



**Republic v Odhiambo (Criminal Case 47 of 2018)  
[2025] KEHC 14251 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14251 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL CASE 47 OF 2018  
WM KAGENDO., J  
OCTOBER 9, 2025**

**BETWEEN**

**THE REPUBLIC ..... PROSECUTOR**

**AND**

**ALLSTAIR OMONDI ODHIAMBO ..... ACCUSED**

**JUDGMENT**

1. In his later years, the late Peter Macharia, also known as Alfian Macharia, did not enjoy a peaceful or dignified life. Despite coming from a well-off background and owning several properties and businesses, he ended up living alone behind a workshop, sleeping on a mattress without a bed.
2. He was estranged from his then wife, Mwanaisha Ali Yusuf (PW1), with whom he had five children. One of the children, Ali Mutunga, was in remand prison and was due to be sentenced around the time the deceased died or disappeared on 12th September 2018.
3. The genesis of his problems was his marriage to Mwanaisha and his conversion to the Islamic faith. This was compounded by the death of his father in 2015, which triggered a fierce succession dispute between his siblings. At one point, the deceased was attacked and hospitalized earlier in 2018. The succession cases were still pending in court. These family differences were evident during the trial, with each side pointing an accusing finger at the other.
4. None of his siblings was among the 19 witnesses called. His mother accused the widow of killing him, and when the widow protested her innocence, the mother-in-law told her that even if she had not killed him physically, she had killed his heart. Against that background, even the exact date of death of the deceased remains uncertain.
5. The widow (PW1) testified that she last spoke with him on 10th September 2018, when he sent foodstuff home through the guard (PW10), which was picked from the shop of PW9. Her evidence was that despite their differences and living separately, he would call her daily at 5:00 a.m., but he did



- not do so on 11th September 2018. She became concerned when he failed to appear for their son's sentencing on 12th September 2018 and his phone went unanswered.
6. According to PW1 Charles Kyengo, an employee of the deceased, they left the workshop around 6:30 p.m. on 11th September 2018 and parted ways near the Mpesa shop past Simba Colt Motors. The deceased told him that he would not be reporting to work the next day as he was to attend court for his son's case and later a family meeting.
  7. He did not see the deceased on 12th September 2018. Later that day, the deceased's brothers, Kennedy and Kioko, asked him about the deceased's whereabouts, saying he had not shown up for the family meeting.
  8. PW8, Purity Mutharika, an Mpesa agent, testified that she saw the deceased on 11th September 2018 at around 7:00 p.m., when they boarded a matatu at Highlife stage. The deceased alighted at Leisure stage around 8:00 p.m.
  9. Her evidence initially led investigators to suspect the widow, since she lived at Leisure with the children. Blood was observed on the second floor of the building where she lived. The investigator (PW17) testified that upon inquiry, PW11 said a child had been injured. The child's blood sample was taken for DNA profiling, but the results were never produced. The Investigating Officer merely stated that it did not yield any positive match.
  10. The absence of that DNA report is among several lapses in the investigations. The family raised numerous complaints, even after the accused was arrested. Each faction maintained that the actual culprit had not been arrested. Neither side was fully forthcoming with information. The siblings remained suspicious of the widow, and she, in turn, blamed them due to the succession dispute.
  11. After his death, the two warring sides could not agree on the place or mode of burial, forcing the court to intervene. A burial permit dated 7th September 2018 also emerged, prompting learned defence counsel Mr. Muthuri to submit that the family had malice aforethought.
  12. The evidence was that the accused, Alistair Omondi Odhiambo, was known to the deceased, having done casual work for him at both the Sega and Sparki workshops. He was also an on-and-off boyfriend of Maureen (PW15) and lived with Obiero (PW7), a friend to Kennedy (PW6). Kennedy linked the accused to Dan (PW2), a driver who used to transport goods for the deceased in motor vehicle KAQ 185P, a canter that ultimately linked the accused to this case.
  13. On the morning of 13th September 2018, the canter delivered scrap metal to a yard operated by Julia (PW4), where James Mwangi (PW5) worked. Julia recorded the delivery details in her scrap metal purchase record (produced as PEX 7), showing that Alistair Omondi Odhiambo, ID No. 34247028, using motor vehicle KAQ 185P, delivered 829 kilos of scrap tent angles and was paid Kshs. 26,528 at the rate of Kshs. 32 per kilo. His phone number was recorded as 0791-4132700.
  14. PW2, the driver, testified that he was called by number 0791-161276 on the night of 12th September 2018 but did not respond. The same number called again at 6:00 a.m. the next morning. He met the accused at Simba Colt Motors, and together they went to the deceased's yard, picked the tent angles (assisted by Yahya PW3), and delivered them to Julia's yard. PW2 was paid Kshs. 1,500 by the accused.
  15. However, these events were not captured in the CCTV footage produced. What was captured was a tuktuk ferrying more tent angles. PW5 also testified that the accused delivered some metal on 12th September 2018 at 4:00 p.m., but it was not recorded due to the small quantity.
  16. PW17, the Investigating Officer, produced the CCTV footage covering the 11th to 12th September 2018. The tuktuk is captured at 7:45 a.m. on 12th September 2018. At 6:23–6:45 a.m., a person is



- seen exiting the gate of the workshop, and at 11:04 p.m., another scene shows someone jumping over the gate.
17. PW15, Maureen, was recalled and identified the person in the footage as the accused, her boyfriend, based on his physique and clothing. This identification led to his arrest.
  18. Article 26 of *the Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except as authorized by law.
  19. The accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It was upon the prosecution to prove beyond reasonable doubt that the accused murdered the deceased.
  20. The issues for determination are whether the prosecution proved:
    - i. The death of the deceased and its cause;
    - ii. That the accused caused the death; and
    - iii. That he did so with malice aforethought.
  21. The death is not in dispute. The body was later exhumed from a manhole, and the post-mortem results confirm death from severe head injuries.
  22. Dr. Ngali Mbuko (PW4) testified that the decomposed body was wrapped in a green sleeping bag, with nylon cords binding the arms and legs. There was a perforated wound on the frontal skull (5x4 cm), bruises on both knees, and a fractured skull with bone fragments embedded in the brain. He opined that death was caused by traumatic cranio-cerebral injury following a perforating head wound.
  23. The death was clearly unlawful. The deceased could not have inflicted such injuries and buried himself.
  24. The critical question is whether the accused was responsible.
  25. The evidence linking him to the offence includes:
    - i. The CCTV footage identifying him at the scene.
    - ii. The scrap metal (PEX4) traced from the deceased's yard to Julia's yard, where Julia picked him out in an identification parade (PEX3).
    - iii. The identity card (No. 34247028) he had at arrest, matching Julia's record.
    - iv. Recovery of his phone containing the deceased's SIM and IMEI numbers.
  26. The Safaricom data analysis showed that the accused's phone shared the deceased's IMEI shortly after the disappearance, proving possession of the deceased's phone after his death.
  27. This invokes the doctrine of recent possession, as defined in *Isaac Ng'ang'a Kahiga & Another v Republic and Erick Otieno Arum v Republic* [2006] eKLR — that where stolen property is found soon after a theft in possession of an accused who cannot reasonably explain it, the presumption arises that he is either the thief or a participant in the offence.
  28. The court is satisfied that the accused was found in recent possession of the deceased's property, the timing being so proximate as to establish a nexus between the possession and the murder. He offered no explanation, having absconded after being placed on his defence.



29. Under Article 50(2)(f) of *the Constitution*, a trial may proceed in the absence of an accused whose conduct makes it impossible for the trial to continue in his presence. See *Republic v Galma Abagaro Shano* [2017] eKLR and *Merori Tetiroe T* [2023] KEHC 18592 (J. Ndungu).
30. On circumstantial evidence, the Court of Appeal in *Ahamad Abolfathi Mohammed v Republic* (Cr. App. Nos. 106 & 107 of 2013) held that circumstantial evidence can be as conclusive as direct evidence if the chain of facts unerringly points to the accused. The classic tests were set in *Abanga alias Onyango v Republic* (Cr. App. No. 32 of 1990) — that:
  - i. The circumstances must be firmly established;
  - ii. They must point unerringly to the accused’s guilt; and
  - iii. The chain must be complete, leaving no reasonable doubt of any other possible perpetrator.
31. In the present case, there was no direct forensic evidence such as DNA linking the accused to the crime, nor any eyewitness. However, the circumstantial evidence — his familiarity with the premises, CCTV capture, stolen property, and possession of the deceased’s phone — forms a complete and consistent chain pointing solely to his guilt.
32. I am satisfied that the accused inflicted the fatal injuries on the late Peter Macharia.
33. On malice aforethought, Section 206 of the Penal Code provides that it may be inferred from the nature of the weapon used, the manner of attack, or the intention to commit a felony. Here, repeatedly hitting the deceased on the head causing a skull fracture, coupled with the theft of his property, clearly demonstrates malice aforethought.
34. The claim that the accused was sent or influenced by others cannot exonerate him. He aggravated his guilt by absconding after being placed on his defence — conduct consistent with a guilty mind.
35. For these reasons, I am satisfied that the prosecution proved its case beyond reasonable doubt. The accused is hereby convicted of the offence of murder contrary to section 203 as read with section 204 Of the penal code.
36. A warrant of arrest shall issue forthwith and be widely circulated to ensure his arrest so that he may be brought for sentencing.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AND ONLINE VIA MICROSOFT TEAMS THIS 9TH DAY OF OCTOBER 2025.**

**HON. LADY JUSTICE W. K. MICHENI JUDGE**

In the presence of:

Mr Ngiri For The State.

Mr Muthuri For The Accused

Mr Bututa Watching Brief For The Sibblings Of The Deceased Bebora Court Assistant

Signed By/for:

**HON. LADY JUSTICE WENDY MICHENI**

