



**Republic v John & another (Criminal Case E018 of 2024)
[2025] KEHC 16796 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16796 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E018 OF 2024
WM KAGENDO., J
NOVEMBER 13, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

EMMANUEL JOHN 1ST ACCUSED

BERNARD NYAGA 2ND ACCUSED

RULING

1. What began as an evening of entertainment for the late Muhudin Sheikh ended as a terrible tragedy : His death. His body was discovered outside a Mangwe -Palm Wine Bar, an establishment operated by one Agnes Makena.
2. This was on the morning of 31st July 2024,when the village elder of Kibarani Village was notified by one Barasa of the presence of a body lying along the road. PW1 proceeded to the scene, confirmed the report, and subsequently informed the police. He also traced and apprehended Makena, who was said to be on the run, and escorted her back to the scene. Police officers, including PW6, visited the location, and the scene was documented by the Scenes of Crime Officer (PW7).
3. Inside the Mangwe premises, the investigating team observed signs of disturbance ; a sofa set was overturned,things strewn all over and a of piece of plastic with blood was found. These are depicted in photographs 17–21. Some clothes, said to belong to the deceased, were recovered from an adjacent room (photographs 25–36). Photographs 1–13 show the body of the deceased outside the palm wine bar’s doorway. The premises were owned by one Francis, with Mwenda (PW2) acting as the caretaker. Mary Kanze Karisa (PW5) was the owner of the residential plot where Makena lived.



The Charges

4. The two accused persons, Benard Mureithi Nyaga and Emmanuel Mitau John, are charged with murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63 Laws of Kenya.
The particulars are that on the 31st day of July 2024, at Kibarani Area, Jomvu Sub-County within Mombasa County, jointly with others not before court, they murdered Muhidin Sheikh.

The Law

5. Article 26 of *the Constitution* of Kenya guarantees the right to life, stating that no person shall be deprived of life intentionally, except as authorized by law.
6. The accused were charged under Sections 203 and 204 of the Penal Code. The essential ingredients of the offence of murder were well outlined in *Republic v Andrew Omwenga* [2009] eKLR, namely:
 - i. Proof of the fact and cause of death;
 - ii. That the accused's act or omission caused the death (actus reus); and
 - iii. That the act was accompanied by malice aforethought (mens rea).

The Death

7. There was ample evidence proving the death of the deceased. His lifeless body was found with a heavy stone that had smashed his head still in place. The post-mortem examination concluded that the cause of death was severe traumatic head injury with massive subdural hematoma and temporal region fractures, consistent with both blunt and sharp force trauma to the head. So the death was proved.

The Cause Of Death

8. I must point out from the onset, and with a lot of concern that, despite the deceased being a police officer, his colleagues did not appear particularly keen to pursue justice for their fallen comrade. A telling indicator of the investigative laxity is that the lead investigating officer failed to attend court, despite the court granting several adjournments and issuing witness summons. Further none of the deceased's relatives testified. At one point, an advocate appeared watching brief for the family, but he too was absent towards the conclusion of the case. Moreover, Makena, the key eyewitness, reportedly disappeared to Meru, and there is no indication of any serious efforts made to trace her.
9. Makena was the only individual said to have directly implicated the accused persons. It was also suggested that she was the wife of one of the accused, in which case her testimony would have required scrutiny under Section 127 of the *Evidence Act*, which governs spousal competency and compellability in criminal proceedings.
10. There was also evidence that blood-stained clothes were recovered from Makena's room. Unfortunately, none of the accused persons was subjected to DNA sampling. PW3 testified that the DNA analysis produced a profile belonging to an unknown male.

The post-mortem examination concluded that the cause of death was severe traumatic head injury with massive subdural hematoma and temporal region fractures, consistent with both blunt and sharp force trauma to the head. It was clearly an unlawful death.



11. However, there was no credible evidence linking either of the accused persons to the infliction of those injuries. Hearsay evidence cannot form the basis of a conviction. The burden rested squarely on the prosecution to prove the case beyond reasonable doubt. On this, they failed miserably.

Conclusion

12. In view of the foregoing, I find that the prosecution has not established a prima facie case against the 2 accused persons. Accordingly, both Benard Mureithi Nyaga and Emmanuel Mitau John are hereby acquitted under Section 306(1) of the Criminal Procedure Code of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63 Laws of Kenya.

They are set at liberty.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AND ONLINE VIA MS TEAMS AT MOMBASA, THIS 13TH DAY OF NOVEMBER 2025.

HON. LADY JUSTICE W. K. MICHENI JUDGE

In The Presence Of;

The 2 Accused Persons Their Advocate For The Prosecutor Mr Ngiri

Court Assistant Ms Bebori "

