



**Walo v Republic (Criminal Appeal E118 of 2022)  
[2025] KECA 1639 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1639 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL E118 OF 2022  
MSA MAKHANDIA, HA OMONDI & AO MUCHELULE, JJA  
OCTOBER 3, 2025**

**BETWEEN**

**LUCAS ONYANGO WALO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal from the Judgment of the High Court of Kenya at Siaya,  
(Aburili, J.) dated 22nd March, 2022 in CRIMINAL CASE NO. E005 OF 2021)*

**JUDGMENT**

1. This is a first appeal arising from the judgment of the High Court of Kenya at Siaya, wherein the appellant, Lucas Onyango Walo, was charged, tried, convicted and sentenced to life imprisonment on the information of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the information were that on either 1<sup>st</sup> or 2<sup>nd</sup> January 2020, at Barkalore village, Lihanda sub- location, East Gem location, within Gem sub-county, Siaya County, the appellant, jointly with others not before the court, unlawfully caused the death of Maurice Omondi, (“the deceased”). The appellant pleaded not guilty to the information and his trial ensued.
2. The brief facts of the case were that on 1<sup>st</sup> January, 2020, PW1, Bernard Otieno Onyango, was at home when at about 9.00pm, the appellant approached him demanding a panga, as he wanted kill someone that night. PW1 declined the demand. The appellant lived about 400 meters away from his house. The following morning, he heard a woman screaming, “They have killed him!” He rushed to the scene and found the deceased's body lying lifeless on the ground, surrounded by members of the public.
3. Later that day, his brother, Shadrack Meshack Onyango (PW2) informed him that he had witnessed the appellant, his brother and another individual assaulting the deceased the previous night near where his body was discovered but had been unable to intervene. Together, they visited the appellant’s home to find out what had happened to the deceased. The appellant’s parents admitted that the appellant had



arrived home the previous night wearing bloodstained clothes, claiming he had fallen off a motorcycle. The appellant's father pleaded with them not to report the incident to the police as it would implicate the appellant in the death of the deceased. They learned further that the appellant had already left for Nairobi. Subsequently, PW1 and PW2 were summoned to Sinaga Police Station, where they recorded their statements regarding the incident.

4. PW2's evidence was more or less similar to that of PW1. Suffice to add that on the material night at around 9:30 pm he was riding his boda boda motorcycle home when he saw the appellant, and his brother repeatedly assaulting the deceased who was lying on the ground. When he questioned them, they told him the fight was over the money the deceased owed them and a helmet he had broken. PW2 saw five people at the scene: the deceased who was also, a boda boda rider, Winnie, the appellant's girlfriend, the appellant and his brother. Despite his attempts to intervene, he was unsuccessful and left. The following morning, cries from the scene alerted him, and upon going there, he found the deceased's body lying in the same position he had left.
5. PW2 subsequently informed PW1 about what he had witnessed the previous night, and together they went to the appellant's home. The appellant's mother confirmed that both the appellant and his brother had returned home the previous night with blood-stained clothes. When questioned, they claimed to have fallen off a motorcycle. She also pleaded with them not to report the matter to the police. However, PW1 and PW2 insisted that if the police questioned them, they would disclose everything they knew. Three days later, he was summoned to Sinaga Police Station to record a statement. PW2 was a long-time friend of the appellant. He was emphatic that he saw the appellant and his brother assaulting the deceased.
6. PW3, Nicholas Odhiambo Sogo, a Senior Chief of East Gem location, on the morning of 2<sup>nd</sup> January, 2020, received a call from a community leader, Festus Omondi, informing him of the discovery of a body within the Church of Israel compound. He promptly went to the scene and found the body of the deceased and immediately contacted Yala Police Station, who dispatched police officers who came and collected the body and ferried it to Yala hospital mortuary. He subsequently unsuccessfully convened a community meeting where he implored residents to provide any relevant information that may lead to the arrest of those who might have committed the offence.
7. PW4, Francis Ochieng a boda boda rider was at around 9:00pm., riding home when he came across a large group of people gathered on the road. He illuminated the area with his motorcycle's headlights and recognized the appellant among them. He then continued with his journey home. The following morning, he rode past the same venue and found the deceased lying dead at the scene.
8. PW5, Rose Juma Amolo, the deceased's mother, on the material day was at home with the deceased when he left for Daraja Mbili to purchase diesel fuel but never returned. The next morning, she learned that the deceased had been killed. She rushed to the scene and saw the body of the deceased. Soon after, police officers arrived and evacuated the body to Yala hospital mortuary. She later went to Yala mortuary, where she identified the deceased's body for purposes of postmortem examination
9. PW6, Dr. Mbeki Melvin, a Medical Officer at Siaya County Referral Hospital, conducted the postmortem on the body of the deceased. He determined that the cause of death was severe hemorrhage resulting from a splenic fracture.
10. PW7 PC Collins Kemboy, the investigating officer around 9:00 a.m. received an anonymous call reporting a murder in Bar Kolare area. Upon arriving at the scene, they found the deceased's body lying by the roadside near a church. They evacuated the body to Yala Hospital Mortuary. Later that day, Inspector Kiboi contacted Bar Kolare Police Station, informing them that two individuals, PW1 and PW2 had volunteered to record statements regarding the murder, claiming they had witnessed



the incident. Their statements were subsequently recorded. It had also been reported that the suspects had fled to Nairobi following the incident. Later police received information that the appellant had returned home prompting his arrest. He was then formally charged with murder.

11. Placed on his defence, the appellant in a sworn statement stated that he had in the past entrusted PW1 with his cow to take care and in consideration thereof he would take the first calf. At some point, PW1 requested him to give him his motorcycle for use in the boda boda business. However, he declined, and PW1 become upset. However, when the appellant encountered financial difficulties and decided to sell the cow before it could calf, PW1, expressed displeasure at the sale of the cow without prior consultation. According to the appellant, PW1 reacted angrily, warning him that he would face consequences. From that moment, PW1 became hostile towards him. He denied being involved in the death of the deceased or being aware of any police investigations against him.
12. After evaluating the evidence presented, the trial court found the appellant guilty of the offence, convicted him and after considering the circumstances of the offence, the victim's impact statement, the court determined that a sentence of life imprisonment was appropriate.
13. Aggrieved by the conviction and sentence, the appellant filed in person a memorandum of appeal which was later supplemented by that drawn by Messrs. Lugano & Achura Advocates alleging that the trial court erred in: convicting him for the offence of murder without prove of the essential ingredients of the offence; relying on the evidence of a single identifying eyewitness; wrongly attributing the fatal blows to the deceased on him; relying on uncorroborated evidence; disregarding his alibi defence; misinterpreting his relocation to Nairobi as evidence of his guilt; dismissing claims of bias due to a grudge held by PW1 and PW2 against him; and imposing a harsh and excessive sentence.
14. When the appeal was called out for plenary hearing, Mr. Lugano Odhialo, learned counsel, appeared for the appellant whereas, Ms. Opiyo, learned prosecution counsel, appeared for the respondent. Both elected to rely entirely on their respective written submissions that they had filed.
15. Counsel for the appellant submitted that the prosecution failed to prove the essential elements of the crime beyond reasonable doubt. He contended that malice aforethought was not established, citing the case of *Nzuki v Republic* [1993] KLR 171 in support thereof. Additionally, counsel argued that the cause of death, as determined by PW6, was splenic rupture, but the specific mechanism leading to such injury was not clarified. Counsel further challenged the identification of the appellant asserting that his conviction was based on a single identifying witness, (PW2), whose testimony was unreliable given that multiple individuals were involved in assaulting the deceased. He relied on the case of *Maitanyi v Republic* [1986] KLR 198, which underscored the necessity of subjecting single-witness identification evidence to rigorous scrutiny. He also referred to the case of *Wamunga v Republic* [1989] KLR 424, on the need for favourable identification conditions to obtain before any identification can be said to be free from possibility of error. Counsel contended that PW2's ability to identify the appellant using motorcycle headlights was questionable, citing the case of *Paul Etole & Reuben Ombima v Republic*, Criminal Appeal No. 24 of 2000, where the court cautioned against convictions based on uncertain lighting conditions.
16. Counsel further submitted that the trial court wrongly attributed the fatal blows on the deceased to the appellant despite evidence showing multiple individuals were involved in the assault. He cited the case of *Republic v Florence Kola, Carole Kola & Another* [2021] eKLR, which dealt with the difficulty in pinpointing an individual assailant in mob justice scenarios. He asserted that the failure to produce the murder weapon further weakened the prosecution's case. He also took issue with the reliance on the evidence of PW1 and PW2, who were brothers and who had a prior grudge against the appellant, submitting that their testimony should have been considered with circumspection. He



further submitted that crucial witnesses mentioned during the trial court were never called to testify, thus weakening the prosecution's case.

17. He further challenged the court's inference that the appellant's departure for Nairobi suggested his guilt, arguing that he was a hotelier living and working in Nairobi, as evidenced by the probation report. Counsel submitted that the sentence of life imprisonment was excessive and unconstitutional. In support thereof, counsel referred to the case of Julius Kitsao Manyeso v Republic, Criminal Appeal No. 12 of 2021, in which it was held that sentence must reflect the unique facts and circumstances of the case. That in the circumstances of this case, life imprisonment was uncalled for. In conclusion, counsel urged this Court to allow the appeal, quash the conviction and set aside the sentence.
18. The appeal was opposed. In doing so, counsel for the respondent submitted that the prosecution had proved its case against the appellant beyond reasonable doubt. That the cause of death was clearly proved through medical evidence, with PW6 confirming that the deceased succumbed to severe hemorrhage secondary to splenic rupture. Counsel contended that the appellant was properly linked to the crime, as PW2 placed him at the scene. He was among those who were assaulting the deceased.
19. On identification, the respondent submitted that although the incident occurred at night, PW2 had sufficient visibility from his motorcycle headlights and engaged in conversation with the assailants including the appellant. Citing the case of Anjononi & Others v Republic [1976-80] 1 KLR 1568, counsel emphasized that evidence of recognition is more reliable than that of identification of a stranger, and that PW2 recognized the appellant at the scene as he knew him very well. It was submitted further that the trial court properly warned itself of the dangers of convicting the appellant based on uncorroborated evidence of a single witness. Counsel invoked the doctrine of common intention, asserting that all individuals involved in the assault were culpable for the crime, regardless of who inflicted the fatal injury. She further submitted that, as held in the case of Moses Jua v The State [2007] LPELR CA/IL/42/2006, the appellant, having been the last person seen with the deceased, he bore the duty to explain how the deceased met his death which he failed to do.
20. On malice aforethought, counsel referred to Section 206 of the Penal Code which defines malice aforethought and submitted that the injuries inflicted on the deceased met the legal threshold for intent to cause grievous harm or even death. She emphasized that the appellant sought a panga from PW1 with the intent to kill. That the trial court did not misconstrue the cause of death as PW6's findings unequivocally pointed to splenic rupture as the fatal injury. On the alibi defence, it was submitted that appellant's presence at the scene of crime was established by cogent evidence, rendering the alibi improbable. Addressing want of crucial witnesses, counsel, cited the case of Julius Kalewa Mutunga v Republic, [2006] eKLR, to posit that the discretion of whether to call a witness lies with the prosecution unless evidence of improper motive is demonstrated, the decision can cannot be impugned. In this case, there was no such demonstration.
21. Turning to sentence, counsel noted that while in the case of Manyeso v Republic this Court held that life imprisonment was unconstitutional, counsel referred to the case of Republic v Ayako (Petition E002 of 2024) [2025] KESC 20 (KLR), where the Supreme Court affirmed that life sentences are lawful and should be imposed unless and until such time as Parliament will intervene. She maintained that the trial court had properly considered mitigation and circumstances of the offence, making life imprisonment appropriate sentence in the circumstances. In conclusion, counsel urged the court to dismiss the appeal, in its entirety.
22. As a first appellate court, our duty is to subject the evidence adduced before the trial court to an exhaustive re-evaluation, draw our own conclusions, and determine whether the findings of the trial court can stand. See the oft quoted case of Okeno v Republic [1972] EA 32.



23. Having considered the record, the written submissions by both parties, the authorities cited and the law, the key issues for determination in our view are whether: the prosecution proved the offence against the appellant beyond reasonable doubt; the identification of the appellant was free from possibility of error; the appellant's defence was properly considered; vital witnesses were not called; and lastly whether the sentence imposed was appropriate in the circumstances.
24. On the first issue, the information laid against the appellant was murder contrary to Section 203 as read with Section 204 of the Penal Code. Section 203 defines murder as:
- “Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder.”
25. The key ingredients for the offence and which the prosecution must prove are: death of the victim and its cause; the death was as a result of unlawful act of omission or commission occasioned by the accused; and that the death was accompanied with malice aforethought.
26. The fact of death was clearly established through the testimony of multiple witnesses, including PW1, PW2, PW3, PW4, and PW5 who all saw the deceased's body at the scene. Whereas PW6 the pathologist, who conducted the postmortem opined that the cause of death was severe hemorrhage secondary to splenic rupture, caused by blunt trauma to the abdomen. The presence of other injuries like bruises on both shoulders, a swollen right eye, a cut wound on the left temporal region corroborated the fact that the deceased had suffered significant and fatal physical assault.
27. On the second element, the prosecution needed to demonstrate that the death resulted from an unlawful act of omission or commission by the appellant. See the case of *Ali v Republic (Criminal Appeal 51 of 2021) [2024] KECA 1168 (KLR)*. The evidence presented by both PW2 and PW4, eyewitnesses, was significant in this regard. They placed the appellant at the scene. They saw the appellant whom they knew very well actively assaulting the deceased along with his brother. So that, this was evidence more of recognition as opposed to visual identification of a stranger in difficult circumstances. Contrary to the submissions of the appellant, the identification, nay, recognition of the appellant at the scene was not by a single witness but two.
28. The law is settled that where a conviction is based on the evidence of identification and or recognition in difficult circumstances, the court must exercise caution and carefully examine the circumstances under which the identification was made. That caution is equally applicable even in cases of recognition knowing that mistakes are also often made in such cases. In *Maitanyi v Republic (supra)*, this Court held:
- “When the case against the accused depends wholly or substantially on the correctness of identification of the accused, the court must warn itself of the special need for caution and examine the circumstances under which the identification was made.”
29. This principle underscores the need for courts to scrutinize the conditions under which the identification occurred, including lighting, distance, duration of observation, and familiarity between the witness and the accused. In the present case, PW2 and PW4 testified that they identified nay, recognized the appellant using the headlights of their motorcycles and even engaged him in



conversation during the attack. The respondent cited and rightly so in our view, the case of *Anjononi & Others v Republic* (supra), where the court stated:

“Recognition is more reliable than identification of a stranger. This is because recognition depends on the witness’s familiarity with the accused, reducing the likelihood of mistaken identity.”

30. Applying these principles to the present case, identification of the appellant was based on recognition rather than mere identification of a stranger. The witnesses had known the appellant prior, interacted with him during the incident, and observed him under the illumination of their motorcycle headlights. This evidence of recognition was further bolstered by the behaviour of the appellant’s parents when confronted by PW1 and PW2 regarding the death of the deceased. Next is the appellant’s flight to Nairobi so soon after the incident. This was clear manifestation of a guilty mind as correctly observed by the trial court. Further, PW1, had earlier on heard the appellant demand a panga from him and declaring his intent to kill someone that night.

31. All the foregoing taken in totality irresistibly point to the appellant as the perpetrator of the crime. We are therefore satisfied just like the trial court that the identification of the appellant by recognition was reliable and cannot be impugned. The conditions under which PW2 and PW4 observed the appellant, coupled with their familiarity with him, reduce the possibility of mistaken recognition.

32. On malice aforethought, in the case of *Nzuki v Republic* (supra), this Court held that malice aforethought is established if the accused intended to cause death or grievous bodily harm of the deceased. Furthermore, in the case of *Chai v Republic* [2022] KECA 495 (KLR) the court emphasized that for a conviction of murder, the prosecution must establish that the accused acted with intent to kill or cause grievous harm. The court also held that:

“Malice aforethought can be inferred from the nature of injuries inflicted, the manner in which the attack was carried out, and any prior statements or conduct demonstrating an intention to cause harm.”

33. The repeated assault on the deceased, the apparent premeditation shown by the appellant’s statement whilst demanding for a panga from PW1 and the fatal injuries inflicted upon the deceased support the conclusion that the appellant acted with the requisite and extreme malice aforethought.

34. Regarding the appellant’s defence, the appellant raised an alibi, asserting that he was not present at the scene of crime and was therefore wrongfully implicated in the crime. The legal position on alibi defences was reiterated in the case of *Kiarie v Republic* [1984] KLR 739, thus:

“An accused does not bear the burden of proving an alibi, and the prosecution must disprove the alibi beyond reasonable doubt.”

35. This Court in *Ruto v Republic* (Criminal Appeal 100 of 2017) [2024] KECA 899 (KLR) reinforced the principle that an alibi must be weighed against the totality of the evidence. The court held:

“Where an alibi is raised, the court must consider whether the prosecution’s evidence sufficiently places the accused at the scene of the crime and whether the alibi is credible in light of the circumstances.”

36. This principle underscores that once an accused raises an alibi as a defence, the burden remains on the prosecution to provide evidence that displaces that defence and indeed places the accused at the scene



of the crime. In the present case, the prosecution relied on the testimony of PW2 and PW4 who placed the appellant at the scene of crime, which evidence was corroborated by PW1, who overheard the appellant earlier in the evening demanding a panga and declaring his intent to kill someone. The trial court found that these testimonies, coupled with the appellant's parents' conduct when confronted with information regarding their son's involvement in the crime and the appellant's ultimate flight to Nairobi so soon after the incident undermined the credibility of his alibi.

37. The appellant alleged that PW1 and PW2 had a grudge against him and therefore their evidence ought not have been believed. The trial court dismissed this argument, and rightly so in our view, noting that the appellant failed to provide evidence substantiating the alleged grudge. The Court in *Bernard Maina Mwaniki v Republic (Criminal Appeal 234 of 2008) [2010] KECA 105708 (KLR)* held that:

“A claim of bias must be supported by credible evidence demonstrating that the witness had a motive to falsely implicate the accused. Mere allegations without supporting proof cannot discredit prosecution witnesses.”

38. We are satisfied that the trial court correctly dismissed the appellant's grudge claims. The appellant made the wild allegations without any iota of evidence at all.

On failure to call crucial witnesses, we agree with counsel for the respondent that the discretion to call a witness lies with the prosecution unless evidence of improper motive is demonstrated. The prosecution need not call a superfluity of witnesses to prove its case. In any case, the appellant did not specify the witnesses he had in mind. Finally, nothing stopped him from calling the said witnesses if he felt that they were vital to his case.

39. Lastly, on sentence, we note that the appellant was sentenced to life imprisonment. Counsel for the appellant argued that the sentence was excessive, citing *Julius Kitsao Manyeso v Republic*, (supra), which emphasized the need for proportionality in sentencing. In opposition counsel for the respondent cited the case of *Republic v Ayako* (supra), where the Supreme Court upheld the constitutionality of life imprisonment. The trial court considered the appellant's lack of remorse, threats made against the victim's family, and the gravity of the crime before determining that life imprisonment was appropriate.

Upon review, we find no reason to interfere with the sentence as it was within the discretion of the trial court and was duly justified.

40. In the end we find the appeal devoid of merit. Accordingly, it is dismissed in its entirety.

**DATED AND DELIVERED AT KISUMU THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**H.A. OMONDI**

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**JUDGE OF APPEAL**

**A.O. MUCHELULE**

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**JUDGE OF APPEAL**



I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

