



**Republic v Noor (Criminal Case E011 of 2023)  
[2025] KEHC 14853 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14853 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E011 OF 2023  
JN ONYIEGO, J  
OCTOBER 23, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MOHAMED ABDULLAHI NOOR ..... ACCUSED**

**JUDGMENT**

1. The accused person is charged with the offence of murder contrary to Section 203 as read out with section 204 of the Penal Code. The particulars are that on 11.09.2023, at Dasheq in Tarbaj sub county within Wajir County he unlawfully murdered Saadiya Adow Alasow.
2. Having pleaded not guilty, the matter proceeded to full trial. Briefly, PW1, Mohamed Abdi Salat, a duksi teacher and the husband of the deceased recalled that on 11.09.2023, he was at his home with his family at around 7:30 a.m., when his wife left home to graze their goats while he remained behind with their 7-month-old daughter. By noon, the goats returned without his wife. It was his testimony that he decided to go search for his wife whom he found dead in the grazing field.
3. He further stated that her body was lying face-up with visible bruises on the neck, left hand and back. The ground around her was disturbed, her clothes were dusty, her shoes were next to her body and her headscarf was hanging from a tree.
4. He testified that he screamed for help thus attracting people who responded and went to the scene. Subsequently, he contacted the police in Wajir who took the deceased's body to Wajir Hospital for post-mortem where he identified the body to the doctor. Later, at around 9:00 a.m. the following day, he was informed by police officers that one Mohamed Abdullahi had been arrested. According to him, the accused person was well known to him and further, there existed no grudge(s) between them. On cross examination, he stated that he did not witness his wife being killed but saw footprints at the scene and was told that the accused herein was responsible.



5. PW2, Shariffa Mohamed Ashman, a herder residing in Arbaqeransi testified that he knew the deceased, Sadia Adow, as she was his relative. He stated that he did not know the accused person herein prior to the incident. That on 11.09.2023 at around 3:00 p.m., the accused went to his home asking for water to drink. That he instead served him tea as there was no water. That he was not aware that the accused person had committed any crime at the time.
6. It was his evidence that he later saw people pursuing someone who was said to have killed another person. That he was summoned and asked to identify the individual he had served tea. That he confirmed that the person he saw at his home was the one in the dock. At the police station, he also identified him from a group of people by pointing him out in as much as the accused was in different clothes; that he recognized him by his bald head.
7. On cross-examination, he reiterated that the accused person was unknown to him prior to the incident herein and that he did not witness the alleged murder but only identified him based on his facial features. On re-examination, he confirmed that he clearly identified the person who previously visited his house.
8. PW3, Hassan Mohamed, a herder from Bajaja in Wajir County recounted the events surrounding the death of his aunt, Sadia Adow. That on 11.09.2023, he received a phone call from his uncle informing him of Sadia's death. That he immediately took a tuk tuk to the scene, where he found Sadia's body and her husband present. After consulting with PW1, the body was transported to Wajir general hospital. He went further to state that he observed the deceased's body alongside Musa Dakane and Ismail Abdile with whom they began tracking footprints believed to belong to the suspect.
9. He told the court that the prints showed that the suspect was initially barefooted but later wore shoes and so, their search led them to a nearby home where the suspect had reportedly stopped to drink water. The said narrative was confirmed by children in that household and therefore, they continued to follow the trail which eventually led them to the suspect's residence.
10. That upon arrival, they found the suspect inside his house while in company of his wife. Upon arresting him, they confirmed that his shoes matched those seen in the footprints. He proceeded to state that they noted that the suspect had visible injuries, including a bite mark on his chest, bruises on his face and knees and dust covering his body. The suspect accused herein was then handed over to the police.
11. PW4, Dr. Mohamed Khar Yussuf Gedi testified that he conducted post mortem on the body of the deceased and that at the time of examination, rigor mortis had set in. He told the court that the body had multiple marks on the back and upper limbs while on the neck, there was a prominent bruising all around the left side which was suggestive of strangulation. He also stated that they also examined the deceased person's private parts but could not find any lacerations nor visible injuries or bleeding. He stated that they collected a high vaginal swab for the lab results to check on whether spermatozoa was found to be present. According to him, the cause of death was strangulation secondary to assault. On cross examination, he stated that there were marks on the upper limbs and the neck of the deceased.
12. PW5, Salah Abdi Yusuf, a police reservist from Arbareyramsa in Wajir County, recalled that on 11.09.2023, at around 10.00p.m. while at his workstation, he received a call from Mohamed informing him that someone had allegedly killed a person in the bush. That Mohamed requested assistance from him. Together with another man also known as Mohamed and Ismail, an NPR, visited the scene using his motor vehicle.
13. Upon arrival, they found the suspect and his family. That the suspect's father surrendered him for interrogation in connection with the death of a girl in the bush whom he was alleged to have killed. He continued that they took the suspect to the chief's office for questioning but instead, he declined



- to respond to the questions asked. That at that point, they ordered him to remove his clothes which revealed upon observation bruises on his cheeks, knees and shoulder. It was his testimony that the suspect declined to explain how he got those injuries. He stated that they handed the suspect over to the police. He identified the person they arrested was the one in the dock.
14. PW6, Kassim Ahmed stated that on 17.09.2023 he received a call from his brother informing him that Sadia had been raped and killed at the outskirts of Dasheg area. He said that the family mobilized and proceeded to the scene, where they found the body lying on the ground while covered with clothes. That the police transported the body to Wajir Hospital for postmortem. He added that he saw the body at the mortuary and observed marks around the neck, dry blood on the nostrils and mouth and bruises on the neck. He added that a post-mortem was conducted by a doctor, and he personally identified the body for the procedure.
  15. PW7, Chief Inspector Musyimi Kyalo stated that he conducted an identification parade on 25.09.2023 at Wajir Police Station. He explained that the parade was requested by the investigating officer, IP Keya and took place between 9.40 a.m. and 10.40 a.m. According to him, the witness, Shariffa Mohamed Osman was present as well as Shanah Abdullahi, the sister of the accused, whose attendance had been requested by the accused himself.
  16. He reported that he informed the accused of the purpose of the parade and his rights, including the right to have an advocate or friend present. He confirmed that the parade was conducted in accordance with Chapter 6 of the Police Standing Orders and consisted of nine members. The accused chose to stand between member numbers 2 and 3. That the witness was positioned inside the OCS office while the accused remained in the cells until the parade commenced. The parade was held in an open space outside the cells with adequate lighting and the witness identified the accused by physically touching him. When asked if he had any objection, the accused reportedly had none and signed the parade form by thumbprint.
  17. During cross-examination, the witness affirmed that the procedure complied with the requirement for a single witness identification and admitted that he did not record a formal witness statement.
  18. PW8, CIP Vincent Ondero Barne recalled that on 15.09.2023 at around 4.10p.m., a suspect named Abdullahi Noor was taken before him by PC Roble for the purpose of recording a confession in a murder case. He continued that he informed the suspect of his rights, including the right to remain silent and the requirement that any statement he made was voluntary without coercion, threat or influence. That the suspect confirmed he had not been coerced and chose his sister, Shina Abdullahi, to act as his representative and interpreter.
  19. It was his evidence that the accused's confession was recorded in the DCIO's office in Wajir East, with Shina interpreting between Kiswahili and Kisomali, as the suspect understood Kiswahili but could not communicate effectively in it. The caution was administered in English and interpreted into Kisomali. The process took approximately two hours during which the suspect appeared disturbed but raised no complaints. He reiterated the importance of a voluntary statement and informed the suspect that his confession could be used as evidence in court. After the caution was read, the suspect signed it.
  20. According to Barne, the suspect, aged 30 with three wives and several children, confessed that on 11.09.2023, while searching for water and grass for his animals, he encountered a woman dressed in a red dera grazing goats. He allegedly admitted that he intended to rape her but when she resisted and screamed, he grabbed her neck to silence her. That they struggled for about 15 minutes, after which the woman became motionless and stopped breathing. He then left the scene, visited a nearby home for water, returned to his own home, and went to sleep. Later that evening, six men arrived at his home



following footprints, leading to his arrest and subsequent transfer to the chief's camp and Wajir police station. He had sustained neck injuries during the struggle.

21. The witness confirmed that the statement was read back to the suspect, interpreted by Shina and verified by both the interpreter and the suspect. The suspect signed the confession and the certificate of interpretation by thumbprint. He concluded by stating that the individual from whom he recorded the confession was present in court and that he intended to produce the confession as an exhibit.
22. Mr. Bosire, counsel for the accused person opposed the production of the confession citing reasons that the same did not comply with Rule No. 3 of the Confession Rules. That the fact that the accused person allegedly looked confused was as a result of the fact that the officer did not avail the rules. In the same breadth, that there was no signature of Shina, sister to the accused who allegedly was the interpreter. Counsel argued that the statement showed that the accused person had two wives yet in real sense, he had three wives which buttressed the fact that the confession was not proper.
23. Consequently, the court conducted a trial within trial and by a ruling delivered on 10.04.2025, the court admitted the confession into evidence for the prosecution.
24. PW9, IP Keya Chea, the Deputy DCI of Wajir East Sub-county, stated that on 11.09.2023, a murder report was filed at Wajir Police Station concerning the death of Sadia Adow. He said that upon visiting the scene with the duty officer, they met the deceased's husband, Abdi Salat who informed them that Sadia had gone to the grazing field but failed to return. Salat reportedly found her body after searching when the goats came home without her. Mr. Keya stated that he noted that the body had neck injuries and signs of a struggle were evident at the scene. He confirmed that the body was taken to Wajir Referral Hospital for postmortem, which revealed death by strangulation and a high vaginal swab was collected.
25. He continued that on 12.09.2023, the suspect was arrested and interrogated by PC Kullow in Somali, during which the suspect allegedly confessed to the crime. He also mentioned that the swab analysis showed no spermatozoa hence the drop of rape charge. He added that on 14.09.2023, he took the suspect to Wajir Referral Hospital for examination, where a P3 form was filled in the presence of the suspect's sister.
26. He claimed that the suspect admitted to strangling the deceased while attempting to rape her. Additionally, he explained that footprints from the scene led them to a house where children described a bald, light-skinned man who had asked for water. The footprints reportedly led to the suspect's house. It was his evidence that Chief IP Barne recorded the suspect's confession and that no ID parade was conducted at that time. Further, he added that on 25.09.2023, he forwarded the case file to the ODPP hence the charge herein. Accordingly, he noted that an ID parade was eventually conducted by CIP Musyimi.
27. During cross-examination, the witness stated that although PC Kullow was present during interrogation, he was not considered a necessary witness. He confirmed that the accused was arrested by two KPR officers on the same day the crime occurred. He explained that fingerprints could not be extracted from the body and that the footprints matched a barefooted man. He affirmed that the ID parade included bald-headed individuals and concluded that he was satisfied the accused was responsible for the murder.
28. DW1, Mohamed Abdullahi Noor the accused herein, a herdsman from Wajir and father of eight stated in court that he did not commit the offence of murder for which he was charged. He asserted that he had not confessed to any wrongdoing and denied recording any confession. He explained that the road where his alleged footprints were found was commonly used by many people and not exclusive to him. He also refuted claims that he had gone to any home to fetch water, calling the allegation false. Noor



added that he was arrested in the presence of many people and insisted that there was no valid reason for his arrest. He categorically denied the charges brought against him.

29. The court directed that parties file their submissions.
30. The prosecution filed submissions dated 17.09.2025 submitting that it was required to prove the elements of murder to wit: proof of the fact and cause of death of the deceased, proof that the deceased met his/her death due to an unlawful; act or omission on the part of the accused and lastly, that the said unlawful act or omission was committed with malice aforethought.
31. The prosecution urged that all the elements necessary for the offence herein were proved beyond any reasonable doubt. That in as much as the prosecution relied on circumstantial evidence, the same considered together justified the inference of guilt on the accused person. Counsel added that the confession was not only lawful but also proved that indeed the accused person herein was guilty of killing the deceased. This court was therefore urged to find that the prosecution proved its case beyond any reasonable doubt.
32. Via submissions dated 22.09.2025, Mr. Bosire, counsel for the defence submitted that the prosecution did not prove its case to the required standards. It was contended that in as much as the court admitted the confession into evidence, the same did not hinder the accused person from giving his version in form of his defence.
33. It was urged that the confession was not correctly recorded as it was not determined that the accused person was properly explained the rules of confession. It was stated that in as much as the witnesses in their evidence pointed at the accused person as having committed the offence, it was evident that the same was not done with malice aforethought. Counsel averred that the evidence by the prosecution clearly did not support the charge of murder and as such, implored this court to acquit the accused person.
34. I have considered the evidence tendered by both the prosecution and defence as well as the rival submissions. It is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt. See *Woolmington vs DPP* [1935] AC 462. The only issue for determination is whether the prosecution discharged the burden of proof against the accused that he murdered the deceased.
35. The offence of murder is defined under Section 203 of the Penal Code as:  

‘Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder’.
36. The burden placed upon the shoulders of the prosecution is to prove the guilt of the accused person beyond any reasonable doubt. The prosecution thus must establish the following essential ingredients:
  - i. That the deceased died.
  - ii. That his death was unlawfully caused.
  - iii. That the death was actuated by malice aforethought.
  - iv. That the accused was the assailant.
37. As regards to proof and fact of death, the evidence of PW4 left no doubt at all. The witness confirmed that the body had multiple marks on the back and upper limbs while on the neck, there was a prominent bruising all around more prominent on the left side which was suggestive of strangulation. The autopsy report was produced as Pex 1. As such, I find that the prosecution proved this ingredient beyond reasonable doubt.



38. On whether the death was unlawful, I am guided by article 26 of *the constitution* which provides that all homicides are deemed unlawful unless authorized by law. The deceased had lived a normal life as she was ordinarily grazing her goats without any problems with her health. Equally, there was no reason cited deserving that she loses her life. It is not to be denied that the injuries inflicted on the deceased left no doubt that the same caused her death. The injuries were obviously not self-inflicted. They were unlawfully occasioned by some body. The assailant had no legal right or excuse to kill the deceased and therefore, I find that the prosecution has proved this ingredient beyond any reasonable doubt.
39. As regards the third ingredient on whether the accused was the assailant, the evidence presented left no doubt that the accused was placed at the scene of the crime. PW8 testified how the accused person confessed to him that on the material day, while searching for water and grass for his animals, he encountered a woman dressed in a red dera grazing goats. He admitted that he intended to rape her but when she resisted and screamed, he grabbed her neck to silence her. They struggled for about 15 minutes, after which the woman became motionless and stopped breathing. PW3 testified how they tracked foot prints believed to belong to the suspect. That the search led them to a nearby home where the suspect had reportedly stopped to drink water. The same was thus confirmed by PW2 who testified that indeed, he served the accused person tea instead of water.
40. The consistent flow of footprints from the scene where the deceased's body was found to the home of pw2 and then continued to the accused's home coupled with the unexplained injuries sustained on the accused's body and thereafter his confession is sufficient circumstantial evidence which irresistibly points a blame worth finger against the accused. See the case of *Ahamad Abolfathi & Another vs Republic* (2018) eKLR where circumstantial evidence was elaborated thus;

“Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”

41. It is clear from the evidence on record that the injuries observed on the body of the accused were a confirmation of the struggle that ensued between him and the deceased as she resisted being raped. Accused did not challenge the fact that he bore injuries on his body.
42. In my considered view, the pieces of evidence above directly placed the accused person at the scene as the perpetrator of the crime. I find this ingredient was proved by the prosecution beyond any reasonable doubt.
43. On whether malice aforethought was proved, the same is provided for in Section 206 of the Penal Code as follows:

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

- (a) 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;
- (b) 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;
- (c) an intent to commit a felony;



- d) 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.
44. In interpreting the provisions of section 206, superior courts have consistently stated as such in various authorities. In the classic case of Republic vs Tubere S/O Ochen [1945] 12 EACA 63 the court held that an inference of malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack.
45. In this case, PW8 testified that the suspect admitted to strangling the deceased while attempting to rape her. The evidence of PW4 pointed to the fact that the body of the deceased had multiple marks on the back and upper limbs while on the neck, there was a prominent bruising all around more prominent on the left side which was suggestive of strangulation. By targeting the neck, it was obvious that the accused knew that that part of the body was delicate hence likely to lead to the death of the deceased. He therefore desired the results. To that extent, it is my finding that the prosecution has also proved this ingredient beyond reasonable doubt.
46. The accused gave an alibi defence thus distancing himself from the scene of crime. I am alive to the fact that an accused person has no duty to prove his alibi defence. However, there must a basis upon which the prosecution may be called upon to discharge its responsibility in disproving an alibi defence. The Court of Appeal in the case of Victor Mwendwa Mulinge vs R [2014] eKLR while considering an alibi defence stated that:
- “It is trite law that the burden of proving the falsity, if at all, of an accused’s defence of alibi lies on the prosecution; see Karanja v R [1983] KLR 501 ... this Court held that in a proper case, a trial court may, in testing a defence of alibi and in weighing it with all the other evidence to see if the accused’s guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence of alibi at an early stage in the case so that it can be tested by those responsible for investigation and thereby prevent any suggestion that the defence was an afterthought.” (Emphasis added).
47. In the instant case, accused’s defence was displaced by his own confession and the testimony of pw2 who served him tea. Besides, the scratch marks on his body were telling yet he did not justify their existence or the source. In my view, his alibi defence cannot stand the test of the strong prosecution evidence both circumstantially and self-incriminating confession which places accused squarely at the scene of crime.
48. In view of the foregoing holding, it is my finding that the prosecution has proved all the elements of the offence of murder beyond reasonable doubt. The defence evidence did not shake that of the prosecution which in my view, was overwhelming against the accused.
49. Accordingly, I find the accused person guilty of the offence of murder and he is hereby convicted as charged.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 23<sup>RD</sup> DAY OF OCTOBER 2025**

.....  
**J.N.ONYIEGO**  
**JUDGE**

