



**State v Miruka & another (Criminal Case 21'A' of 2022)
[2025] KEHC 12584 (KLR) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12584 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE 21'A' OF 2022**

DK KEMEL, J

SEPTEMBER 16, 2025

BETWEEN

STATE PROSECUTION

AND

FABIEN OWITI MIRUKA 1ST ACCUSED

VICTOR ODHIAMBO MIRUKA 2ND ACCUSED

JUDGMENT

1. Both accused herein Fabian Owiti Miruka and Victor Odhiambo Miruka have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 25th day of April 2021 at Bar Kowino Sub-Location, in Bondo Township Location, Bondo Sub County within Siaya County, jointly with others not before court, murdered one Stephen Oyugi Rajula.
2. The prosecution called six (6) witnesses in support of its case which was as follows.
3. John Onyango Abiero (PW1) testified that on 25/4/2021 at around 9pm, he was watching television in his house when he heard a call from outside. That he opened his door and saw his neighbour the late Stephen Oyugi Rajula holding grills of his veranda. That he saw blood from his face flowing to his chest. That the deceased informed him that he had been beaten by three people. That he informed him that his wife knew those 3 people. That he took him to his house, placed him on a chair and that he asked his wife to disclose to him the people who had beaten the deceased. That the wife informed him that three people beat the deceased but she only knew two of them and that they were Biggy and Tuju because they were sons to her neighbour and also she had known them by their other names (alias).

That he went to nearby home to seek for help and found Peter who assisted him to take the deceased to Owens Hospital. That he paid the hospital charges and that he left the deceased with Peter at Owens Hospital undergoing treatment. That the following day learnt that the deceased had died. That he



went and reported to police where he recorded his statement. That the assault took place at around nine 9 pm not am and that he never heard noise until the deceased came to his house saying that he had been beaten.

On cross examination he stated inter alia; that the deceased informed him that three people had beaten him and that his wife had known them; that the deceased was his employee and that they lived in one homestead close to one another and they even shared same utilities such as toilet which was at the far end of the compound. That his home was not fenced and that they lived near a road. That deceased's wife informed him that the deceased had been assaulted near the doorstep of their house. That the deceased's wife never raised an alarm and that there were no dogs in the compound. That in the homestead they were only living the three of them. That he never saw signs of struggle or markings of fighting and that the deceased never used to drink alcohol. That he was not aware of any grudge between the accused and the deceased and that Mr. Miruka's home was near his home and that only one home separated the two homesteads.

On re-examination, he stated that the deceased's wife just told him that she knew Biggy and Tuju who had assaulted her husband and that they were with another person whom she did not know.

4. Vitalis Opiyo Oketch (PW2) testified that he is a resident of Bark Owino village in Siaya County and that he was a conductor with Bondo transporters. That on 25th April 2021 and at about 8.00 pm he was at his home. That at about 8.30 pm he was going to milk the cows when he heard noises at the road next to his home as people were fighting and that the fight ended before he arrived at the scene. That he saw men who ran into different direction. That he went to his home and at about 9.00 pm as he was milking, his nephew whom he stays with informed him that some people had beaten Stephen Oyuke. That he went and found the deceased and his wife in their house and upon calling the deceased, he informed him that he had been beaten by three people two of whom he knew. That the deceased mentioned Biggy and Tuju as his assailants. That he went to his neighbor John Onyango and requested him to help take the deceased to hospital. That he went to look for a vehicle to aid transportation to hospital but could not find any. That on his way back, he met the deceased and others on the way. That Stephen (deceased) had been hurt on the head which was bleeding. That they took him to Owen Hospital where he was treated and left him there so as to come back the following day. That the following morning and at about 6.00 am, he went but only to find that Stephen had died. That he informed the deceased's sister to come and later on took the body to the mortuary. PW2 further stated that when he reached at the scene, he did not identify the men as they had run into different directions. That the gave his statement at the police as the police officer wrote it on his behalf and which was not read back to him. That Biggy is accused 2 who was in yellow shirt, while Tuju was accused 1.

On re-examination, he stated that the scene was about 120 metres from the house of John Onyango Abiero (PW1) and that it was about 100 metres from his home and that John's house was about 200 metres away. That the incident was at the road about 120 metres from John's house. That he was aware that the deceased was sleeping at the compound of John. That the deceased told them that he had been attacked when he went out for a short call within the compound. That he had gone to find out who were fighting and only found Stephen Oyugi, his wife and children. That he could not know who had carried him from the scene to the house. That he wrote a statement at the DCIO office and that he was not able to remember whether he signed it or not as he narrated the statement in Dholuo language and that the same was not read back to him.

5. Dr. Thauddeus Owiti (PW3) stated that he works for Homabay County. That on 5-5-2021, he examined the body of Stephen Oyugi Bolo who was identified by Jacinta Awino Oyugi and Milicent Akinyi Ayoro and whose dress was heavily soaked with blood and performed an autopsy on it. That there were obvious fresh wounds on the right side of the head with haemotoma, also fresh irregular



wounds 7 x 4 x 2 cm on the scalp with associated massive swelling. Blood was oozing from the Nose, mouth and both ears. There was also another irregular wound on the back of the head. That there was massive haematoma and irregular fracture of the skull which were commensurate with the injuries on the scalp. That he formed the opinion that cause of death was severe head injury due to physical assault with a blunt object. That he signed the certificate of death indicating the cause of death whereupon photos of the injuries were taken and which formed part of the report which was produced as Exhibit 1.

On cross examination, he testified that Occipital region is the back of the head and that Epidural and subdural haematoma resulted from the injuries and which were as a result of injuries. He further stated that the police witnessed when he was taking photographs of the body and during the autopsy procedure.

6. Jacinta Awino (PW5) testified that she stays in Kogalo and that she is a farmer. That the deceased was her husband. That on the night of 25/4/2021, the deceased was assaulted at night by Tuju and Biggy. (assailants' names as known in the village) and that they were present in court. That Tuju is Accused 1 while Biggy is Accused 2. And that she did not know why they assaulted the deceased (her husband). That she went out and saw them.

On cross examination, she testified that when the incident happened, she was staying at Bar Kowino in Bondo and in a rented house. It had a fence with no gate. It was a big compound. Rent was 1000/= . It was 1 bedroomed. These were neighbours. That she could not remember her neighbours' names. That there were many paths around.

That she wrote her statement Dholuo language, which was shown to her and that she signed it. That she did not read the same after writing. That she recorded in her statement that the deceased (her husband) had gone out for a call and that she heard people shouting but could not hear the words they were saying. That the toilet was a bit far from our house, half the way between the court and the gate. That their house had no electricity and that toilet had no electricity as well. That she heard the noises before the deceased reached the toilet and that he was at the door of the house. That the people were making noises as they came nearby and that they were many and that not all of them assaulted the deceased. That they were talking as they beat him and that she had never known existence of any grudge between the deceased and the accused persons. That those who assaulted her husband were three in number.

7. IP Silas Mutua (PW6) informed the court that he was stationed at Bondo DCI and that he used to work with CPL Michael Olunga and that he was in court to testify on behalf of CPC Michael Olunga who has since retired from service in 2023 and who has been sickly and unable to come to court. He testified that it was a murder case under Section 203 as read with Section 204 of the Penal Code. That a report was made on 26/4/2021 and that it was alleged that on 25/4/2021, three people armed with clubs attacked one Stephen Oyugi alias Rajula at his residence in Bar Kowino area of Bondo Sub County and that the incident was witnessed by the deceased's wife Jacinta Awino Ayugi. That some of the suspects were identified by her at the scene. That another witness also claimed that he was able to identify some of the suspects. That the victim was taken to hospital the same day but died while receiving treatment. That an autopsy was conducted and that two suspects were arrested. That a third suspect was also arrested but the identification parade did not implicate him as no witness identified him. The two suspects were subjected to mental assessment before being charged.

On cross examination, he testified that the report was made to him by John Onyango in the company of Jacinta. That the OB did not indicate the name of Jacinta. That the court to look at the statement by CPL Olunga whom he had worked with for one year and that of whom he was familiar with his handwriting. That the murder took place on 24/5/2021 and that the deceased died while in hospital on 26/4/2021. That none of the witnesses did mention the condition of lighting at the time. That the death took place in hospital.



Further, he testified that the incident took place in a certain house given to deceased by John Onyango. That he could not recall if the area had a fence and that CPL Olunga visited the scene. That there were no photographs taken of the scene. That the deceased was attacked a few metres from his house. That CPL Olunga did not capture this in his statement. That Jacinta is the one who witnessed the incident. That it was possible to see and identify at the same time. That the deceased did not mention names of those who assaulted. Yes, I have the statements. CPL Olunga collaborated with the doctors. That the incident took place around 8.30pm. That Jacinta saw the suspects running away. Yes, Jacinta did not witness the incident. I trust the witnesses who were present during the incident. That he had seen the statement of CPL Olunga which talks about the incident and mentioned names of suspects. That the investigating officer investigated the fight prior to the incident. Further he testified that no exhibits were recovered by CPL Olunga and that the statements of both accused were recoded which are in the file.

On cross examination, he testified that he had seen the statement of Vitalis (PW2) and that he captured all the scenarios and that CPL Olunga conducted the investigation in the matter.

8. After the close of the defence case, learned counsels were directed to file and exchange submissions. However, it is only the defence that complied.
9. I have considered the evidence of the prosecution and defence as well as the submissions filed. I find the issue for determination is whether the prosecution proved its case against the accused beyond any reasonable doubt.
10. I have considered the evidence of the prosecution and defence as well as the submissions filed. I find the issue for determination is whether the prosecution proved its case against the accused beyond any reasonable doubt.
11. The burden of proof in all criminal cases is always upon the prosecution to discharge and that the standard is one of beyond any reasonable doubt. See *Woolmington Vs. DPP [1935] AC*.
12. In a charge of murder, the prosecution is under obligation to prove certain essential ingredients inter alia; that there was death of the deceased; that the death was caused unlawfully; that there was malice aforethought; that the accused was the perpetrator of the crime.
13. As regards the aspect of death, that the autopsy was conducted by Dr. Thauddeus Owiti (PW3) who noted that the body had fresh wounds on the right parietal region an ipsilateral inflammatory tumour (hematoma) with irregular edges of wound on the superior aspect of scalp, with associated massive swelling. That the deceased had bled from noses, mouth and ears literally, irregular wound on the occipital region and that there was massive epidural and subdural hematoma. That there was a fracture of the skull at the right parietal region and on the superior aspect of the skull. That the fractures were commensurate with the scalp wounds. He formed the opinion that the cause of death was severe head injury due to physical assault with a blunt object. He produced the autopsy report as Exhibit 1. I find that the prosecution has proved this ingredient beyond any reasonable doubt.
14. As regards the unlawfulness of the death, it is trite law that all homicides are unlawful unless authorized by law. The deceased was a young man then aged thirty-one (31) years and in good health. The injuries noted by the pathologist left no doubt that the assailants desired that the same would lead to the death. It is instructive that the deceased sustained a vicious injury on the head which did not give him a chance to survive. Further, it is noted from the evidence of the witnesses that he deceased was in his compound when three assailants accosted him and viciously injured him. Looking at the injuries inflicted on the deceased, it is clear that the said injuries were not accidental. It was the work of persons who had planned to eliminate him. There is no evidence that the deceased prior to his demise was in ill health and hence he is deemed to have been in good health and looked forward to more years in his life. I am



satisfied that the death was unlawful and that this ingredient was proved by the prosecution beyond any reasonable doubt.

15. On whether there was malice aforethought, it transpired from the evidence that the deceased was in his compound and had gone to relieve himself only to be accosted by three assailants two of whom are the accused herein who viciously attacked him and left him for dead. The fact that the said assailants while armed could proceed to the home of the deceased and attack him is clear evidence that they had a motive to eliminate him. That is the reason why they lay in wait until darkness fell when they struck. I find that there was malice aforethought on the part of the assailants and that the prosecution proved this ingredient beyond reasonable doubt.
16. On whether the accused persons were the assailants, it is noted that the incident took place at night and that the issue of identification of the assailants must be considered. The two accused persons and their witnesses have denied involvement and maintained via their alibi that on the material date the accused persons who are brothers were not at home at the time. The 1st accused maintained that he had gone to work for somebody in Seme area and was there for some days and came back home to be informed that certain persons were looking for his brother (Victor) who is the 2nd accused. The said 1st accused has distanced himself from the case. As for the 2nd accused (DW4) his case is that on the material date he was coming home from the Gold mines when he met one William at the gate and who was assaulting some two persons and further added that he went home and forgot about the encounter with the said William only to learn later that he was being looked for and which compelled him to seek refuge in the gold mine for some time. The evidence of Jacinta Awino (PW5) who was the wife to the deceased is that the two accused persons who went by alias names of Tuju and Biggy respectively stormed her home and attacked her husband who was then heading to the toilet to relieve himself and that she was able to see the attackers. John Onyango Abiero (PW1) stated that he rushed to the scene and met the deceased who was then bleeding profusely and who informed him that he had been attacked by three assailants who were well known by his wife (PW5) and that he went and approached the said wife who informed him that the two accused persons herein who are sons of her neighbor were among the assailants.
17. As the incident occurred at night, the key issue for determination is whether the evidence of Jacinta Awino (PW5) who was the wife of the deceased is sufficient for purposes of identification. The court is conscious of the danger of convicting of the accused on the evidence of a single witness without corroboration. In the case of R. VS. Turnbull & Others [1976] 3ALL.ER 549 Lord Widgery CJ held as follows:

“First, whether the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not to use any particular form of words.

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made.

How long did the witness have the accused under observation? At what distance? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation



and the subsequent identification to the police? was there any material discrepancy between the description of the deceased given to the police by the witness when first seen by them and his actual appearance? In any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases, if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence. Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger. In our judgment, when the quality is good, as for example when the identification is made after a long period of observation, or in satisfactory condition by a relative, a neighbor, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it; that provided always, however, that an adequate warning has been given about the special need for caution.

In the case of *Maitanyi Vs Republic* [1986] KLR 198 the court held as follows:

- “ 1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.
 2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light available conditions and whether the witness was able to make a true impression and description.
 3. The court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making a decision. It must do so when the evidence is being considered and before the decision is made.”
18. Jacinta Awino (PW5) testified that the deceased was her husband and that he had stepped out to go and answer a call of nature only to be attacked by three people. That she was able to recognize the two accused persons herein but that she did not manage to recognize/identify the 3rd assailant. She stated that the accused persons are her neighbours since their home is a few metres from theirs. She further added that the two accused persons herein were known in the area by their alias names and went ahead to state that the 1st accused went by the name Tuju while the 2nd accused went by the name Biggy. Indeed, this witness knew the two accused persons. She further added that her home had solar light which enabled her to recognize the accused persons herein. She was steady even on cross examination and was certain that the accused persons were the ones who attacked her husband. Hence, this was identification by recognition. In the case of *Wamunga Vs Republic* [1989] KLR 47, the Court of Appeal held that the identification by recognition is more assuring and more believable than the identification of a stranger since the witness has more information and details about the perpetrator. It transpired from the evidence that there was no grudge between the family of the deceased and that of the accused persons and therefore it is highly unlikely that they were framed for the offence. I am alive to the legal position that it is trite law that where the only evidence against an accused is the evidence of



identification or recognition, the court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction. It is my considered view that recognition is more reliable than identification of a stranger. The witness (PW5) was a neighbor to the accused persons and therefore all of them were not strangers to each other. The witness had no difficulty in recognizing the accused persons and that she immediately mentioned their names to those who arrived at the scene and also to the police. I have also taken caution as guided by the Court of Appeal for Eastern Africa in the case of *Abdallah Bin Wendo & Another Vs R* [1953] 20 EACA 166 where it was held:

“Subject to certain well-known exceptions, it is trite law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is known that the conditions favouring correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct pointing to guilt from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness can safely be accepted as free from the possibility of error.”

Being guided by the foregoing authority and juxtaposed with the available evidence, more particularly of PW5, it is evident that the accused persons herein were placed at the scene of crime. Further, the accused persons in their sworn testimonies and those of their witnesses have presented what can be termed as alibi defences whereas the 1st accused maintained that he was not at home as he had gone to Seme to work on some electrical installation, his evidence was weakened and his cover blown by the evidence of the 2nd accused. The father to both accused (DW2) attempted to deflect incriminating evidence pointing towards accused persons who are his sons and that he maintained that the 1st accused was not at home on the material date and that the 2nd accused was within the compound and inside his house when a group of young men stormed his compound looking for his sons. He confirmed on cross examination that he was aware that his sons were being looked for over the incident of murder of the deceased but that he did not report to the police and that he admitted that it was wrong not to have done that despite the fact that he had known about the death of the deceased. The 2nd accused (DW4) confirmed that he had met somebody at their gate by the name William around 8.00 pm and that the following day he escorted a certain lady (Nyar Uyoma) to a certain market near Lake Victoria and that the 1st accused later called him using his mother's phone to warn him not to come home as he was being looked for and that he sought refuge at a certain gold mine since his life was in danger. The said 2nd accused also admitted on cross examination that he did not report the incident to the police or the issue that certain people were looking for him or the fact that his life was in danger. Hence, piecing together the evidence of the accused persons and their father, it emerges that all of them were hiding something from the public or the authorities. It is instructive that the accused father did not bother to report the incident to the police and further deliberately misled the group of people who had come in search of his sons over the murder incident when he informed them that his sons were away while in fact one of them (2nd accused) was inside his house. The 2nd accused in his evidence stated “he then warned me not to go home as I could be killed by some people who were looking for me. I opted to go home despite the warning only to see the young men who were looking for me. I feared for my life and remained inside my house and that my family members informed them that I was not at home. Later, I went to stay in Bondo gold mine.”



19. The accused persons in their defence have brought forth the defence of alibi. Both of them maintain that they were not at the scene of the alleged crime. In the English decision of *Republic Vs Johnson* 46 CR APP. R 55 [1961] 3 ALL ER 969 the defence of alibi was described as follows:

“Though an alibi is commonly called a defence, it is to be distinguished from a statutory defence such as insanity or diminished responsibility and is analogous to a defence such as self defence or provocation. A prisoner who has put forward an alibi as an answer to a charge does not assume any burden of proving that answer and it is a misdirection to refer to any burden as resting on the prisoner in such a case.”

Again, in the case of *Uganda Vs. Sebyala & Others* [1969] EA 204 the learned Judge quoted a statement by his lordship the Chief Justice of Tanzania in Criminal Appeal No. 12D 68 of 1969 where his lordship observed: “The accused does not have to establish that his alibi is reasonably true. All he has to do is to create doubt as to the strength of the case for the prosecution. When the prosecution’s case is thin, an alibi which is not particularly strong may very well raise doubts.”

Going by the observations noted in the preceding paragraphs, it is clear that the accused persons were placed at the scene of crime and that the alibi defence which they gave were weak and did not cast doubt on the evidence of the prosecution. In any event, whether an alibi was raised the accused persons do not have the burden of proving their innocence. It is instructive that the said alibi defence was not raised at the earliest convenience so as to enable the prosecution to interrogate it. Even if the accused persons want this court to believe their version of events, other than the direct evidence of PW5 this court finds that even circumstantial evidence has placed the accused person at the scene of crime. In a case entirely based on circumstantial evidence, the test to be considered is the one laid down in the case of *Sawe Vs. Republic* [2003] KLR 364 where the Court of Appeal held as follows:

“In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied upon. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence remain with the prosecution. It is a burden which never shifts to the party accused.”

19. After careful analysis of the entire evidence, it is my finding that the accused persons were placed at the scene of crime and were the perpetrators. The defence evidence did not shake that of the prosecution which was overwhelming against them. Further, it emerged from the evidence that the conduct of both the accused prior and after the death of the deceased left no doubt that they were the ones behind the death. They together with their father tried to cover their tracks by avoiding coming into contact with irate public and also failed to report to the authorities about the incident.
19. In the result, it is my finding that prosecution has proved its case against both accused persons herein beyond any reasonable doubt. I find the accused herein Fabien Owiti Miruka and Victor Odhiambo Miruka guilty of the charge of murder and are convicted accordingly.

DATED AND DELIVERED AT SIAYA THIS 16TH DAY OF SEPTEMBER 2025.

D. KEMEI

JUDGE

In the presence of



Fabian Owiti Miruka.....1st accused.

Victor Odhiambo Miruka.....2nd accused.

Mshindifor both accused.

Soita.....for Prosecution.

OkumuCourt Assistant.

