



**Republic v Mwakubona (Criminal Case E004 of 2023)
[2025] KEHC 14250 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14250 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E004 OF 2023
WM KAGENDO., J
OCTOBER 9, 2025**

BETWEEN

THE REPUBLIC PROSECUTOR

AND

JOSIAH MWADIME MWAKUBONA ACCUSED

JUDGMENT

Particulars of the Offence

1. The accused is charged with the offence of murder, contrary to the above provisions. The particulars are that:

Josiah Mwadime Mwakubona, on the 5th day of November 2022 at Bokole Estate in Changamwe Sub-county within Mombasa County, murdered Vincent Odunge Okello.

Plea and Prosecution

2. The accused denied committing the offence. The prosecution called a total of six (6) witnesses to prove its case: PW1 – Florence Aluoch Ogada PW2 – Charles Oliviah Oliaro PW3 – Chrispine Otieno Okello PW4 – Fredrick Odhiambo Okello PW5 – Dr. N. Mbullo PW6 – Nathan Achira Akuche

Defence

Ingredients of Murder

3. The accused gave a sworn testimony in defence
4. As set out in Republic v Andrew Omenga (2009) eKLR, the elements of murder are:
 1. The fact and cause of death



2. Actus reus – That the accused’s actions (commission or omission) led to the death
3. Mens rea – Malice aforethought (premeditation)

Issues for Determination

5.
 - a. Whether the accused caused the death
 - b. Whether malice aforethought was established

The Death

6. The fact of death is not contested. PW4 produced the post mortem report, which showed the following injuries:

External Appearance:

Healing bruises on the right side of the face (zygomatic area) } Oral lacerations around the mouth

Internal Appearance:

Upper airway obstruction due to laryngo-epiglottic oedema with mucoid material }
Ulcerated laryngeal mucosa

Tracheal mucosa erosion with eczematous mucoid material in the lumen Consolidated lung
parenchyma (fluid-filled lung tissue)

Lower airway obstruction due to oedema and mucoid mate

Cause of Death

7. PW5 – Dr. N. Mbullo produced the post mortem form dated 14.11.2022. The cause of death was stated as:

Respiratory distress resulting from chemical pneumonitis with airway obstruction.

Witness Testimonies

8. PW1 – Florence Aluoch Ogada

Mother of the deceased. She received a call from her neighbor, Kombo, who asked if she had left the child sick. Upon arrival, she found the deceased crying and bleeding from the mouth. The child informed her that he had been beaten by a neighbor. She took him to Changamwe Police Station, where she was advised to first seek medical attention. She later returned to the station and was issued OB number 30. She testified that the child implicated the accused person . under cross examination she could not explain the discrepancy between her evidence and initial report implicating 3 ladies .

9. PW2 – Charles Oliviah Oliaro

He met the deceased, who was unable to speak properly and was drooling. The deceased told him that he and the accused’s child had tasted a lime-like substance. The accused allegedly



forced the deceased to swallow the substance with the help of his wife. The deceased and his mother later reported the matter to the police.

Cross-examination:

PW2 stated that the deceased had tasted the substance before meeting the accused's child. He also confirmed that he interrogated the minor separately and was unaware if the deceased had been interrogated by his mother.

10. PW3 – Chrispine Otieno Okello

Father of the deceased. He received a call at work informing him that his child had ingested poison and was unable to speak. He stated that only children implicated the accused and that he did not know the names of those children. He knew the accused as a neighbor but not by name.

Cross-examination:

He continued working after receiving the call and did not communicate with his wife.

Re-examination: He only went to the police station to record his statement.

11. PW4 – Fredrick Odhiambo Okello

Uncle to the deceased. He stated that he could not tell where the poison was administered. One child told them that the accused had fed the deceased with poison.

Cross-examination:

He did not know the child who gave the information and did not interrogate any other children.

12. PW5, Dr. N. Mbullo, produced a post mortem report dated 14.11.2022 indicating the cause of death as “respiratory distress from keeping in contact with chemical pneumonitis with airway obstruction.” He noted injuries on the right side of the face and inside the mouth. However, he admitted that he did not conduct the post mortem himself, no toxicological analysis was done, and no samples were taken or submitted to the police. No treatment notes were produced to show the medical care the deceased received.

13. PW6, Nathan Achira Akuche, aged 15 years, testified that the deceased, Vincent, was his friend. He stated that Vincent picked a bag containing acid and gave it to Felix. Felix reported the incident to his father, Baba Robi (the accused), who allegedly beat Vincent, forced him to ingest the acid, and sent him home. PW6 claimed to have witnessed this.

14. Under cross-examination, PW6 contradicted his earlier testimony. He stated that he fled the scene when Felix began crying and did not see the accused or what transpired. He further claimed to have heard that four ladies beat the deceased, and the accused was not mentioned. This contradiction undermines the reliability of his testimony.

ANALYSIS

15. PW1 and PW6 were the key witnesses. PW6 was present when the deceased picked the unknown substance. PW1 testified that the deceased narrated the incident to her. However, PW1 admitted she



did not witness any assault and gave inconsistent accounts, initially blaming four unknown ladies and later implicating the accused.

PW2, PW3, and PW4 gave hearsay evidence based on information from unidentified children. Their testimonies lacked probative value.

16. Section 203 of the Penal Code defines murder as:

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

17. Section 206 of the Penal Code outlines circumstances under which malice aforethought is deemed established, including:

An intention to cause death or grievous harm;

Knowledge that the act or omission will probably cause death or grievous harm; An intent to commit a felony;

An intention to facilitate escape from custody.

18. In this case, no evidence of prior hostility, grudge, or intent was adduced. The accused did not know the deceased, and it was not established what substance was administered or by whom.

Burden of Proof

19. The prosecution bears the burden of proof in criminal cases. In Philip Nzaka Watu v Republic [2006] eKLR, cited in Gordon Omondi Ochieng v Republic [2021] eKLR, the court held:

“To find conviction in a criminal case, the trial court must be satisfied of the accused person’s guilt beyond reasonable doubt.”

1. Similarly, in Stephen Nguli Mulili v Republic [2014] eKLR, the court reaffirmed the principle from DPP v Woolmington (1935) UKHL 1 that the burden of proof lies with the prosecution.

2. Findings

Based on the foregoing, the Court finds that:

The prosecution failed to demonstrate that the accused caused the death of the deceased;

Malice aforethought was not proved;

The substance allegedly ingested by the deceased was neither identified nor linked to the accused;

The charge of murder was not proved beyond reasonable doubt.

I am guided by the decision in Sawe v Republic [2003] KLR 364, where the Court held:

Though it is wrong to kill somebody, it is also wrong for the court to find fault in people against whom there is no evidence, or sufficient evidence.”



Conclusion and Orders

20. The ingredients of actus reus and mens rea were not established. Consequently, the offence of murder was not proved.

Accordingly, the accused is hereby acquitted of the offence of murder contrary to Section 203 as read with section 204 of the Penal Code,

DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE VIA MS TEAMS ON THIS 9TH DAY OF OCTOBER, 2025.

HON. LADY JUSTICE W. K. MICHENI JUDGE

In the presence of:

The Accused Person And His Advocate Mr Nganzala Mr Ngiri For The State

Bebora Court Assistant

SIGNED BY/FOR:

HON. LADY JUSTICE WENDY MICHENI

