



**Republic v Kundu alias Sammy (Criminal Case E023 of 2023)
[2025] KEHC 16795 (KLR) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16795 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E023 OF 2023
WM MUSYOKA, J
NOVEMBER 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL NYONGESA KUNDU ALIAS SAMMY ACCUSED

JUDGMENT

1. The accused person herein was charged with murder, contrary to section 203 and 204 of the Penal Code, Cap 63, Laws of Kenya. It is alleged that he murdered Beatrice Aluoch Muga, on 5th November 2023, at Vurano village, Bujumba, Butula, Busia. He denied the charges, and a trial ensued, where 9 witnesses testified for the prosecution.
2. PW1, John Murabula Okumu Okello, was a son of the deceased. When he was unable to reach his mother on the telephone, he reported the matter to the police. He was present when the clothes of the deceased were retrieved from a pit latrine, and when a bloodstained mattress was found in her bedroom. Her body was found, in a shallow grave, within the compound of her home. The accused had been employed by him, to take care of the home, and watch over the deceased. He testified that the accused disappeared, as soon as he, PW1, came home from Nairobi, after he was unable to contact his mother.
3. PW2, Godfrey Muga Okello, was another son of the deceased. After he was unable to reach the deceased, on phone, he travelled home, on 1st December 2023, to join those who were searching for her. He was present, on 2nd December 2023, when the body of the deceased was retrieved from a shallow grave, and her clothes from a pit latrine.
4. PW3, Doreen Akinyi Okwara, was the neighbour and step-sister of the deceased. She had last seen the deceased on 24th November 2023, explaining that she used to see her regularly. When she enquired from the employee of the deceased, the accused, she was informed that the deceased had gone to hospital. PW1 and PW2 telephoned her, to inform her that they were unable to contact their mother, and to



- request her to make enquiries. She was present when the body of the deceased was retrieved from a shallow grave, and her clothes from a toilet.
5. PW4, Patroba Benson Otsieno, was a former Assistant Chief. He was informed that the deceased had disappeared for a week, and her employee had also disappeared, with her cow. He joined the team that was searching for the deceased, which included PW1. They identified, at the farm of the deceased, a spot where soil appeared to have had been disturbed, and they decided to dig it up. They found the body of the deceased there. He noted injuries on the face of the deceased. The body was then moved to the mortuary
 6. PW5, Dr. Dixon Mchana, was the pathologist, who conducted post-mortem on the body of the deceased. He noted physical injuries on various parts of her body. There was subdural haemorrhage, or bleeding under the head coverings. He opined that the cause of death was severe head trauma, following assault. He ruled out accidental fall, asserting that it was a case of homicide, given the nature of the injuries, on both sides of the head, and the presence of defensive injuries on the arms. PW6, David Kihara Muthoni, was an analyst, from the Government Chemist. He was given a bone sample, from the body of the deceased, to compare with bloodstains from a bedsheet removed from her bedroom. After analysis, he established that the bloodstains on the bedsheet was of human origin, and there was presence of blood belonging to the deceased, and blood belonging to an unknown male person.
 7. PW7, No. 86640 Police Corporal Douglas Wamalwa, was from the scenes of crime personnel. He was party to the exhumation of the remains of the deceased, from the shallow grave. He took photographs, of the scene and of her body. PW8, No. 24128 Inspector of Police David Ochieng Oloo, recorded a confession from the accused, which he produced as an exhibit. PW9, No. 21050, Police Constable Edward Ouma, recorded the initial report, and carried out the initial investigations, which included visiting the scene, retrieved exhibits from the pit latrine and removed the body from a shallow grave in the farm.
 8. I found the accused to have a case to answer, in my ruling of 20th June 2025. I put him on his defence.
 9. He testified on 16th July 2025. He said he was attacked by 2 young men, who were armed. They threatened him with severe consequence, if he raised alarm. They asked to be taken to where the deceased was. When she opened the door, they attacked her, killed her, dug a shallow grave and buried her remains there. He said he did not exactly know what was happening as he was tied with ropes, and his head covered. He could only use his sense of hearing. He said that after that he was taken to Bumala, where he was hidden in a hole for 2 weeks. He said that the 2 young men eventually released him, after it was discovered that the deceased had died, and her remains were found. He went to stay with his paternal aunt. He said that he did not report to the police, as he feared his captors. On the confession statement, he said that the same was not taken voluntarily, for he had no spiritual issues, as alleged in that statement, and that he was forced to sign it.
 10. Despite directions being taken, at the close of the oral hearings, for filing of written submissions, none of the parties filed submissions.
 11. The elements for the offence of murder are well settled. The prosecution is required to prove the death, the cause of it, the role of the accused person in the causation, and the fact that the causation was with malice aforethought.
 12. On the proof of the death of the deceased, the evidence was overwhelming. PW1, PW2 and PW3 all saw her body, when it was dug out of a shallow grave. They were her relatives, and they identified it at the scene. PW9, the investigating officer, was in the team of police officers who were present at that exercise. They retrieved the body, and it was identified by relatives to the police. PW5 was the pathologist who



- did the post-mortem on the body, after it was identified by the relatives. Indeed, the deceased died. There was a death. The body was found.
13. On the cause of death, the evidence of PW5, the pathologist, is critical. He noted physical injuries on the body. He opened it up, and noted head injuries, which had caused bleeding into the coverings of the head. He concluded that the deceased had been assaulted, on the head, with a blunt object, and that that was what caused the haemorrhage into the coverings of the head, leading to the death.
 14. On whether the accused was party to the causation, there are 2 aspects. The first is that no one saw the accused assault or do anything to the deceased, which could have caused her death. Nevertheless, the circumstances put him squarely in the picture. He was the person staying with the deceased, at her home. Yet, he could not account to PW1, PW2 and PW3 on the whereabouts of the deceased. When PW1 came home, to join the search for the deceased, the accused, conveniently, disappeared, making himself unavailable. As the person who was staying with the deceased, it was him who was expected to account for her whereabouts. He could not, and he suspiciously disappeared at the critical moment. That unerringly pointed to him, as being complicit to the death, or having something to do with it.
 15. He placed himself at the scene, at the moment the deceased died. He, though, distanced himself from the death, saying that other individuals, who he named, did it, after they had abducted him, and forced him to lead them to the deceased. He testified to have been present when the deceased was hit on the head and killed, and he was present when the shallow grave was dug, and the body of the deceased buried there. However, although he was present when the murder was allegedly committed by others, he did not make a report of it to the police, and he did not give the names of the persons, who he claimed did it, to the police for investigation. He did nothing to report the matter to the police, if he was truly innocent.
 16. More crucially, there was a confession that was recorded from him, by PW8. In his defence statement, he denounced the confession. Yet, when PW8 testified, he did not object to the production of the statement, to force a trial-within-a-trial, on its authenticity and admissibility. He just let it go, by way of being produced and marked as an exhibit, without any objection at all. In it, he confessed that he killed the deceased, upon being possessed by spirits from the underworld, which had been cast upon him by his wife or girlfriend, Linet.
 17. My conclusion is that there was material, placed on record, to establish the role of the accused, in the causation of the death of the deceased. He confessed to it, and I find that the deceased died by the hand of the accused.
 18. On malice aforethought, the various ways it manifests itself are spelt out in section 206 of the Penal Code. There is direct intention to kill, sputtered out verbally or in writing. It could be inferred, from the conduct of the accused. One, where the injury caused it so bad that it can only be inferred that there was an intention to kill, or cause grievous harm, from which death occurs. Two, the injury is caused in circumstances which suggest an intention to commit a felony, of one kind or other, and death occurs in the process. Three, where the injury is caused in circumstances where there is indifference, on the part of the accused, as to the consequences of what he is doing, when he is expected to know that his conduct could cause a deadly injury.
 19. The injury that caused death, according to PW5, was to the head. It was bad enough to cause bleeding into the head coverings, compromising the working of the brain. Such injury could only be caused by a person, who either intended to kill, or cause grievous injury, or was indifferent to the consequences of what he was doing. Hitting someone so badly, on the head, in circumstances which did not point to an accident or inadvertence, only suggested that the person intended to commit some felony, or the causation of the injury was in the course of the commission of some felony, either robbery, burglary,



or sexual assault. Whatever the case, the combination of the commission of the intended offence, and the ensuing injury, amounted to malice aforethought.

20. Concealing traces of the commission of the offence, in this case through burying the remains of the deceased, only made the matter worse. It compounded it. It pointed to awareness, by the perpetrator or perpetrators, that whatever he or they did was criminal, and, to avoid detection, he or they had to take steps to conceal it, so that it did not catch up with them.
21. What I have discussed, in paragraph 20, above, deals with the question of the accused being allegedly possessed by some spirit, so that he would not know what he was doing, suggesting some element of temporary insanity. A person suffering temporary insanity of that kind, would not have the presence of mind, to know that he ought to conceal evidence of what he had done. The concealment of evidence can only be conceived by a person who has full control of their faculties, a person having the presence of mind, of knowing what they are doing.
22. I believe that I have discussed enough, to demonstrate that there is ample evidence that the accused did the deed of killing the deceased person herein, with malice aforethought. I, accordingly, find him guilty of the murder of Beatrice Aluoch Muga, contrary to section 203, as read with section 204, of the Penal Code, and I hereby convict him, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya.
23. For the purposes of sentencing, I hereby direct the Busia County Director of Probation and Aftercare Services to look into the antecedents of the accused, take the views of the family of the victim, and file a report in 14 days. A sentencing hearing shall be conducted on 3rd December 2025. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 14TH DAY OF NOVEMBER 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the prosecution.

Mr. Otieno, instructed by Masiga Otieno & Associates, Advocates for the accused.

