the human body.
32. Moreover, even if it were proven that the Accused gave some herbs to the deceased as claimed by her relatives, there is no evidence that by so doing she intended to cause her death. No evidence of any motive on the part of the Accused to kill the deceased has been adduced. Malice aforethought as defined under section 206 of the Penal Code supra has not therefore been demonstrated. The circumstantial evidence presented to the court does not unerringly point only to the guilt of the Accused.
33. In the premises, I find that the prosecution failed to prove the charge beyond reasonable doubt. The accused is accordingly acquitted thereof pursuant to the provisions of section 215 of the Criminal Procedure Code.

**J. M. NANG'EA, JUDGE.**

**JUDGEMENT DELIVERED IN OPEN COURT THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

In the presence of:

Mr Wakasyaka for the Director of Public Prosecutions.

Mr. Ochang Advocate for the Accused.

Accused, Present

Court Assistant [Jeniffer].

**J.M. NANG'EA, JUDGE.**

