



REPUBLIC OF KENYA



KENYA LAW
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**Anyona v Republic (Criminal Appeal 338 of 2019)
[2025] KECA 1785 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1785 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 338 OF 2019
MSA MAKHANDIA, CO OMONDI & LA ACHODE, JJA
OCTOBER 24, 2025**

BETWEEN

GEOFFREY OGETO ANYONA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of the High Court at Nyamira,
(Maina, J.) dated 25th July, 2019 in HCCRC No. 13 of 2016)*

JUDGMENT

1. The appellant, Geoffrey Ogeto Anyona, was charged in the High Court of Kenya at Nyamira in, Criminal Case No. 13 of 2016, with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was alleged that on the night of 10th October 2014, at Tombe Shopping Centre, Koiguwa sub-location, in Manga Sub-County within Nyamira County, the appellant murdered Sebastian Momanyi Apoko (Deceased).
2. The appellant pleaded not guilty and a fully-fledged hearing ensued. At the conclusion of the trial, the learned judge convicted the appellant and sentenced him to 30 years imprisonment.
3. The appellant was aggrieved by that decision and has lodged the present appeal. In his Memorandum of Appeal, the appellant raised five (5) grounds of appeal, which are that:
 - “(i) The trial judge of the High Court erred in law by convicting the appellant for the offence of murder contrary to section 203 as read with section 204 of the Penal Code as much as the prosecution failed to prove its case beyond a reasonable doubt.
 - ii. The trial judge of the High Court erred in law and in fact by convicting the appellant of murder contrary to section 203 as read with section 204 of the



Penal Code as there was no evidence pointing directly to the appellant as having killed the deceased.

- iii. The learned trial judge erred in law and in fact by using circumstantial evidence to convict the appellant.
 - iv. The learned judge erred in law and in fact in failing to appreciate that the prosecution had failed to prove its case to the standard required in law that is proof beyond a reasonable doubt.
 - v. The learned judge misapprehended the facts, applied wrong legal principles and drew erroneous conclusions to the prejudice of the appellant.”
4. Briefly, the facts of the prosecution case were that on the material day, at around 6:30 p.m., the appellant and the deceased went to the premises where PW6, Douglas Misati Ongeru [Douglas] was running a pool table business. At the time, Job Mokaya (Job), who testified as PW2, and Walter Mwamba Ogechi (Walter), PW3, were playing; Douglas was present as the owner. An argument ensued between the appellant and Sebastian Momanyi Apoko, the deceased, prompting Douglas, with the help of Job and Walter, to remove them from the premises. About 10 to 15 minutes later, they heard distress cries outside and on rushing to the scene, they discovered the deceased lying lifeless on the ground, while the appellant had disappeared.
 5. Upon being informed that the deceased was lying on the road, PW5, Apoko Momanyi Oigwa (Apoko) the deceased’s father, rushed to the scene where he found some police officers guarding the body. The body was taken to Nyamira County Hospital and on 15th October 2014 Dr. Omoti performed a post-mortem on it. On physical examination, the doctor observed a depressed skull fracture (4cm wide and 2cm deep) on the left parietal area and the brain tissue had blood clot in the left parietal region. The doctor opined that the cause of death was cardiorespiratory arrest secondary to severe head injury with an epidural haematoma.
 6. The appellant disappeared after the incident, until 31st July 2016, when he allegedly accosted Ruth Kwamboka (Ruth), PW1 a sister of the deceased, at a Church in the area and asked her for forgiveness for killing her brother. Ruth raised an alarm and villagers went to the scene, apprehended the appellant and handed him over to the police. He was subsequently charged with this offence.
 7. Placed on his defence, the appellant gave a sworn statement and stated that on the material day at about 7 pm, he went to play pool but because he was drunk, he was chased away by Douglas, the pool table attendant. He stated that he was alone when he left the premises and went home. The appellant denied that he was with the deceased; and further denied that he killed him. He contended that he did not see the deceased even on his way home; insisting that this charge is a fabrication that ought to be dismissed, as he did not understand why he was arrested. While conceding that he was arrested two years after the death of the deceased, he denied having fled the area, and stated that he was at home all along only that he used to leave home early to go to work. He vehemently denied that he went into hiding and maintained that he even used to go to play pool a fact that Douglas and Walter could attest to.
 8. The trial court was convinced that the evidence placed the appellant at the scene of the crime and further held that the circumstances, when considered together, formed a complete chain pointing to the appellant as the perpetrator. Consequently, he was found guilty of murder and sentenced to 30 years’ imprisonment.



9. The appeal was argued by way of written submissions. At the plenary hearing, Mr. Menezes learned counsel appeared for the appellant while Ms. Mochama, learned Prosecution counsel appeared for the respondent. Both parties relied on their written submissions.
10. In support of the appeal, the appellant submits that to prove the offence of murder, the prosecution has to prove that the deceased died as a result of the unlawful omission or commission of the accused, the death of the deceased was actuated by malice aforethought, and that it is the appellant who caused the death of the deceased.
11. It is argued that the prosecution failed to directly or indirectly prove that it is the appellant who caused the death of the deceased. It is the appellant's contention that when they exited the pool, each one of them went in a different direction as they did not stay together. Further, that no witness testified to having seen them together after the exit, as such the prosecution failed to prove the elements of murder beyond reasonable doubt.
12. Regarding the principle of circumstantial evidence, the appellant contends that even if the appellant and the deceased had an altercation and were ejected out together, that does not mean that they were together throughout, as such the learned judge erred in finding that the appellant was the last person seen with the deceased.
13. Regarding the alleged fight, it is submitted that apart from PW6, none of the other witnesses testified to having seen the appellant and the deceased fight. Further, when the alarm was raised, people rushed to the scene however, the appellant was not there that 10-15 minutes is a short time for anyone responding to a distress call as such the appellant could have been intercepted at the scene.
14. The appellant maintains that the circumstances forming the basis of his purported guilt are not definite as there are glaring gaps. In his evidence, the appellant stated that after being sent out, he went home and was not with the deceased. On the altercation and fights, the appellant denied being together with the deceased; and that there was a fight between them. It is further contended that the appellant was a friend of the deceased; and that he only escaped from the boda boda riders who were furiously searching for him.
15. Relying on the case of *R. vs. Kipkering Arap Koske & Another* [1949] 16 EACA 135, the appellant submits that the prosecution failed to establish all the elements required in proving the offence of murder.
16. In rebuttal, the respondent contends that where there is no direct evidence, a court can rely on circumstantial evidence linking the accused to the offence charged. The chain of evidence linked the appellant to the offence as PW2, PW3 and PW6 all testified that they were at Tombe market in a pool house playing pool when the deceased and the appellant came in while drunk and were quarrelling. 10 to 15 minutes after PW6 had asked them to leave the pool premises, they heard noises and when they rushed outside, they found the deceased lying on the road while the appellant was not at the scene.
17. Relying on the case of *Ahamad Abolfathi Mohammed and Another vs. Republic* [2018] eKLR and *Abanga alias Onyango vs. Rep Cr. A No.32 Of 1990 (Ur)*, the respondent contends that the prosecution met the three tests required when circumstantial evidence is relied on. Further, that the doctrine of last seen was relied on because the deceased was the last person seen with the appellant as they went to the pool together; and they were ordered out and left together because they seemed to be drunk and noisy; that, they were later attracted by noises outside; and found out that the deceased had passed on.



18. Regarding the appellant's defense, it is contended that the same was not true as the witnesses described clearly the events of that day that he came together with the deceased to the pool; they were in a drunken argument; they were ejected from the pool game; and the deceased was found dead a few minutes thereafter.
19. The respondent contends that the prosecution proved all the elements of murder by presenting consistent and corroborative witness testimonies. PW2, PW3, and PW6 confirmed meeting both the appellant and the deceased on the material day and narrated events that established circumstantial evidence linking the appellant to the death. The deceased's sister testified that the appellant disappeared from home after the killing, further implicating him. Additionally, a doctor produced a postmortem report confirming the death of the deceased. Taken together, this evidence proved the case against the appellant beyond a reasonable doubt.
20. Lastly on sentence, it is contended that the 30-year sentence was lenient since murder ordinarily attracts the death penalty, and the judge considered all circumstances before imposing it. The respondent urges the court to uphold both the conviction and sentence, as the trial was fair and the offence was fully proved.
21. Having considered the grounds of appeal, submissions in support of and against the appeal thereof, and the law, the Court should note that this is a first appeal and its duty is to subject the evidence tendered in the trial court to a fresh analysis before reaching its conclusions. In so doing, the Court ought to give due consideration to the fact that, unlike the trial court, it has the disadvantage of not hearing or seeing the witnesses as they testified during trial. The Court cannot therefore differ with the trial court's conclusions on the demeanour or credibility of the witnesses. (See *Okeno vs. Republic* (1972) EA 32. That said, what commends itself for determination is whether the circumstantial evidence adduced against the appellant was sufficient to sustain his conviction and whether the sentence meted out against the appellant was lawful in the circumstances.
22. On circumstantial evidence, this Court has over the years developed and distilled the principles applicable in cases turning solely on circumstantial evidence. See for instance *Wambua & 3 others vs. Republic* (2008) eKLR, *Joan Chebichii Sawe vs. Republic* [2003] eKLR and *Peter Mugambi vs. Republic* (2017) eKLR. The guiding principles are that; to justify the inference of guilt, the evidence must irresistibly point to the accused as the perpetrator of the crime, that inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt, that the chain of events must be so complete that it establishes the culpability of the accused and no one else. This Court in *PON vs. Republic* [2019] eKLR stated that

“To base a conviction entirely or substantially upon circumstantial evidence, it is necessary that guilt of the suspect should not only be rational inference but also it should be the only rational inference that could be drawn from the circumstances. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the suspect not guilty. This principle has been applied for years in this jurisdiction and continues to stand the test of time.”
23. The evidence before the court indicates that there was no eyewitness to the heinous crime, hence the prosecution relied on circumstantial evidence to connect the appellant to the murder. The trial court relied on the evidence of PW2, PW3 and PW6 who gave an account of the circumstances surrounding the commission of the crime. The three witnesses testified that while playing pool, the appellant and the deceased came in while drunk and were having an altercation. Since they were noisy, Douglas ejected



- them and after about ten (10) or fifteen (15) minutes after they had been ejected, they heard wails outside and when they went to the scene of the wailing, they found the deceased lying on the ground dead but the appellant was nowhere to be seen.
24. It is noteworthy that after the incident, the appellant disappeared and was only apprehended by members of the public after 2 years. The question is whether the appellant in his defence offered any explanation as to why he escaped after the incident.
25. The main fundamental issue discernible in the instant appeal is the appellant’s disappearance after the incident, a circumstance legally referred to as “post-offence conduct.” In *R vs. White* [1999] 2 SCR Rothstein, J, on behalf of the majority of the Canadian Supreme Court, stated that:
- “The principle that after-the-fact conduct may constitute circumstantial evidence of guilt remains good law. At its heart, the question of whether such evidence is admissible is simply a matter of relevance
- ... As Major J. noted in *White* (1998), ‘evidence of post- offence conduct is not fundamentally different from other kinds of circumstantial evidence. In some cases, it may be highly incriminating, while in others it might play only a minor corroborative role’ ... As with all other evidence, the relevance and probative value of post-offence conduct must be assessed on a case-by- case basis ... Consequently, the formulation of limiting instructions with respect to the broad category of post-offence conduct is governed by the same principles as for all other circumstantial evidence.”
26. In cases such as the one before the Court where the appellant flees the scene, the Court must assess whether the conduct is connected to the crime and whether it carries probative value, meaning it reasonably points to guilt. Any inference of guilt from post-offence conduct must be logical, evidence-based, and not merely speculative. The Court also examines if there are alternative, innocent explanations for such behavior.
27. In this case, the appellant’s defence offered no credible justification for his disappearance after the offence. In *Douglas Thiongo Kibocha vs. Republic* [2009] eKLR it was stated that:
- “When parliament enacted section 111 (1), above, it must have recognized that there are situations when an accused person must be called upon to explain certain matters especially within his knowledge. Otherwise, the prosecution would not be able to conduct full investigations in such cases and the accused in the event, will escape punishment even when the circumstances suggest otherwise. Section 111(1), above, places an evidential burden on an accused to explain those matters which are especially within his own knowledge. It may happen that the explanation may be in the nature of an admission of a material fact.”
28. The circumstantial evidence on the record when taken cumulatively shifted the evidential burden to the appellant to explain why he escaped after the incident. The circumstantial evidence pointed irresistibly to the appellant as the offender and no other reasonable hypothesis can be made after properly analyzing the said evidence.
29. By virtue of section 111 of the *Evidence Act*, the burden of proof shifted to the appellant to give a reasonable explanation as to how the deceased met his death after they left together quarreling. The Section further provides that where the burden shifts to an accused, the same shall only be deemed to be discharged if the prosecution proves beyond reasonable doubt that such circumstances exist and that the accused will only be entitled to an acquittal of the offence where the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person.



30. The appellant did not offer any explanation as to what happened to the deceased or what could have led to the deceased's body being found by the road and why he thereafter escaped. In light of the evidence that was before the trial court, the only rational conclusion is that the appellant was the one who caused the deceased the head injury and left him to die.
31. The circumstances in which the head injury was inflicted on the body of the deceased clearly demonstrated an intention to cause the deceased's death and therefore malice aforethought can be inferred under Section 206[1] of the Penal Code; and the appellant escaping immediately after the incident demonstrated the conduct of a man with a guilty mind.
32. Circumstantial evidence is often said to be the best evidence as it is the evidence surrounding the circumstances which by intensified examination is capable of proving a proposition with the accuracy of mathematics. (See. Musili Tulo vs. Republic CR. APP. No. 30 of 2013). Given the foregoing just like the trial court holding, there are no other co-existing circumstances weakening the chain of events relied on by the prosecution and the trial court to find a conviction. We find no reason in law or fact to warrant our interference with the trial court's finding that the evidence was sufficient to sustain a conviction, nor is there any justification in our interfering with the sentence. Our considered view is that the appeal lacks merit and is dismissed its entirety.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF OCTOBER, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR

