



**Republic v Kipyegon (Criminal Case 44B of 2015)  
[2025] KEHC 17107 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17107 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE 44B OF 2015  
JRA WANANDA, J  
NOVEMBER 20, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**EVANS KIPKORIR KIPYEGON ..... ACCUSED**

**RULING**

1. It is admittedly unacceptable and an embarrassment to our judicial system that a criminal case commenced 10 years ago is being determined to day.
2. Be that as it may, the accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 1/10/2015 along Kabarnet -Marigat road, opposite Kabarnet High School, in Baringo Central Sub-County, within Baringo County, he murdered one John Kemboi Rotich.
3. The accused is represented by Mr. Tarus, while for the State, several Prosecution Counsels have handled the matter. At the moment, it is Ms. Muriithi, and before her, there have been Ms. Mokua, Ms. Oduor, Ms. Okok, and Mr. Okaka.
4. From the record, the accused was arraigned on 23/11/15 before eventually taking plea on 19/01/2016 before Githua J. He denied the charge and a plea of not guilty was entered. He was then released on bond.
5. After further proceedings on various preliminary issues and false starts on several occasions, the hearing eventually commenced on 29/08/2016 before G.K Kimondo J, who took the evidence of PW1-PW4. Upon the Judge's transfer, Ogola J took over the matter and took the evidence of PW5-PW6 after which the Prosecution closed its case. By his Ruling rendered on 11/10/2022, Ogola J found that the accused had a case to answer and put him on his defence. It is after Ogola J's transfer that I then took over the case on 12/10/2023 and presided over the defence case. Needless to state, at all stages of a new



Judge taking over the case, directions under Section 200(3) of the Criminal Procedure Act were taken. On all those occasions, the defence, with concurrence of the Prosecution, elected to proceed with the case from the point where it had stopped before the previous Judge.

6. I will now recount the testimony of the respective witnesses.
7. PW1 was Stephen Wanyonyi, who introduced himself as a “boda-boda” (motor-cycle taxi) operator. He testified that on 1/10/2015, he was at Kabarnet town ferrying a passenger to the police lines when, on his way back, he met the deceased who appeared drunk and asked PW1 to show him the way to Kasoyo, which PW1 did. PW1 testified that after some time, he got a customer and ferried him to Kasoyo, that on the way, he saw a motor-cycle parked next to a fence, which then followed him, it was now around 10.30 pm and the customer got worried on being followed by the strange motor-cycle, but the motor-cycle then stopped. PW1 stated that on his way back, he came across the same motor-cycle and recognized Evans (accused) who was known to him, as the one the riding it, and that he had known the accused for about 2 years. PW1 stated that he asked the accused whether there was a problem, upon which the accused responded that there was none but also told PW1 that he had asked the deceased to pay him Kshs 800/- but the deceased had failed to do so. PW1 testified that he then left the accused at the fence of Kabarnet Boys, a little further from where the accused had previously parked. He stated that he then returned to Kabarnet town but the accused followed and asked him why he was asking about the deceased, upon which PW1 told him that it was because the deceased was drunk, and he then told the accused to take him where the deceased was, which the accused did by taking him to the fence of Kabarnet Boys where indeed, they found the deceased on the opposite side of the road.
8. According to PW1, the deceased had been beaten up as he had a cut on the right side of the head, he was bleeding on the head and the mouth, and he was seated down but was not speaking. PW1 stated that when he asked the accused to take the deceased to hospital, the accused responded that “Kemboi amenisumbua sana, wacha akufe.” (Kemboi has disturbed me so much, let him die). He testified that he then returned to town and informed one Kipkorir about the incident, together they returned to the scene, they found the deceased further down the road, near Kapropita Primary School struggling to walk, they got a taxi which they accompanied to the home of the deceased and picked a sister of the deceased. He stated that he then got another customer whom he took back to town, that on the next morning, the taxi driver told him that the deceased was taken to hospital. He then stated that he never saw the deceased again after that night. He then clarified that when he returned to the scene with the said Kipkorir, each was on his own motor-cycle, and they were also with a third rider, one Anderson, who however left him and Kipkorir. He also reiterated that both the deceased and the accused were well known to him, and that he was not aware of any dispute between the two.
9. In cross-examination he stated that the accused told him that he (accused) had beaten up the deceased by hitting him with his fist and also with a stick. He stated further that when the accused followed him (PW1), he (accused) asked him whether he wanted to see the deceased, and that it is after this that he, Kipkorir and Anderson went to the scene and found the deceased. He agreed that he did not see the accused beating the deceased but testified that he saw the stick and that it had blood. He also refuted the theory that the deceased might have suffered his injuries after a fall because the motor-cycle the deceased was riding had not been involved in any accident.
10. PW2 was Ruth Cheptoo, a sister of the deceased. She stated that on 2/10/2015 at around 1.00 am, she was at Kasoyo when a neighbour, one Kipkorir appeared and told her that the deceased had been injured. She testified that she and her other brother boarded the taxi and went to the scene but they found the deceased on the way, he was bleeding on the upper lip, they took him to Kabarnet Hospital where he was admitted for the night, but in the morning, they were referred to Nakuru Provincial General Hospital where they took the deceased but he died on the next morning. She stated that the



- accused was a neighbour and she had no knowledge of any disagreement between the deceased and the accused. In cross-examination, she stated that the deceased never spoke to them as he was unable to do so, and that, while at the hospital, she noticed that the deceased had bruises on the right side of the head.
11. PW3 was Evans Kemboi who stated that he was a 17-year-old primary schoolboy. He testified that on 3/10/2015, the accused called him to go and help him collect firewood in the forest, the accused had a motor-cycle on which he carried PW3, and when they reached Tenges, the accused left PW3 there with the motor-cycle which he asked PW3 to take back to Kabranet to the owner, PW4, which, he did as instructed. He testified that he had known the accused for 12 years as he was a neighbour, that he had not seen the accused ever since that day when he left him with the motor-cycle, and that he only saw him again in Court. In cross-examination, he stated that he did not know the deceased.
  12. PW4 was Ben Korir Kirwok. He stated that he had employed the accused to ride his motor-cycle, that on 3/10/2015, one Kipsang informed him that the accused had injured someone, upon which PW4 called the accused and asked him to return the motor-cycle, but the motor-cycle was returned by a different young man who delivered it and left. He testified that the next morning, a police officer came and took photographs of the motor-cycle, and that he had last seen the deceased 2 days before, and he only saw him again in Court in this case.
  13. PW5 was Dr. Titus Ngulungu, a Pathologist at the Nakuru Provincial General Hospital. He testified that a post-mortem exercise was conducted on the body of the deceased by one Dr. Kimani Chege who had however left service, and whose writing and signature he was familiar. He stated that the police report received was that the deceased was attacked while on his way home, and that the deceased was taken to a local hospital but was later referred to the Nakuru General Hospital where he however died while undergoing treatment. He stated that, for purposes of the post-mortem, the body was identified by two relatives. He then stated that the body had been preserved by embalmment in 10% formalin and which limited the extent to which an examination could be undertaken as the body was still. Regarding the results of the post-mortem, he stated that externally, the body showed no loss of blood, it had abrasions and bruises on the left side of the head temporal parietal region, a cut wound on the upper lip, and there was also haematoma on the left side of the head. On internal examination, he stated that there were brain lacerations and subdural haematoma, the brain had tears and there was blood between the brain and the dura mater. He then stated that such accumulation of blood is very dangerous because it compresses the brain vessel and one then dies due to lack of oxygen, and that in this case, the blood was 200 ml, which can exert pressure to suffocate the brain. He then testified that the cause of death was “severe head injury as a result of severe haematoma” causing blood trauma to the head. He further testified that blood sample was taken from the head for DNA analysis to compare with materials taken from the scene to establish whether there was a link. He then produced the post mortem Report on behalf of the said Dr. Kimani Chege. In cross-examination, he stated that the time of death could not be ascertained with absolute accuracy due to the embalmment.
  14. PW6 was Senior Sergeant Emmanuel Simiyu, the Investigating Officer in this case, and previously attached at the Kabarnet Police Station. He testified that on 3/10/2015 he was at the Station when one Stephen Nabiswa (presumably PW1) came and reported that on 1/10/2015 at around 10.45 pm while he was on his normal “boda-boda” operations within Kabarnet town, he met the deceased who asked him to show him the way to his (deceased’s) residence in Kasoyo, that the deceased appeared drunk and had thus missed his way, and that he (Stephen) showed the deceased way and continued with his business. He stated that Stephen further told him that he later saw a motor-cycle parked by the road near Kabarnet Boys while he was on his way back and when he stopped, the accused emerged from the bush and informed him that he had assaulted Kemboi (deceased) because the deceased had failed to refund his debt, that Stephen asked the accused where the deceased was, and the accused showed



him. PW6 stated that Stephen narrated to him further that when he saw the deceased, he was bleeding seriously from the head and he was in a kneeling position, that when he (Stephen) asked the accused to help take the deceased to hospital, the accused refused, that it is a good Samaritan who appeared in a car and took the deceased to hospital and later the deceased was referred to the Nakuru Provincial Hospital where he however died. PW6 testified that after recording the Report, he went to the scene where recovered a broken stick and some blood-stains on the ground, and he picked the stick and later recorded statements from witnesses. He stated that on 12/10/2015, his colleague attended the post-mortem exercise at the Nakuru Provincial Hospital, that the accused was on the run but was arrested on 15/10/2015 within Soy from where PW6 collected him and brought to Kabarne Police Station. He also stated that the accused denied any involvement in the crime. Despite objection on production of the stick said to have been recovered from the scene on the ground that the stick was never brought to Court earlier, the Court allowed him to produce the stick as it had been referred to in witness testimonies. He then testified that he noticed that the stick had been plucked from the nearby fence. In cross-examination, when told that PW1 had introduced himself as Stephen Wanyonyi, and not Stephen Nabiswa, he testified that, in his belief, that was one and the same person. He also agreed that although in his Statement he had stated that he also recovered stones with blood, no such stones had been produced in evidence. He also agreed that no DNA test was done to link the alleged blood-stained stones to the accused, and that the identity of the “good Samaritan” who took the deceased to hospital was never revealed

15. As aforesaid, after the Prosecution closed its case, Ogola J, by the Ruling delivered on 11/10/2022, found the accused to have a case to answer and put him on his defence. The accused then testified for himself, and also called 1 other witnesses in his defence.
16. The accused testified as DW1, and gave sworn testimony. He agreed that on the material date, he was with the deceased at a bar where they got drunk after taking alcohol, that the deceased requested to ride the accused’s motor-cycle to go and withdraw some money, and the accused agreed, but that he however saw the deceased riding in a zig-zag manner. He testified that one Steven (presumably PW1) later told him that the deceased had fallen down with the motor-cycle, that the accused then went to the scene and took his motor-cycle, and informed his (accused’s) brother, Kevin, and he later travelled to his home in Kipsombe, that after 2 days, he received a phone-call from his wife informing that the deceased had died, and after 3 days, he was arrested. He denied that he had killed the deceased, and contended that the deceased died as a result of injuries suffered in the accident. In cross-examination, he explained that he was related to the deceased by marriage, and reiterated that it is PW1 who told him that the motor-cycle had fallen upon which he (accused) went to the scene but he did not find the deceased there, although he found the motor-cycle. He refuted PW1’s testimony that he found the accused at the scene, but agreed that PW1 asked him to take the deceased to hospital, which he however did not do because he could not do so alone. He also denied that the deceased owed him money but he agreed that it is PW4 who had employed him (accused) to ride the motor-cycle, which, he testified that after repairing it, he gave it to PW3 to return to PW4. He stated that he asked PW3 to return the motor-cycle on his behalf because he had asked PW3 to carry some firewood for a customer and then hand over the motor-cycle back to PW4, and that PW4 had agreed that PW3 could be riding the motor-cycle as a stand-in for the accused as the accused had travelled to Kipsombe. He reiterated that he was arrested after about 3 days, and not 3 weeks, and further denied that he had fled to Kipsombe because he had killed the deceased. In re-examination, he stated that he travelled to Kipsombe to harvest his crop as it was October, the time harvesting.
17. DW2 was Kevin Koros, who also introduced himself as a “boda boda” rider and a neighbour to the deceased. He stated that on 1/10/2015, he was playing pool at Kapsoi when he received a phone call from his cousin, the accused, informing him that the deceased had fallen off the accused’s motor-cycle



and he asked DW2 to go to the scene, which he did. DW2 testified that when he arrived there, the accused told him that he had lent the motor-cycle to the deceased but who had fallen off the same, that the accused then asked DW2 to trace the deceased and talk to him as the deceased was drunk and had declined the accused's offer to carry him and that he should convince him to go to hospital for treatment for the accident injuries he had suffered. He stated that when he went to the home of the deceased, he did not find him, and after 2 days, he learnt that the deceased had died.

18. I then gave the parties the liberty to file written Submissions within strict timelines. However, by the time that I concluded writing this Judgment, neither party had filed any as I did not come across any both in the online Judiciary Case Tracking System (CTS) portal and in the physical file.

### **Determination**

19. Section 203 and 204 of the Penal Code under which the accused is charged provides for the offence of murder and the punishment for it. Under these provisions, the prosecution has a duty to prove, beyond reasonable doubt, that the accused, by an unlawful act or omission caused the death of the deceased through "malice aforethought". The sections read as follows:

203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

204. Any person who is convicted of murder shall be sentenced to death.

20. For the Court to determine that an accused person committed the offence of murder, the Prosecution must therefore establish the following elements; (a) the death of the deceased, (b) proof that the accused person(s) committed the unlawful act which resulted in the death of the deceased: and, (c) malice aforethought.
21. The above being the ingredients of the charge of murder was reiterated by the Court of Appeal, in the case of *Roba Galma Wario v. Republic* [2015] eKLR, as follows:

"For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional."

22. In this case, the death of the deceased and cause thereof are not disputed. The post mortem established the cause of death as "severe head injury as a result of subdural hematoma causing blood trauma to the head."
23. On whether there is proof that the accused is the person who committed the unlawful act which resulted into the death, PW1 narrated how on 1/10/2015, he had come across who was drunk and had lost his way and how he showed the deceased the right route, how later when he was again passing by the scene he found the accused, a person also well known to him and a fellow boda-boda rider within the vicinity, and who told him how he had beat up the deceased because the deceased had refused to pay him Kshs 800/-. He also narrated how the accused then took him to the fence at Kabarnet Boys where they found the deceased badly injured.
24. On his part, the Pathologist, PW6, testified that the deceased had tears and bruises on the left side of the head and a cut wound on the upper lip, and haematoma on the left side of the head. These injuries may indeed appear to be consistent with the testimony of PW1 that the accused told him that he (accused) had hit the deceased with a fist and a stick.



25. There is also the alleged conduct of the accused person after the incident. According to PW1 when he suggested to the accused that he should assist in taking the deceased to hospital, the accused responded that “Kemboi amenisumbua sana, wacha akufe”. Indeed, this could have been perceived as an indication that the accused may have known something about the injuries to the deceased, and he was willing to let him die. It may indeed be presumed that this was not the ordinary reaction to a situation where one finds an injured person well-known to him lying on the side of the road.
26. There is however also the fact that there was no witness who saw the accused actually strike the deceased. The testimony by PW1 that the accused told him that he (accused) had hit the deceased with a stick and a fist is also vehemently denied by the accused. Although the Investigating Officer, PW, produced the stick that is said to have been recovered at the scene, alleged to have been the weapon used to injure the deceased, no link was directly established to the accused in respect to the stick. The Prosecution evidence was therefore purely circumstantial.
27. As to what constitutes “circumstantial evidence” and in what manner it can sustain a conviction, the Court of Appeal, in the case of *Ahamad Abolfathi Mohammed & 2 others v Republic* (2018) eKLR, established the following guide:

“However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. 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. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr. App. R 21: -

“It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.”

28. As to how “circumstantial evidence” may be established such that it can sustain a conviction, the Court of Appeal, in the case of *Abanga alias Onyango v Republic* Criminal Appeal No. 32 of 1990, guided as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused;
- (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and none else.”



29. The Court of Appeal, again, in the case of *Joan Chebichii Sawe v Republic* [2003] eKLR, the Court observed that
- “..... In order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused.”
30. It is therefore generally agreed that for “circumstantial evidence” to carry the day, the Prosecution must establish that there are no other co-existing circumstances which could weaken or destroy the inference of guilt. It is also agreed that in a case reliant on “circumstantial evidence”, each link in the chain must be closely and separately examined to determine its strength before the whole chain can be put together and a conclusion drawn that the chain of evidence as proved is incapable of explanation on any other reasonable hypothesis except the hypothesis that the accused is guilty of the charge (see *Mwangi & Another V Republic* (2004) 2 KLR 32).
31. In view of the above, it is my considered view that the evidence on record does not sufficiently establish that it is the accused who committed the act that resulted in the death of the deceased. The closest evidence that is said to link the accused to the actus reus is the testimony of PW1 that the accused told him that he had hit the deceased. I am afraid that, without convincing surrounding circumstances, that alone cannot sustain a conviction as serious as one for murder. It is also not lost on me that this testimony came out for the first time when PW1 was being cross-examined. He never made any such specific allegation during his evidence-in-chief.
32. The allegation by the accused that the deceased got involved in an accident and thus may have sustained his fatal injuries during that accident has also not been sufficiently countered. I say so because the testimony by the accused person that the deceased was very drunk that night was confirmed by PW1. According to the accused, the deceased asked to use the accused person’s motor-cycle to go home, and when the accused agreed, he saw the deceased riding the motor-cycle in a zig-zag manner. Indeed, PW1 confirmed that when he met the deceased that night, at around 10:30 pm, the deceased was riding a motor-cycle but was struggling to do so as he was visibly very drunk, and that the deceased had even lost his way unable to trace the route to his own home. The testimony of the Pathologist, and also the post mortem report did not, in my view, also conclusively rule out the possibility that indeed the injuries suffered by the deceased were not a result of a road accident. The accused also claimed that he only went to the scene after PW1 came and told him that the deceased had fallen off the accused person’s motor-cycle. This therefore is a case of PW1’s word against that by the accused. This situation leaves us in limbo.
33. In this case, I do not feel confident enough to say that the circumstantial evidence on record and the accused person’s alleged involvement in the case is such that it is incapable of explanation upon any other reasonable hypothesis than that of the accused person’s guilt. I cannot therefore conclusively say that there is no other co-existing circumstances weakening the chain of circumstances relied on by the Prosecution. In my view, the possibility of the existence of various other circumstances is very much alive in this case.
34. Having found that the prosecution has failed to prove the actus reus, the next issue of whether “malice aforethought” can be inferred from the actions of the accused person does not arise. I am therefore not



convinced that the Prosecution has proved the case against the accused person to the specified standard of proof beyond reasonable doubt.

**Final Orders**

35. In the end, I rule and order as follows:

- i. I find the accused person not guilty of the charge of murder and I acquit him under Section 215 of the Criminal Procedure Code .
- ii. Accordingly, unless otherwise lawfully held, the accused person is hereby set at liberty forthwith.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 21<sup>ST</sup> DAY OF NOVEMBER 2025**

..... ..

**WANANDA J. R. ANURO**

**JUDGE**

