



**Republic v Salome alias Bujuju (Criminal Case 6 of 2018)  
[2024] KEHC 6911 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 6911 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL CASE 6 OF 2018**

**GMA DULU, J  
APRIL 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MARKO SILAYA SALOME ALIAS BUJUJU ..... ACCUSED**

**JUDGMENT**

1. The accused person herein Marko Silaya Salome alias Bujuju stands charged with Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on the night of 14<sup>th</sup> and 15<sup>th</sup> September 2018 at Miembeni Estate in Taveta sub-County within Taita Taveta County murdered Anastacia Ndanu Kasyoka.
2. He has denied the charge and in proving their case, the Prosecution has called eight (8) witnesses. On his part, the accused person who stated that his name is Marko Benjamin Silayo Salome Alias Bujuju tendered sworn defense testimony and did not call any additional evidence.
3. PW1 was Elizabeth Muthina Makarai the mother of the deceased Anastacia Ndanu Kasyoka. She testified that the deceased lived at a hotel and was a waitress in Taveta town and that on 15/9/2018 she received a phone call from a person who lived in the same plot with the deceased who told her that she had not been seen for a day. According to her the person who called her was a fiancé of Anastacia.
4. It was her evidence that the caller informed her that he has gone to take fish to Taveta market and on return he was informed by neighbors that Anastacia had not been seen and that he looked for her the whole day in vain.
5. The the witness and Mwikali and Mutunga Kasyoka then proceeded to Taveta the following morning, and passed by Taveta Police Station and sought for Anastacia the whole week starting from Tuesday.



6. On the third day of the search, Mwikali sister of Anastacia advised that they post Anastacia's photos on trees and posts in Taveta town. On the 6<sup>th</sup> and 5<sup>th</sup> day of the search the witness went to Taveta sub County Hospital gate to wait for Mwikali when somebody telephoned Mwikali to inform her that Anastacia had been seen at Chamwende. Then accompanied by 8 others they proceeded to Chamwende and outside a house they saw a crowd of people and Police Officers.
7. On arrival at the house, one woman asked them whether they were relatives of the deceased and when they showed that woman photographs of Anastacia, she shouted in Kiswahili that she was the one.
8. According to this witness also, the police told them to stay aside but later called them and opened the gate of the house and they entered and found Anastacia lying on a bed, clean and smart but dead. She wore a pair of red trousers and a white blouse but with open buttons The bra had been lifted and the breasts were bare. The trousers was well zipped.
9. The Police lifted the body and the head was moving from side to side. They were then advised to board a white vehicle and the body was taken to the Mortuary at Taveta sub- County Hospital by the Police. They later recorded witness statements at Taveta Police Station.
10. According to the witness, she learnt while in the Police Vehicle that the accused person herein was the owner of the house where the deceased was found dead. She did not know the accused person before and, according to her, it took a week for a pathologist to arrive at Taveta mortuary to conduct the post mortem examination, which was witnessed by Mutua and Mutinda as well as the witness's brother in law Kyalo Mcharanze.
11. In cross examination, she stated that she did not see any injuries on the body of Anastacia. She also stated that Anastacia was previously married and had two children but separated from her husband and was now living with another man. She stated that she was not aware that Anastacia had a romantic relationship with the accused person.
12. PW2 John Sande Lenjashi testified that he was the chief of Mbogholi location and knew the accused person as one of his location residents but did not know the deceased. He was called on phone on 15-9-2018 at 7.15am by the Assistant Chief Njoro sub Location Leonard Meduva who informed him that a woman had died in the bedroom of the accused person.
13. It was this evidence that he proceeded to the place of alleged incident and arrived after 10 minutes where he met the Assistant Chief and village elder Rose Mrunde and the accused person as well as members of the public. Then we and Assistant Chief, Village elder and the accused person entered the bedroom and found a dead woman lying on the bed.
14. It was this evidence that the accused person said that he knew neither the woman nor her parents, or her home. The witnesses then phoned the OCS Taveta Police Station and in a short while the deputy OCS came to the scene and called CID Officers who arrived shortly afterwards.
15. According to the witness, he was present when the police loaded the body into the police vehicle to the mortuary. It was his further evidence that the deceased wore a red pair of long trousers and long sleeved white blouse. He did not observe any injuries on the deceased.
16. It was this further evidence that the accused person stated that the deceased went to him early that morning and asked for water to drink, but when asked why the woman slept there the accused person kept quiet.



17. The witness also testified that the room of the accused person was in the accused mother's compound in an extension of the house. The accused person was not married. He was aware that the accused person used to herd the mother's goats and was not employed.
18. In cross-examination, he maintained that he did not notice any injuries on the deceased body, or any signs of a struggle.
19. PW 3 Teresia Mwikali Kasyoka testified that she was an older sister of the deceased Anastacia Ndanu who was not married but lived with a lover whose name she did not know.
20. She testified that on 11.9.2018 at 7pm, while at her mother's home at Chumvini she learnt that her mother was called on phone by the lover of Anastacia who informed her that Anastacia had fallen ill and that he took her to hospital, but he was now not seeing her, after he came back from buying medicine for her, and that, when he asked the medical personnel they said she went to the toilet and never came back.
21. She stated that the lover said that he waited for her for an hour but did not see her and looked for her in the hospital wards but did not find her. It was her evidence that they did not go to the Hospital that night but went to the place where Anastacia Lived but did not find anyone.
22. They then linked with Anastacia's lover and searched for her and when they did not find her, they reported to the police station at 4pm which report was booked in the OB. They then posted photos of Anastacia on electricity poles and shop walls in the shopping Centre of Taveta Town, and only found Anastacia after 5 days, after they received a phone call from a member of the public who contacted her sister Christine Wavinya.
23. It was her further evidence that Christine Wavinya told them that the report was that Anastacia was found in a house at Muhoho they then proceeded there and met the police and members of the public at 9am.
24. It was her evidence that when the police asked for relatives they identified themselves and that they then entered a room in the homestead where they found Anastacia and identified her, and noted that she was wearing a pair of long trousers and a white blouse. She did not notice any injuries on the deceased. They saw the man in the room who was the accused person. It was her testimony that she was not aware that Anastacia was sick.
25. In cross-examination, she stated that they found Anastacia's body lying in the middle of the bed. She confirmed that on 12.9.2018 the lover of Anastacia explained the disappearance of Anastacia. She also confirmed that the lover looked for Anastacia at Taveta Sub County Hospital.
26. PW 4 was Irene Mwaringa a Government Analyst from Government Chemists' office in Mombasa. It was her evidence that on 18.10.2018 they received items from Cpl. Robert Kariuki with an exhibit memo, which they were to compare with exhibit "M" a condom and "N" which was dry blood, hair and nails. There were also requests to analyze exhibits g, h, I, j, k and l for DNA connection.
27. She conducted analysis, and the report was that the condom "M" generated a partial male DNA profile which matched the male DNA profile generated from the blood of the suspect "N". it was her evidence that exhibits "D" deceased white blouse "H" the deceased bra, "I" deceased pair of red pair of trousers "J" deceased biker "K" deceased black party, "L" beddings including mattress cover, were found negative to semen.



28. She prepared the report and signed it. She produced the report and the exhibits memo as exhibits. In cross-examination, she stated that the exhibits taken from the accused person did not reveal any relation with the deceased.
29. PW5 was Salome Navotoi Katembo the mother of the accused person, whose evidence was that on 14/9/2018 at 10:15pm he arrived at Mombasa having taken there bananas. That on 15/9/2018 at 6.45am the accused person called her to inform her that the woman visitor whom she had seen on 13/9/2018 had died.
30. It was her evidence that she advised her son the accused person, to make a report to the village elder. The witness then offloaded the bananas at Mombasa and travelled back to Taveta and found the accused person's house door open and no beddings were on the bed. She testified that the deceased person was not married, and that she had seen the woman who died for 3 or 4 times before. She also went and saw the deceased person at the mortuary.
31. In-cross examination, she maintained that she had seen the deceased woman in the accused house.
32. PW6 Was Dr. Shem Jeremiah whose evidence was that post mortem examination of the deceased was done by Dr. Njumwa, deceased was a female African aged about 26 years, who was well nourished and built Post mortem was conducted on 21-9-2018 about 6 days after death. According to him on external appearance, it was noted that there was dark bluish discoloration on the neck and upper chest. There was clotted blood in the nostrils. There was cyanosis on trachea, which is blue discoloration of tissues due to lack of oxygen and the lungs were also cyanotic. There was no indication of fractures noted. The great vessels and heart were intact.
33. It was also his evidence that the Spinal cord and column were intact and cause of death was asphyxia due to discoloration, which means that the deceased lacked oxygen due to strangulation. He produced the post mortem report as an exhibit.
34. He testified that some specimens of stomach contents tissue from the liver, kidney, nails and blood sample were taken by the doctor for chemical examination.
35. He stated also that lack of oxygen in blood makes the tissues turn blue. He further stated that the neck swelling was due to lack of oxygen due to pressure and excessive force applied to the deceased's neck.
36. In cross-examination, he stated that there was no evidence of marks on the deceased neck.
37. PW7 was Alex Kyallo Philip, a person married to the cousin of the deceased Anastacia Ndanu Kasyoka whose evidence was that on 21-9-2018 he attended the post mortem examination of the deceased at Taveta Sub County Hospital Mortuary. He identified the body of the deceased person to the post-mortem doctor and also attended her burial.
38. PW8 was the investigation officer CPL.Robert Kariuki whose evidence was that on 15-9-2018 while in Taveta County he was informed by the DCIO Alfred Owen that a dead body had been recovered in a house of a suspect.
39. Together with DCIO and PC Wanyama,they boarded a vehicle and proceeded to Darajani sub location about 400 meters from Taveta police station, where they met police officers from Taveta police station, among them IP Bii and PC Musyoka and members of the public, including- the chief and village elder and relative of the deceased.



40. They then took control of the scene, sent the public away and entered the house with the accused person and in the room found a dead woman on the bed, who was very clean. They then interrogated the suspect who informed them that he met the deceased by the roadside and she asked him for water.
41. That he invited her into the house and gave her water and that the deceased said she was not feeling well and he gave her a place to sleep. He also informed the Police that the mother (PW4) was then present but proceeded to Kongowea market to sell bananas.
42. Further, he informed them that he prepared a meal of fish and ugali but on eating the woman vomited and that, they slept on the same bed but did not have sexual intercourse with her.
43. According to the witness, the police noted that the woman was oozing blood from her mouth and nostrils had a clean white top, red pair of long trousers, which he collected and produced in court as exhibits. They also recovered a striped nightdress, pink and white bed spread which he produced as exhibits.
44. They also recovered a white piece of cloth and also collected a condom, which he produced as exhibits. He also testified that they took all recovered items to Government Chemist for analysis, together with blood specimen from the deceased and finger nails from the accused person.
45. He further added that they recovered a black panty of the deceased and a pink biker, and a bra from the deceased all of which they forwarded to the Government Chemist. He produced all these recovered items as exhibits. He received the Government Chemist Report indicating that the DNA of the suspect was found in the used condom, which they had recovered in the suspect's bedroom.
46. He attended the post mortem examination of the deceased person and the doctor informed them that the deceased died of strangulation. He also stated that on 13-9-2018, a report had been received at Taveta Police Station that the deceased had gone missing at Taveta sub-county Hospital. According to the information, one Geoffrey Ndero informed investigators that the deceased appeared mentally disturbed. The said Geoffrey actually lived with the deceased and had informed the deceased's family about the disappearance of the deceased.
47. In cross-examination, he stated that he did not know that the accused person and the deceased knew each other before. He maintained that the information he received was that the deceased appeared mentally disturbed. He stated also the accused person called the village elder. That was prosecution evidence.
48. When put on his defense, the accused person tendered long shown defence testimony and did not call any additional witness. He stated that he was Marko Benjamin Silayo Salome alias Buguju of Taveta Mwembeni a farmer. That on 14-9-2018 he had come back home from herding goats when he was visited by Letizia Ndanu his girlfriend, now deceased.
49. They met outside the house and she asked him for water but appeared disturbed and said that she had left her hotel job.
50. According to him, the deceased asked for ksh. 200 to travel home next day. He then welcomed her in the house, prepared ugali and cabbage and fish and they ate but left her to go and received his mother who came and met Salome (deceased). The mother then took a bath and travelled to Mombasa.
51. It was his evidence that he noticed the deceased vomiting while she ate, and then she asked to go and rest and eat when she felt better. She then proceeded to the bed and lay there, and after sometime, he also went to bed and slept, as the deceased was already asleep.



52. In the morning, he woke up and prepared tea took some and proceeded to the farm leaving the deceased on the bed. He then went to wake her up at 6am only to find her in a shocking state as she was already swollen, He then phoned his mother who told him to report the incident to the police, but he suggested to her that he would report to the village elder one Murunde and he did so and both came into the room.
53. According to him, the village elder then phoned the chief and later the police arrived, interrogated him, and asked him to load the body on to the police vehicle to the mortuary. He stated that at that time the relatives of the deceased had arrived with the deceased photographs and told the police that she disappeared from hospital.
54. He denied killing the deceased and said that in fact he wanted to marry her, as she was his lover. He stated that he did not use the condom on the deceased and that in fact he had many lovers. He emphasized that the DNA tests did not connect him with any activity with the deceased. He stated that he did not know the mother of the deceased Anastacia, but that his mother Salome knew her. He was cross-examined at length.
55. At the close of prosecution and the defence case, both the Director of Public Prosecutions and the defence counsel one Mr. Mutinda filed written submissions, which I have perused and considered.
56. This is a murder case. The accused person has been charged under section 203 as read with section 204 of the Penal Code. Section 203 defines the offence of murder while section 204 provides for the sentence.
57. In accordance to the provisions of the sections 107,108 and 109 of the *Evidence Act* (Cap 80), the burden was on the prosecution to prove all the elements of the offence. This being a criminal case, the standard of proof is beyond any reasonable doubt –see *Sawe v Republic* [2003] eKLR.
58. I will start with proof of death. Did the prosecution prove that the deceased died? On this element, the evidence of both prosecution and defence is clear. On 14<sup>th</sup> September 2018, the deceased person visited the accused in the evening. The mother of the accused person PW4 saw her alive. There is also evidence that her relatives were looking for her from 11<sup>th</sup> September 2018. This is the evidence of PW1, 2 and 3.
59. On the morning of 15<sup>th</sup> September 2018, the body of the deceased was seen lying lifeless in the bed of the accused person. Post mortem examination was later done on the body at Taveta sub County Hospital. She was confirmed to have died of Asphyxia. In my view, from the evidence record, the Prosecution proved beyond any reasonable doubt that the deceased died of Asphyxia or suffocation.
60. Did the accused person cause the death of the deceased person? In deed all, the evidence of the prosecution and the defense was that the deceased died in the room and on the bed of the accused person. At that time, only two of them were in that room and house, as the mother of the accused person had gone to Mombasa to deliver bananas for sale.
61. The Prosecution states that the accused person killed the deceased person because, at the time of death, only the two of them were in that room. Additionally the medical post mortem report was to the effect that the cause of death was Asphyxia due to strangulation.
62. On the other hand, the defence contents that through the deceased person died of Asphyxia, it was a natural death as she had been sick and mentally disturbed and also there were no signs of strangulation or struggle.
63. This is a case based on circumstantial evidence as nobody saw or witnessed the act, which accused the death of the deceased person, Courts have severally considered the issue of adequate evidence to sustain



a conviction on circumstantial evidence. On this, I will fall back to the case of *Sawe v Republic* (2003) eKLR in which it was held that the inculpatory facts must be incompatible with the innocence of the accused and is incapable of explanation upon any other reasonable hypothesis than that of this guilt.

64. In the preset case, there is certainty evidence of opportunity to kill because the deceased and accused person were two only ones in that room and bed. However, there is no evidence of any quarrel or disagreement. There is no evidence for a struggle or strangulation marks. The condom found in the room did not have any DNA connection with the deceased person or any indication that it was used on her.
63. The accused person also gave a long narrative on oath of what happened from the time the deceased came into that room until the time he realized that she was dead in the morning. The relatives and lover of the deceased person also testified that the deceased person also testified that the deceased person had suffered from undisclosed decease which caused her mental confusion and was even admitted in hospital but mysteriously escaped and left the hospital.
64. In my view, the evidence on record, does not lead to the irresistible conclusion that the accused person killed the deceased. In my view, the deceased in all probability died of natural causes than any action or lack of action of the accused person. I so find, that the Prosecution did not prove that the death was caused by the accused person.
65. Was the death unlawful? There is no evidence that any person or any other act caused an unlawful death of the deceased .I thus find that the Prosecution did not prove that the death of the deceased was unlawful.
66. Was the death caused with malice aforethought? Malice aforethought is defined under section 206 of the *Penal Code* (cap.63). It is an intention to cause death or do grievous bodily harm. In my view, the Prosecution did not prove malice aforethought herein. Thus, the charge against the accused person has not been proved.
67. Consequently, as the charge of murder has not been proved, I find the accused not guilty of murder contrary to section 203 of the *Penal Code* and acquit him accordingly.

**DATED, SIGNED AND DELIVERED THIS 04<sup>TH</sup> DAY OF APRIL 2024 AT VOI IN THE OPEN COURT.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Sirima for State

Mr. Mutinda for the accused

Accused

