



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CRIMINAL CASE NO. 4 OF 2023

REPUBLIC..... PROSECUTOR

VERSUS

DANIEL KAHUHA KAHATO..... 1ST ACCUSED

WILSON MUTHINJI MWANGI 2ND ACCUSED

THOMAS WAFULA MABONGA 3RD ACCUSED

JUDGMENT

1. Daniel Kahuha Kahato, Wilson Muthinji Mwangi and Thomas Wafula Mabonga are charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the night of the 27th and 28th of February 2021, at Table Land village, Igwamiti location, Nyahururu Sub-County within Laikipia County, they murdered Leonard Kariuki Kihonge.
3. Leonard Kariuki Kihonge, the deceased herein, was murdered at about 9 p.m. It was nighttime, and all those who responded to the distress call testified that, although they saw some three people, none could identify any of them due to the darkness. The first accused was suspected because he was allegedly involved in stealing from the deceased's garden. The second accused was suspected of being at 7.30 pm. he went to the home of PW10's father with the deceased, and each of them bought some meat. The third accused was implicated by the evidence of PW7, who stated that he had confessed to being involved.
4. Each accused denied any involvement in the offence. The third accused contended that he was in Nakuru at his place of work, having left Shamanei in 2020.
5. The issues for determination are:

- a) Was the suspicion against the accused one backed up by evidence?
 - b) Did the last seen with evidence meet the threshold? And;
 - c) Whether the alleged confession by the third accused amounted to a confession.
6. The evidence presented against the first accused was that he used to steal from the deceased's garden. This is suspicion of the weakest kind. The Court of Appeal in the case of **Sawe vs Republic [2003] KLR 354** held as follows:

Suspicion, however strong, cannot provide the basis of inferring guilt, which must be proved by evidence beyond a reasonable doubt.

7. Peter Mwangi Kahoro (PW1) testified that on 27th February 2021, at about 6.30 p.m., he assisted his father in slaughtering a bull. He informed the deceased and the second accused, who were nearby, about the meat. He cut pieces for each. They agreed to pay the following day. When they parted ways, the two headed to their respective places. This was an attempt to introduce the last seen with evidence. "Last seen alive with" doctrine creates a presumption that the person last seen with a deceased individual is responsible for their death. This presumption is rebuttable and falls within the realm of circumstantial evidence. In the case of **Mohamed & 3 Others vs Republic [2005] 1 KLR 722**, Osiemo J., explained what circumstantial evidence is as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved.

8. For the doctrine of "last seen alive with" to apply, it must be tested like any other circumstantial evidence, and the chain should not be broken. Nancy Njeri Kariuki Kihonge (PW2) was the deceased's wife. Her evidence was that her husband left their house at about 9 p.m. and told her that he was going to charge his phone at the Centre. The "last seen alive with" chain was therefore broken.
9. Jane Gaintau Njeri's (PW7) evidence was the only link connecting the third accused to the offence. She stated that the third accused called her and introduced himself as Tom. He inquired about the deceased, and she replied that he was in the hospital. She confirmed that the third accused had stopped working for her grandmother over six months before the incident. This supports the defence that at the time of the incident, he was working in Nakuru. Although the investigating officer confirmed that PW7 reported the alleged confession, no call data was produced to show any communication between PW7 and the third accused as claimed. The only logical conclusion is that no such call was made.

10. This is a case where the prosecution seemed to be groping in the dark and would cling to the nearest piece of what appeared to be evidence. I find no evidence against any of the accused persons. Each is acquitted of the offence of murder and set free unless otherwise lawfully held.

Delivered and signed at Nyandarua, this 30th day of October 2025

**KIARIE WAWERU KIARIE
JUDGE**