



**Republic v Kegoya (Criminal Case E043 of 2022)
[2025] KEHC 13454 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E043 OF 2022
HI ONG'UDI, J
SEPTEMBER 29, 2025**

BETWEEN

REPUBLIC STATE

AND

SAMWEL OTWORI KEGOYA ACCUSED

JUDGMENT

1. Samuel Otworu Kegoya hereinafter referred to as the accused was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars being that the accused on 14th February, 2020 at Kenyatta Estate in Njoro sub-county within Nakuru county murdered Ruth Waithera Kinyua. He denied the charge and the matter proceeded to full hearing with the prosecution calling ten (10) witnesses while the accused gave a sworn statement of defence without calling any witness.
2. The case presented to court is that the deceased who lived alone within Njoro could not be reached on phone. This came out clearly on 18th February, 2020. She had last spoken with her daughter Sheila Wanjiku Kinyua (PW9) who was at the university on 14th February, 2020. Her relatives PW2, PW4, PW7 PW10 and another (PW3) reported the matter to the Njoro police station. This was on 18th February, 2020. They all went to the deceased's house in the company of police officers. The time was 9.30pm and they found the compound locked. The gate was broken to gain access.
3. There was a bad smell on the compound, and the door to the house was also broken for them to enter. They found the deceased's body on the floor at the bedroom entry. Both hands, neck and legs were tied with scarfs. The body was taken away after the police processed the scene. On 20th February, 2020 as the house was being cleaned in the presence of PW2, a small knife was found hidden next to the lamp.
4. The deceased's daughter (PW9) stated that she tried reaching her on 17th February, 2020 in vain. She called the deceased's colleagues (John Njohi) who told her, the deceased was not on duty. It was then



- that the family got involved. The deceased worked as a secretary at Egerton University. PW9 later learnt of her death. She further testified that on 19th February, 2020 she received a message “Gnyte” from telephone number 0759..... On 20th February, 2020 the same number called her twice but she could not recall having any conversation with the caller. She learnt later that the suspect one Samuel Otworu was using the deceased’s phone, and she was the last person to have talked to the deceased.
5. PW6 – Aneriko Kakwa Ong’anyo who works at Nakuru High School owns a house in Njoro which he had given to one Brenda to live in, in January, 2019. In June 2019 he went there to fence it and he found there one Kelvin whom Brenda said was her brother. In August, 2019 when he went back he did not find the said Kelvin but found him there on 25th December, 2019. In 2020 he lost his job due to Corona and he went to Njoro but found Brenda had moved out. She had left the key with a neighbor. He identified the accused as Kelvin who had been living with Brenda. He did not know if Kelvin has other names.
 6. PW8 Stephen Kabucho Kathegi from Kisii testified that he runs Tekalu Logistics Ltd. He produced his certificate of registration and other documents namely, license, company’s PIN plus CR 12 – EXB 6a – e. He stated that at the Kisii police station he was told they had registered a new phone line for a customer. He could not know who registered it since they register new numbers and customers on Mpesa.
 7. PW1 – Dr. Titus Ngulungu conducted a post mortem on the body of Ruth Wachira Kinyua (the deceased) on 20th February, 2020 at Egerton University mortuary. The body was swollen, lacked oxygen, had bruises on the lower eye lids, abrasions on cheek, right angle of the mouth, tongue was protruding and the lungs had collapsed. He found the cause of death to be asphyxia due to neck compression and manual strangulation. He took finger nails for analysis for DNA, HVS, liver stomach and kidney. He produced the report as PEXB 1.
 8. PW5 No. 92589 P. C Joseph Njogy Ekante was the investigating officer. He stated that during the investigation they learnt that the deceased’s mobile phone had gone missing and tracing of it started. The phone was Serial No. 353559094556570, and the hand set used phone No. XXXXXXXXXX7 registered in the deceased’s name ID No. XXXXXXXXXX. Upon request they received the call data on 26th February, 2020 and they confirmed the deceased’s last communication to have been with number XXXXXXXXXX of PW9 on 14th February, 2020 at 16.29.23hrs around Egerton University. Thereafter the deceased moved to Njoro Kenyatta her area of residence. On 15th February, 2020 the call data moved to Nakuru Githua road at 06.15hrs. At 08.32.42 hrs the phone was captured at Chepsir, using the deceased’s sim card. At 12.58.28 hrs the phone had a different sim card inserted ie No. XXXXXXXXXX. This number was registered in the name of Samuel Otworu Kegoya ID No. XXXXXXXXXX at Safaricom.
 9. From Chepsir the phone used moved to Keumbo, Keroka to Kesabakwa (Kisii) at 18.40hrs where it remained in Kesabakwe and Keroka up to 24th February, 2020. On 28th February, 2020 together with Monica DCI, P. C Rapudi and P. C Mose they embarked on searching for Samuel Otworu whose details they had gotten from the Registrar of Persons. They then headed to Masaba North. They engaged his brother Kelvin (who refused to testify) who led them to their home. They saw someone running away and Kelvin confirmed to them it was Samuel. They tried to chase him but they were not successful.
 10. A report was made at Keroka police station and the officers returned to Njoro/Nakuru. The post mortem was conducted on 20th February, 2020 and samples taken for further investigations. On 30th July, 2022 they received information that the accused had been arrested in Keroka and escorted to Njoro police station. He referred to a report from the National Registration Bureau dated 25th August, 2022, request to Safaricom in respect of the accused; call data for the deceased’s number and call data



from accused's number which were only marked for identification. He stated that the accused was suspected for handling the deceased's phone.

11. In cross examination he stated that besides the phone they have no other evidence against the accused. That the accused's blood sample was sent to the government chemist and a statement under inquiry taken from him by a senior officer. He talked of a report being handled by one of his colleagues. The said report was never produced, before this court.
12. This witness (PW5) was recalled by the prosecution for further cross-examination upon a request by the defence. He stated that the accused disappeared with the deceased's phone and upon his arrest he was not found with it as this was over 7 months after the murder. He confirmed that samples were taken from the accused for DNA purposes since it was suspected that the deceased may have been raped before her death as there were struggles at the scene. He did not deal with the results of the DNA as he was transferred two (2) months after the accused's arrest.
13. In his sworn defence the accused denied the charge. He said he used to do masonry work before his arrest. He explained that on 14th February, 2020 he was in Kajiado Ongata Rongai doing his masonry work. On 26th July, 2022 he went to visit his parents in Ichuni – Keroka and was well received. On 27th July, 2022 he was at home with his sister Rhoda Moraa, Josphat Otworu (father) and Juliet Bosibori when his parents told him that there were police officers who had come looking for him. The parents did not recall the date. He went with his father to see the chief of Bokimotwi over the same. The chief advised him to go to the police station but he called the police who came and arrested him. He was later taken to Njoro police station. He denied having been with a phone nor being in Nakuru in February, 2020. He said his blood samples were taken but he had never been given the results of the examination.
14. In cross examination he said he was in Ongata Rongai in 2020 and was arrested from his home in Keroka. He admitted having had a small phone which used a battery. He however lost it in 2020 while coming from work within Ngong area. He denied knowing the deceased nor having any phone at the time of the arrest.
15. The prosecution did not file any written submissions.
16. The defence filed two sets of submissions. The first one was at the no case to answer stage. These were filed by G. N. Githae and company advocates and are dated 12th June, 2024. The second one was after the close of the defence case. They are dated 25th July, 2025 having been filed by Ooga and Co. Advocates who took over the case from G. N. Githae advocates.
17. A summary of the first set of submissions is that the prosecution had not discharged its burden of proof. That all the witnesses could not tell how the deceased died and what caused her death save for PW1 who conducted the post mortem on the body. Counsel further submitted that investigations were biased against the accused. She mentioned Kelvin and Brenda who should have been witnesses in view of PW6's evidence. In short, she submitted that investigations were shoddy, since no DNA was done on the recovered blood-stained knife, on the entry points of the house (doors, windows padlock) to ascertain the fingerprints of the perpetrators.
18. In the second set of submissions counsel submitted that in criminal cases the prosecution has the burden of proof of the accused, person's guilt beyond reasonable doubt. Reference was made to Article 50 (2) (a) of *the Constitution*, section 107(1) of the *Evidence Act*, and the cases of Stephen Nguli Mulili V Republic [2014] eKLR; Miller V Ministry of Pensions [1947] 2 ALL 2 ALL E.R; Festus Mukari Murwa V Republic (2013) eKLR among others.



19. Counsel further submitted that the evidence adduced was nothing but mere allegations and hearsay amounting to mere suspicion. On suspicion he relied on the case of *Joan Chebichii Sawe V Republic* [2003] eKLR where the Court of Appeal stated:

“before a court of law can convict a person accused upon circumstantial evidence, such evidence must be where the inference of guilt, the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. That such evidence must be so mathematically accurate as a basis of conviction in exclusion of any other co-existing circumstances weakening the chain of circumstances relied on by the prosecution. These principles articulate the position in law that the question as to the cause of death may either be answered by way of medical or circumstantial evidence.”

20. It is his contention that the accused was suspected to have handled the deceased’s phone after her murder. However, all the related evidence by the investigating officer (PW5) was never produced. Additionally, the government Analyst’s report on the samples taken from the deceased and accused, was also never produced as evidence. This omission to him was critical in spite of section 143 of the Evidence. On this he relied on the case of *Bukenya & others V Uganda* [1972] E.A 549 where the court held that the prosecution had a duty to make available all witnesses necessary to establish the truth.

21. On malice aforethought on the part of the accused, counsel while citing section 206 of the penal code and relying on *Republic V Tubere s/o Ochen* [1945] 12 EACA 63 and *George Ngotho Mutiso V Republic* [2010] eKLR, among others submitted that the accused went to the chief upon learning from his parents that police officers had come to their home looking for him. It’s then that he was arrested. To counsel, this was not the conduct of a guilty person.

22. Counsel referred to the accused’s detailed defence and submitted that it displaced the prosecution’s evidence. He thus urged this court to be guided by the case of *Sekitoleko V Uganda* [1976] E.A 53 where it was held as follows:

“As a general rule of law the burden on the prosecution of proving the guilt of a prisoner beyond reasonable doubt never shifts whether the defence set up is an alibi or something else”.

He thus prayed for the acquittal of the accused.

Analysis and determination

23. I have carefully considered the evidence on record, the accused’s submissions and the law. The main issue for determination is whether the charge of murder has been proved against the accused. The offence of murder is defined under section 203 of the penal code which states:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”

Further section 204 of the penal code on the punishment of murder provides:

“Any person convicted of murder shall be sentenced to death”.



24. From the definition of murder and as was held in the case of Republic V Andrew Omwenga [2009] eKLR for the offence of murder to be proved the following ingredients must be proved by the prosecution beyond reasonable doubt:
- a. The fact and cause of the deceased's death
 - b. That the accused's unlawful act caused the death (actus reus)
 - c. The unlawful act was caused by malice aforethought/ill intention (mens rea).

Also see Republic V Gedion Wambura Koko & 2 others [2019] eKLR on this.

Fact and cause of death

25. From the evidence of PW1 – PW4, PW7, PW9 and PW10 the fact of death is not in doubt at all. They are all related to the deceased and they visited the scene, and found the body of the deceased which was in bad state. Dr. Titus Ngulungu (PW1) who conducted the post mortem confirmed the state of the deceased's body which had injuries. He found the cause of death to be, Asphyxia due to broad cord tensional pressure to the neck in keeping with manual strangulation. This is all in the post mortem report (PEXB1). There is therefore no dispute that the deceased did not die a natural death.

Whether the accused caused the deceased's death

26. From the evidence of PW2 – PW10 it is clear that there was no eye witness to the killing of the deceased. The evidence further shows that the deceased was a secretary at Egerton University and lived in Njoro. She had a daughter (PW9) who was not staying with her as she was studying at JKUAT. She therefore lived alone. From the evidence of PW2 and PW3 the deceased lived on her own compound which had a gate, which was locked when they visited. The house was also locked. They had to be broken for entry to the compound and house to be achieved.
27. The charge sheet indicates that the deceased met her death on 14th February, 2020. Save for the foul smell and the condition of her body, there is no concrete evidence confirming when she died. Her daughter (PW9) last talked to her on 14th February, 2020 evening. In her evidence she said she spoke to the deceased on 14th February, 2020 at 4.30pm when she was on a matatu and promised to call back which she never did. PW9 later called her and they spoke for a while. It cannot therefore be correct when the investigating officer (PW5) claimed that from the call log the last time the deceased communicated with PW9 was 14th February, 2020 at 16.29.23 hrs. The said call log was however never produced as an exhibit for this court's perusal.
28. The only evidence that the prosecution adduced against the accused is the one linking him with being in possession of the deceased's phone S/No. 353559094556570 using No. XXXXXXXXXXXX registered in the name of the deceased under I.D number XXXXXXXXXXXX. PW5 and team allegedly got all this information from Safaricom, after making a request in writing. PW5 had the following documents marked for identification since he was not their maker. They are:
- i. Report from National Registration Bureau dated 25th August, 2022
 - ii. Request to Safaricom in respect of the accused.
 - iii. Call log data for deceased's number
 - iv. Call log data for accused's number



29. None of these very important and crucial documents was produced as an exhibit in this matter. The documents were the basis of connecting the accused with the killing of the deceased. Therefore, all the evidence PW5 gave in respect of the tracing of the movements of the deceased's and accused's call logs is of no benefit to the matter before this court. What evidence then is before this court to show that the accused ever handled the deceased's phone?
30. A witness Stephen Kabucho Kathegi (PW8) who runs a company called Tekalu Logistics Ltd testified on how his company registers new customers on Mpesa and new phones. The witness did not mention anything about registering the accused's number. Its not even clear why PW8 was called as a witness. Further, the defence had no question for him.
31. Aneriko Kakwa Ong'anyo (PW6) told the court he owned a house in Njoro where one Brenda lived. She was not a tenant and on two occasions as he went there (June 2019, and 25th December 2019) he found one Kelvin living with Brenda. Brenda told him Kelvin was her brother. He identified the accused as the Kelvin who was living with Brenda. Brenda was not called as a witness in this matter. It is therefore not clear what evidence PW6 had in connection with the deceased's death.
32. In his evidence PW5 told the court that the accused has a brother called Kelvin who assisted them in one way or another. The said Kelvin never appeared to testify despite the prosecution being given several opportunities to call him. The question is whether the accused is Kelvin or Samuel according to PW6? Could there be some confusion in the identity of these two brothers? Why did Kelvin refuse to come and testify despite recording a statement?
33. In his defence on oath the accused denied the charge. He explained his movements upto his time of arrest when he had gone to the local chief upon being informed by his parents that the police were looking for him. This was not disputed by the evidence of the prosecution witnesses.
34. In the above analysis I have clearly set out the prosecution case plus the gaping loopholes in its evidence. The burden of proof in criminal cases lies with the prosecution which has to prove its case against the accused. The proof MUST be beyond reasonable doubt. See the case of Stephen Nguli Mulili Vs Republic [2014] eKLR.
35. Speaking to a scenario similar to what is before this court Mativo J (as he then was) in Elizabeth Maithigeni Gatimu V Republic [2015] eKLR stated as follows:

“To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant's guilt beyond reasonable doubt is basic to our law. It is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty...Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favorite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court



in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge".

36. Further in *Moses Nato Raphael V Republic* [2015] eKLR the Court of Appeal states thus:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice”.

37. I am duly guided by the decisions above, the law and in view of my findings in respect of the evidence before this court, I am satisfied that the prosecution has failed to prove that the accused is the one who committed the unlawful act that led to the deceased's death.

Whether the accused had any malice aforethought

38. There is no evidence to show any link or connection between the accused and the deceased. There is therefore nothing to show any reason that would have made the accused to take away the deceased's life.

39. The above being the findings on the three issues I finally find that the prosecution has failed to prove its case against the accused as required by the law. For my part I find him not guilty and acquit him under section 322 Criminal Procedure Code. He shall be released forthwith unless lawfully held under a separate warrant.

40. Orders accordingly

**DELIVERED, DATED AND SIGNED THIS 29TH DAY OF SEPTEMBER, 2025 IN OPEN COURT
AT NAKURU**

H. I. ONG'UDI

JUDGE

