



**Republic v Ouma (Criminal Case E045 of 2022)
[2025] KEHC 15317 (KLR) (Crim) (27 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15317 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E045 OF 2022
AM MUTETI, J
OCTOBER 27, 2025**

BETWEEN

REPUBLIC RESPONDENT

AND

SILVIA ATIENO OUMA ACCUSED

JUDGMENT

Introduction

1. The accused in this matter is charged with the offence of murder under Section 203 as read with 204 of the Penal Code.
2. It is alleged that on the 29th June 2024 at around 1800hrs at Mungaini Area in Njiru Sub- county, within Nairobi County she murdered Sospeter Opiyo Muganda.
3. In support of the murder information the prosecution called a total of Seven (7) prosecution witnesses.
4. The evidence of PW1 Agnes Wanzia Mwangangi was that she was a caretaker of the building where the accused and the deceased lived at the time of the incident.
5. According to PW1 the deceased approached her and rented out room 13 Within the building. They deceased Sospeter lived alone for a while and later he brought in his wife Sylvia Atieno with their children aged three years and another who was a toddler.
6. PW1 further testified that the two continued living together and sometime in 2022 the two fought and she moved in to separate them. The witness went on to state that she warned the two that if they continued fighting she would throw them out.



7. On 29th June 2022 at about 6:00 pm the witness stated that she was outside washing utensils within the plot when Sospeter came back from work and found her outside as she was dumping waste.
8. At that time PW1 testified that she was in the company of other women who lived within the same building.
9. PW1 also stated that one Boniface Opili was present when the deceased came to where they were.
10. The deceased was said to have been a man who loved cleanliness thus he was collecting and burning garbage at that time.
11. PW1 testified that the deceased told her that Sylvia does not cook for him.
12. According to PW1 he challenged the deceased by asking him if at all he provided Sylvia with the food to cook.
13. The witness went on to state that at that point the deceased left what he was doing and went towards his house.
14. The witness said that she thought that he had gone for a matchbox to come and burn the garbage.
15. However, after about 5-10 minutes Sylvia came out holding a knife with blood dripping.
16. According to PW1 she was holding the knife and she asked her “you killed?” the accused answered “its peter who started it all”.
17. At that point PW1 and the rest rushed inside the building and found the deceased lying outside his house with his face down.
18. Bonface Opili rushed to call a boda boda who came to the scene and upon looking at the deceased declined to take him saying that was a police case.
19. Bonface then left to go and call the police.
20. According to PW1 Sylvia (the accused) appeared shake and had wetted her clothes with urine.
21. PW1 testified that she guarded Sylvia from being beaten by members of the public who had gathered at the scene.
22. PW1 stated that when they found the deceased on the ground he was motionless and did not nit utter a word.
23. The police came to the scene and picked up the body.
24. The witness stated that the deceased had a stab wound somewhere around the chest and the body was soaked in blood.
25. The police collected the knife which was used as the murder weapon from the stair case where the accused dropped it.
26. The knife had a blue handle and PW1 identified it in court as MFI-1.
27. It was PW1 ‘s knife which she had left in the utensils outside her house as she went outside the gate to the dump site.
28. PW1 later recorded a statement with the police regarding the incident.



29. PW1 positively identified the accused in the dock. On cross-examination PW1 testified that the deceased and the accused quarreled routinely and the quarrel would occasionally turn violent. According to her the deceased was an abusive husband who would occasionally beat the accused seriously.
30. The witness went further to state that the accused had reported to her and the police incidents of assault by the deceased.
31. Further, PW1 stated that the accused Sylvia would occasionally say that they had no food in the house and she could help them with some.
32. The witness further stated that at the time the deceased was stabbed she was outside the building and she wouldn't be able to tell whether when he entered the building from the dumpsite where he left them, he entered his house. She did not witness the stabbing and she was therefore not able to tell how it all happened.
33. According to PW1 she couldn't tell whether he stabbed himself or fell on the knife while running.
34. Further, PW1 stated that she had had just put her utensils to wash and the knife MFI-1 was amongst the utensils.
35. Upon re-examination. PW1 stated that she was in shock since it was her first time to see a dead person but was conscious of what was happening. She went on to state that when the deceased went and beat her up at the church he beat her up badly to an extent that she could not go out for about a week.
36. Upon cross- examination by court, PW1 stated that she wouldn't tell where the children were at the time of the assault and she was arrested immediately after the incident.
37. PW2 Salim Ouma Mbira a boda boda operator and a resident in Shauri Moyo stated that he was called from home by his sister Eunice who informed him that his son who was living in Nairobi was hurt in the course of a domestic violence between the deceased and the accused.
38. PW2 went on to state that on 6/7/2021 he went to identify the body at Mama Lucy Hospital and the post mortem was done after he identified the body.
39. PW2 went on to state that he didn't know the wife of the deceased and the post mortem form is hereby marked as PMFI-2.
40. Upon cross examination, PW2 stated that the deceased was his nephew and he was the maternal uncle of the deceased. He stated that it was the deceased's mother who informed him of the death calling from home Budalangi.
41. PW3 Bonface Opili stated that he is a resident in Busia and a farmer.
42. He went on to state that in 2020 he was living in Njiru Nairobi.
43. On December 2024, PW3 stated that at his place of residence at Mwalimu's plot one of his neighbors "Peter" lived next to him and he brought in his wife after about a month who came with 2 children.
44. PW3 stated that Sylvia and Sospeter would quarrel very often.
45. According to PW3 , on the day of the incident at around 6:00pm while outside basking with other neighbors including PW1 Peter came and found them outside. He started collecting garbage while complaining that his wife was not cooking for him and he was wondering what to do.



46. PW3 further stated that the deceased inside the plot and he would not know whether he went to his house or not but after a short while the deceased's wife came shouting saying "yeye tu ndiye alinianza kujeni msikae." loosely translated to mean he is the one who started it all. According to the witness the accused was visibly angry while holding a knife in her hand soaked with blood.
47. PW3 went on to state that he rushed into the plot and found Peter lying near the caretakers house his face down blood oozing from the chest. The witness said that he tried to run and get a boda boda rider to take the deceased to the hospital but the boda boda rider declined. When they came back the deceased had died and PW3 decided to go report the incident to a police station nearby whereby two officers accompanied him back to the scene.
48. The witness PW3 further stated that Kayole DCI came and took photographs at the scene only and the witnesses later went on to Kayole DCI for further statements.
49. Upon cross- examination, PW3 stated that they became neighbors with the deceased since 2022 and the deceased and the accused used to have family disputes regularly.
50. PW3 went on to state that he had never witnessed the two fight before the incident but he had counselled them to settle their differences.
51. According to PW3 the deceased was complaining that his wife was not cooking for him but he did not appear hungry although he complained of being hungry.
52. PW3 further stated that he was outside the plot and would not know what happened when the deceased went into the plot. He went on to state that they accused only called them after the incident and the body of the deceased was near the caretaker's house.
53. According to PW3 the caretaker's dishes were outside and there was a knife but the knife did not belong to the accused. He went on to state that he could not tell whether the deceased fell and got injured by the knife accidentally. He went on to state that the children of the deceased were are picked by the sister.
54. PW3 further stated in his evidence that he could not tell if the deceased used to abuse drugs.
55. Upon re-examination PW3 stated that the accused's sister was present when the incident happened and she was in the house. He further stated that, that morning he had not gone to work and the accused's sister was in the house because he saw her after the incident but he can't tell where she was when the stabbing happened.
56. PW4 Margaret Wahau Maina stated in her evidence that she holds a Bsc. Chemistry from Makerere University Government Analyst at the Forensic Biology Lab Government Chemists and had worked for 12 years.
57. . According to her she received a request from Sgt. Andrew Masinde who submitted items vide a memo dated 7/7/2022 and the request was for them to determine the presence and origin of blood stains that were on the exhibit knife.
58. PW4 further stated that item 1 knife Blue plastic handle which was in a Khaki envelope marked letter "A", a blood sample in a bottle marked letter "B" Sospeter Opiyo Muganda on 7/7/2022 PW4 claims that they got buccal swab samples from Sylvia Atieno Ouma. She went further to state that she had a report dated 18/10/2023.
59. PW4 gave the analysis that the knife was moderately stained with human blood. She also stated that they had generated DNA profiles from the 3 items were tabulated at the end of the report.



60. She went on to state that she was able to conclude and form the opinion that the blood stains on the knife matched the blood sample of Sospeter Opiyo Magadi which was marked Sample 'B'. The forensic report was produced as PEXH.3
61. Upon re-examination PW4 stated that analysis can be done more than 1 year due to challenges of reagents and also backlog contributes to delay.
62. PW5 Dr. Atandi David, stated that he is a government pathologist based at Mamelosi Hospital and he holds MBCHB from UON MMED in Anatomic pathology Aga Khan University Nairobi. He stated that he performed an autopsy on the body of one Sospeter Opiyo Muganda at Mama Lucy Hospital and the body was identified by his brother whose name appears on the report.
63. He further stated that the body was well preserved and there was evidence of peripheral cyanosis (Lack of blood) , a 2 centimeter wide and a 9 centimeter deep stab wound on the left side of the chest and no further injuries externally.
64. According to PW5 internal examination left side of the chest was filled with blood as the stab wound went through the left ventricle of the heart and the right ventricle terminating at the right lobe of the liver. The injury resulted into massive bleeding in the abdominal cavity about three liters hemoperitoneum.
65. PW5 further stated that examination of other systems was unremarkable and as a result he concluded that the cause of death was exsanguination due to a single stab wound to the chest. The postmortem report was dated 6/7 /2022.
66. According to PW5 he drew a blood sample from the body of the deceased for purposes of the forensic analysis.
67. On cross examination PW5 stated that he observed a single stab wound and the trajectory of the entry and the depth of the stab the pattern was not consistent with self- inflicted injury.
68. He went further to state that he is not speculating and he was convinced it was not self-infected and was not accidental. He went further to state that he was 100% sure.
69. The witness further stated that shock is a physiological state only determined when someone is alive it cannot be demonstrated by a dead body.
70. PW6 No. 238846 CIP ISAAC ANDERE based at Molo as the base commander previously served at Njiru Police Post.
71. According to PW6 on 29/ 6/2022 about 2000 hours while in his office briefing officers a man by the name Bonface Opili PW2 came and reported that there was a lady who had stabbed her husband within Njiru.
72. He went further to state that upon receipt of the report together with his colleagues they went to the scene and on arrival they found a huge crowd and the crowd wanted to lynch the suspect and they whisked her away to safe custody.
73. PW6 went on to state that he found a man lying with his face down in a pool of blood. He quickly secured the scene. At the scene he recovered a blood -stained knife with a blue handle and then informed the scene of crime personnel from Kayole to go and process the scene since he had secured it.
74. According to PW6 the person lying at the scene he came to learn that he was the husband of the suspect and the knife was near a room which he believed was occupied by the caretaker. He went on to state



- that he took the suspect Sylvia Atieno to Kayole Police Station and after processing the scene he moved the body to Mama Lucy Hospital.
75. Upon cross examination PW6 stated that at the scene there was a crowd and he arrested the suspect who was just at the scene of crime. He further stated that the crowd was outside the gate and he can't tell what had happened at the scene before he arrived and he was the first to enter the plot where the body lay since the gate was closed.
 76. PW7 was No. 58147 SGT Andrew Masinde Masavuli of DCIO Kayole performing general investigations. He stated that he was the Investigating Officer in the matter. On 29/6/2021 he was assigned to visit the cells and take over the matter involving the accused who was held at Kayole police station having been arrested by officers from Njiru police post. After taking over the matter he visited the scene where he found Agnes Waiza PW1 and the neighbor by the name Boniface Pili PW2.
 77. He further stated that the two narrated to him what took place and PW1 claimed that the killer knife was hers.
 78. According to Pw1 she had kept the killer knife together with her other utensils at her doorstep. The officer father stated that PW1 and PW2 told him when the deceased came back from work and started collecting garbage. He heaped it somewhere and went into the plot where they thought he had gone to pick a matchbox to come and burn the trash and within about 5 minutes the accused person came out holding a knife shouting "yeye ndiye amenianza vita" (he is the one who started the fight). According to the witness when the two witnesses went in they found that the deceased was lying motionless on the ground.
 79. According to PW7 he recorded the statements of the two witnesses and the statement of the officer who recovered the weapon.
 80. On 6/7/2022 the postmortem was conducted and the investigating officer also requested for blood sample from the body of the deceased for purposes of analysis and on 7/7/2022 in the company of PC Cecilia Mumbi and CPL Ochoyo they took the accused to Government Chemists for a buccal swab and submitted the exhibits for analysis .
 81. According to PW7 he prepared the exhibit memo:-
 - i. Exhibit 1 was a blue handled knife which was bloodstained
 - ii. Blood sample from the deceased body
 - iii. Buccal swab for the accused.
 82. The memo signed on 7/7/ 2022 PW7 produced it as MF -1-P exhibit 4 and on 12/7/2022 they took her for mental assessment and it was established that she was fit to stand trial.
 83. The assessment report was produced as MF -1 P Exhibit 5 and he also recovered the knife which he produced as MF-I 5- P EXH 5.
 84. Upon cross examination PW7 stated that he was the Investigating officer in the matter and that the incident took place on 29/6/2022 he revisited the scene on 4/7/2022 which was about 5 days after.
 85. He further stated that he was given the knife by the officers who first visited the scene and he could not confirm whether it was the murder weapon.
 86. He further stated that he was told the relationship between the deceased and the accused was turbulent and they would quarrel regularly.



87. Upon re-examination PW7 said he relied on PW1's statement because it had facts in recommending that the accused be charged with murder.
88. The court having heard the prosecution witnesses considered the evidence and made a finding that the accused had a case to answer in terms of the provisions of Section 306 of the Criminal Procedure Code.
89. The accused person elected to give a sworn statement of defense. She testified that she was a resident of Njiru in Nairobi Country, married with two children. She stated that she used to do business and was married to the deceased.
90. She went to state that she had been married for 5 years and they got two children aged 3 years and the second was 8 months in 2022.
91. She went on state that on 29/6/2022 her husband was not at home and she waited for him to come and give her money for food.
92. When the deceased came, she said that she was at the caretakers. She heard his voice and went out to meet him and ask for money from him to buy food.
93. According to DW1, she followed him to their house and he started quarrelling and hurling insults. She did not want to quarrel with him she went out to Agne's (PW1) house. She further stated that the deceased followed her there and he started beating her
94. She went on state that she told him to stop but he continued. Outside PW1's house there were utensils and she fell where the utensils, saw a knife in the utensils and she picked the knife to ward the deceased off.
95. DW1 further stated that she wanted to make him stop beating her but he continued and she warned him not to come close to her but he didn't listen.
96. DW1 further stated that the deceased charged at her and as he struggled to wrestle to the knife from her, she accidentally slipped together with him and as they went down the knife was still in her hand.
97. According to DW she managed to wake up from the ground, and didn't realize that she had stabbed him. According to her she did not stab him. But when she got up she pulled the knife from his chest and ran out of the gate to seek assistance from neighbours.
98. She went on to state that Agnes and others were outside the gate and when they saw her they asked "Sylvia umeua" meaning "Sylvia have you killed". She said no "Alinianza"- meaning he is the one who started the fight.
99. DW1 further stated that the neighbours went and called the police as the deceased had fallen down in the plot. After they reported she was arrested and taken to the police station.
100. According to DW1, at the police station, she was interrogated and she recorded a statement which she produced as D exhibit 1. The statement was dated 4/5/2022.
101. She further stated that their marriage the same was rocky. They would quarrel often because whenever the deceased came home drunk, he would quarrel and beat her.
102. DW1 claimed to have made several reports to the police and she was unable to get copies of the Occurrence Book reports of the incidents. She tried to find out the fate of the OB reports after her arrest.



103. She went on state that when she went to the police together with her father, they were told those O.B reports could not be found so she was unable to get extracts of the same
104. Dw1 pleaded with the court to forgive her over the act and stated that she has small children that require her care.
105. She went on state that she went to check the O. B's at Njiru Police Station but she cant recall the name of the officer she found there when she collect them.
106. DW1 further went on to testify that when she ran from her house to Agne's house she did not find her. The deceased was assaulting her and attempting to strangle her to death and she was screaming. Those outside the compound could hear the screams but none responded.
107. DW1 stated that when they fell down with the deceased, she was on top of him. She held the blue knife as they struggle.
108. She further stated that she removed the knife from his chest, ran out and found her neighbours who had not come to her rescue.
109. The accused stated that the deceased was squeezing her neck and at the scene the police did not want to hear anything from her. The police did not take her to hospital.
110. She went on to state that when she was arraigned in court, she told the court that she was assaulted by the deceased but the court did not assist her.
111. The accused claimed to have been attended to at the prison clinic. However, no documents to that effect were produced before this court.
112. Upon re-examination the accused DW1 stated that she did not have the OB reports as proof of the fact that the deceased had previously assaulted her.
113. She went on to state that Agnes confirmed that she would be assaulted time and again by the deceased and she would scream whenever that happened.
114. The above is a summary of the evidence adduced by the prosecution as well as the defense.

Analysis And Determination

115. The accused person faces the charge of Murder contrary to section 203 as read with 204 of the Penal Code.
116. The prosecution in a case of murder must be able to prove beyond a reasonable doubt that the accused person with malice aforethought caused the deceased's death
117. The Penal Code under Section 206 provides that;-

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

 - (a) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”
 - (b) an intent to commit a felony;
 - (c) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such



knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

- (d) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
118. It follows therefore that where any of the above scenarios is established beyond a reasonable doubt, malice aforethought would have been established and that would be sufficient coupled with the proof of actus reus to lead to a conviction for the offence of murder against the accused.
119. The accused person in this matter was involved in a physical confrontation with the deceased. In the course of the confrontation the deceased suffered a fatal injury through stabbing.
120. The accused person denied stabbing the deceased and went as far as suggesting that the deceased may have fallen on the knife and fatally injured himself.
121. The theory propounded by the accused was a however discounted by the pathologist Pw5 who testified that he was convinced beyond peradventure that nature of injury sustained by the deceased cannot have resulted from a fall on the knife and that it was not self- inflicted.
122. The prosecution proved that the deceased and the accused were the only ones together when the incident happened.
123. The court is thus left with the circumstantial evidence surrounding the incidence of stabbing which evidence is to be carefully weighed against the defense of the accused.
124. The circumstances irresistibly point to the fact that the deceased was stabbed by the accused. The two were wrestling together as admitted by the accused and there was no third party involved.
125. Pw1and PW2 testified that the accused person came out shouting that “niye amenianza” meaning that it was the deceased who had started it all. Even though no one witnessed the stabbing, clearly the statement by the accused was an admission that she had fought with the deceased. Nothing would have been easier than for her to tell the witnesses who sat outside that in the course of their tussle the deceased fell and injured himself in the process. The accused having failed to do so, she must have weaved the theory of a fall to conveniently try and extricate herself from the matter. At best that was an afterthought.
126. The accused also testified that as they wrestled with the deceased the deceased was attempting to struggle her and she remained atop as the deceased they fell.
127. The pathologist testified as to the depth and trajectory of the injury and the same was consistent with the positioning of the deceased vis a vis the accused on the ground. He ruled out self- infliction of the injury by the deceased as claimed by the accused.
- a. The Court of Appeal in the case of Joseph Kimani Njau v R (2014) eKLR, the Court of Appeal held as follows: “Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;
- i) The intention to cause death;
- ii) The intention to cause grievous bodily harm;
- iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse



with the intention to expose a potential victim to that risk as the result of those acts. It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed.....”.

128. The court having analyzed the evidence adduced by the prosecution has come to the conclusion that the accused inflicted the injury that eventually led to the death of the deceased.
129. It is important for this court to examine whether the facts as presented disclose an intention on the part of the accused to cause the death of the deceased. The evidence does show that the accused person was under attack from the deceased when she stabbed him. The two were embroiled in a fight and given their history as a couple, obviously the accused was bound to protect herself from being struggled by the deceased.
130. No one witnessed the stabbing thus the court is left with the narrative given by the accused coupled with the forensic evidence tendered by PW5 Dr Atandi David.
131. The deceased suffered a single stab wound to the chest. He was the one who provoked the accused by beating her and trying to struggle her. No doubt any reasonable person of sound mind placed in the circumstances that the accused found herself in would fight back. It is a natural act of self- preservation in the face of danger.
132. However, the proportionality of response should also be considered and in this case the court finds that by stabbing the deceased on the chest, the accused was reckless and ought to have known that there was a greater risk of death by striking direct at the heart.
133. The degree of injury leaves no doubt that the force used was great. The weapon used was dangerous and that the result was devastating and fatal. Simply put, the degree of force used to ward off the deceased was disproportionate considering that the accused was atop the deceased, she had the opportunity to flee from his grip but instead stabbed him right on the chest striking at the heart thereby causing death.
134. The force was unreasonable even in the face of provocation. In PALMER V. REGINAM [1971] 1 ALL E.R. 1077 a case cited to the learned Judge the Privy Council said at p.1088C:-

“It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but may only do, what is reasonably necessary. But everything will depend on the particular facts and circumstances It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack it would not be common sense to permit some action of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril then immediate defensive action may be necessary. If the moment is one of crisis for someone in imminent danger, he may have to avert the danger by some instant reaction.”

135. The accused person could have avoided causing the death by fleeing from the scene after she subdued the deceased. The accused could still have run to the neighbors outside immediately the deceased went down.
136. Further, she was not candid with the court by suggesting that the deceased may have fallen on the knife and injured himself. Honesty is key for it would help the court address its mind fully on all the facts but to attempt to skew the facts in favor of oneself is to act deceitfully and the court does not look at such litigants with a merciful eye.



137. He who seeks equity must do equity and the duty not to mislead a court is a duty that all those that seek justice in our courts must solemnly discharge. It would have been helpful to this court to hear from the accused why she could not just flee from the deceased's hand once he was down. That does not in any way amount to shifting the burden of proof to her but it would have helped in determining whether the reaction to the assault that she visited on the deceased was merited.
138. The facts of this matter militate against a finding of guilty for murder but sufficiently prove the offense of Manslaughter contrary to Sections 202 as read with 205 of the Penal code.
139. This court finds that the accused did not intend to kill the deceased but her negligent act of stabbing him in the chest caused his unfortunate death. The court exercising the jurisdiction conferred upon it under Section 179(1) of the Criminal Procedure Code to convict the accused for a lesser cognate offence of Manslaughter even though not charged but proved,
140. The accused person is therefore found guilty of the offense of Manslaughter contrary to Section 202 as read with 205 of the Penal code and is accordingly convicted.
141. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF OCTOBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Habiba

Habiba: Court Assistant

Ms. Dela for the state

Mr. Musiro for the Accused

Accused: present out on bond

