



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Nzilani (Criminal Case E001 of 2024)
[2025] KEHC 14481 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E001 OF 2024
TM MATHEKA, J
OCTOBER 9, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSHUA SILA NZILANI ACCUSED

RULING

1. Joshua Sila Nzilani is charged with murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars are that on 23/10/2023 at Ndalani Village kaboo Sublocation Kiboko Location, Makindu Subcounty Makueni County he murdered Emmanuel Muasa Mue.
3. The case for the prosecution is that the deceased and the accused were living in the same homestead. Their relation was that the deceased was uncle to the accused.
4. ON 23/10/2023 the PW3 Joseph Munyao Village who was also the village elder was informed by PW2 Patricia Ndinda, a fellow Villager that Muasa - the deceased, had told her that he had been beaten by Sila, who had also taken his phone away.
5. PW3 rang Boniface Musyoka PW4 the brother of Muasa and told him what Ndinda, PW2 had told him. PW4 came home and they – PW3 and PW4 met at about 6.00pm at the home of Muasa - however, his house was locked from inside with a padlock.
6. They waited for him in vain - they even thought he was late grazing until they saw his goats come home on their own. They locked up the goats and left for their homes.
7. They met the following day at Muasa's home - his door was still locked. PW3 said he was going to attend to other errands - and left but while on his way PW4 called him back, telling him to return.



8. PW4 testified that the deceased was his brother and accused the son of his sister. That on 24/10/2023 when they parted ways with PW3 outside the house of the deceased - he said he needed a seat. He decided to break into his brother's house, after sorting out the deceased's goats. When he forced the door open, he saw blood at the door and when he looked behind the curtain that separated the bedroom - he saw his brother Muasa and that he was not alive. He called back PW3 who came, police were called, and they took over. According to PW4 the deceased and the accused had fought over a goat.
9. On her part PW2 told the court that she and other women were from the river on 23/10/2023 at 8.00am. Then they heard the voice of Muasa telling them to tell Munyao that the son of his sister had assaulted him. PW2 said Munyao was not at home and she found him at the market and told him. She said when Muasa called out to them she saw that he was bleeding from the face and head.
10. She said on cross-exam that she was seeing the accused for the 1st time. She also said that Muasa did not tell her the name of the person who had assaulted him.
11. PW5 Teresia Mutheu Nzilani said Muasa was his uncle, and the accused her older brother. She testified that she had other brothers. She received a call from PW3 - her uncle on 24/10/2023 who asked her whether she had not heard from home - he told her that there had been a fight between Muasa, her uncle and Sila her brother. That her uncle had been found dead. He told her the fight was over cattle at home.
12. She attended her uncle's burial but no one knew where Joshua the accused was. He was not at the burial.
13. ON 16/12/2023 Joshua rang her on a new number. He told her that he was stuck and needed fare to come home. She sent him fare - and he came to Kiboko where she was. He asked her whether she had spoken to the deceased and she said no. He told her when he left home the deceased was alive. Later some two men came and arrested him. She said under cross-exam that she was not aware of any dispute between her uncle and her brother prior to 24/10/2025.
14. It turned out that after police received the report, visited the scene, which was photographed by PW6 - the accused became the key suspect.
15. PW7 No. 86232 PC Moses Mungai told the court that PW2 Patricia Ndinda told him that she met the deceased standing at a fence. She told him deceased said.

“... Mkipita kwa Munyao mwambie Kijana ya sister yake amenichokoza, amenipiga na ameniumiza...”
16. The investigating officer further told the court that there was a piece of timber and manila rope that were recovered from the house of the parents of the deceased – and that there were blood stains in that house. That this happened on 1/11/2023 and those who made the discovery were PW4 and one Simon Mukwana.
17. He learnt that accused lived with deceased in the same homestead and that it was Sila Nzilani who had assaulted him while demanding a goat to sell, and when deceased refused Sila assaulted him. That accused used the rungu and rope to strangle the deceased in the parents' house then he disappeared.
18. That DCI officers kept surveillance over him and tracked him to Kajiado, and to his sister's house in Kiboko from where he was arrested.



19. According to PW7 the accused was the key suspect because he lived with deceased in same compound, his house was about 3m from that of the deceased; the deceased told Ndinda that accused had assaulted him and taken away his mobile phone.
20. Further that he established that the accused was last at home by triangulating his phone signals - but this triangulation was not evidence he could produce in court because he said it was CRIV who have it. That the accused was placed in the boma up to 23/10/2023 after which he ran away. He said he did not ask Patricia whether she had seen accused. That accused did not attend the burial of his uncle.
21. As he was coming to the end of his testimony he said there were 2 scenes of crime- the 1st scene where there was a rope, and human waste in the house of the parents of the deceased- and the 2nd scene where the deceased was taken, to his house. He said accused was the last one to be seen alive with deceased.
22. PW1Dr. Loiposha conducted the postmortem on 2/11/2023 at Makindu Subcounty Hospital. He completed the postmortem form and established that cause of death was asphyxiation secondary to strangulation. (and queried whether a Rope?? Had been used_) with fracture of C2 and blood otorrhinorrhea. He saw a visible strangulation mark on the neck region, deformed neck region due to the fracture.
23. The prosecution closed its case.
24. At this juncture the issue is whether there is evidence to warrant the accused being put on his defence. Section 306 of Criminal Procedure Codes States ;
 - (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
 - (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.
25. The prosecution must at least establish the ingredients of murder as set out in Wiyema v Republic [2025] KECA 1574 (KLR)
Where the CoA cited Chiragu & another v Republic [2021] KECA 342 (KLR) where it had stated:

“The prosecution in an information of murder has the singular task of proving the following three ingredients in order to secure a conviction; that the death of the deceased occurred; that the death was caused by an unlawful act of commission or omission by the accused and that the accused had malice aforethought as he committed the said act.”
26. In this case - it is not in doubt that Muasa is dead – his body was found by his brother, police were called - and it was taken to the mortuary.
27. The cause of death was also established - he was strangled - and he force used was sufficient to cause fracture of C2. That cause of death establishes an unlawful am unlawful act.



28. Whose unlawful act was it? Who killed the deceased?
29. The prosecution says it is the accused person because the deceased told the PW2 that he (accused) assaulted him. The testimony of PW2 is that the deceased did not mention any names. He told her that the son of his sister had assaulted him meaning his nephew had assaulted him. She is the one the deceased spoke to and she said the deceased did not mention any name. she said it was her first time to see the accused in court .It is not clear how the prosecution arrived at the accused person yet PW5 the sister to accused told the court that she had other brothers. It was upon the prosecution to narrow down to which son of which sister had assaulted the deceased.
30. The PW3 - the village elder said it was PW2 who told him the name Sila - which she denied. So how did he and PW4 the brother of deceased, uncle to accused ,arrive at the conclusion that it was accused who assaulted the deceased over his refusal to give him a goat?
31. Neither PW3 nor PW4 said they were present when the alleged fight occurred – PW2 was not at the place where the alleged fight occurred - So who is this person who witnessed the fight and even knew the reason for the same? This person/persons did not testify yet they appear to have had key evidence that would have placed the accused at the scene. Without this evidence placing the accused at the scene what other evidence did prosecution have?
32. It was alleged that the accused and deceased were the only ones who lived in the homestead – But no evidence was placed before court that he was living at that home. Or that he was at the material time. The alleged triangulation of the signals from his mobile phone placing him at the scene/in the home were not produced before court.
33. In addition he is said to have taken the deceased’s phone. There is no evidence that it was looked for , or that it was recovered/traced to him.
34. The investigating officer said he established that the accused lived in that home but produced no evidence to prove that. He also said accused ran away from the area on 23/10/2023 but produced no such evidence.
35. It is noteworthy that when PW3 and PW4 were waiting for Muasa, they did not mention that they were surprised that accused had also not come home – they did not mention that accused was also expected to be at home an indication that the accused was likely not to have been at home at that material time and was not expected to be coming home that evening or the following day.
36. The investigating officer introduced a twist to the case at the tail end of his cross-examination - that the deceased was killed in his parent’s house, and then dragged to his own house. It is noteworthy that PW2 saw deceased around 8.00am in the morning. That is when she said the deceased told her he had been injured by his nephew . She reported this around 9.30am to the PW3 - the village elder. The question is –did the killer go back – strangle the deceased in his mother’s house - drag him to his house and lock the door from inside? The investigating office did not tell the court what investigations he carried out to find out what could have happened – did neighbours hear anything?
37. The I.O introduced this aspect of the deceased having ben killed elsewhere and being dragged to his house. Yet the general case for the prosecution appeared to be that the accused had assaulted the deceased caused his injuries that led to his death. The alleged discovery of this other scene by some of the witnesses who testified was not even mentioned by those witnesses and that left a gap in the case for the prosecution as to what really happened. It added a twist to the case that had not been mentioned by the witnesses.



38. It is now well established that suspicious done however strong cannot be proof of murder. In *Sawe v Republic* [2003] KECA 182 (KLR) the CoA had this to say;

In our judgment, the evidence does not satisfy the legal requirements of circumstantial evidence to warrant or justify the conviction of the appellant on the basis of the evidence on the record. We are, therefore, unable to uphold the conviction entered by the learned trial judge. We have evaluated the evidence as we are entitled to at great length and there is really nothing left to connect the appellant with the death of the deceased except mere suspicion. The suspicion may be strong but this is a game with clear and settled rules of engagement. The prosecution must prove the case against the accused beyond any reasonable doubt. As this Court made clear in the case of *Mary Wanjiku Gichira v Republic* (Criminal Appeal No 17 of 1998) (unreported), suspicion however strong, cannot provide a basis for inferring guilt which must be proved by evidence. We disagree with the learned judge's view that the prosecution had proved its case against the appellant beyond any reasonable doubt.

39. The prosecution must produce evidence that meets the standard of beyond a reasonable doubt. The mere fact that the accused was arrested in Kajiado at the sister's place is not proof of anything when in the 1st place no evidence placed him at the scene. There is no evidence that he was switching his phone on and off as alleged by the I.O. There is evidence that when he went to his sister's the conversation, they had was that when he left home , whenever that was, the deceased was alive. Failure to attend burial cannot be proof of guilt.

40. I am saying that the evidence placed before court regarding the involvement of the accused in the death of his uncle falls short of a prima facie case to warrant the accused being put on the defence. It is evidence that would not sustain a conviction.

41. In the circumstances I enter a finding of not guilty pursuant to s. 306(1) of the Criminal Procedure Code. I dismiss the charge and acquit the accused accordingly.

42. He is to be set at liberty unless otherwise legally held.

DATED SIGNED AND DELIVERED THIS 9TH OCTOBER 2025.

MUMBUA T MATHEKA

JUDGE

Accused - Present

Chrispol - Court Assistant

Mr. Kazungu for State

Mr. Judah Kioko for accused

