



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Republic v Mutai (Criminal Case E061 of 2021)  
[2025] KEHC 17470 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17470 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE E061 OF 2021  
JK SERGON, J  
NOVEMBER 26, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**HILLARY KIPLANGAT MUTAI ..... ACCUSED**

**RULING**

1. Hillary Kiplangat Mutai, is before this Court on trial for the offence of murder.
2. The particulars of the information are that on the 2<sup>nd</sup> day of February, 2021 at Kamaget Village, Kamaget Sub-location in Soin Sigowet Sub-County within Kericho County he murdered Wilson Boson.
3. The Prosecution closed its case after the four witnesses it summoned testified. Parties were invited to file written submissions on no case to answer.
4. At the time of writing this ruling, neither the Prosecution nor the Defence filed their written submissions. This Court opted to consider the evidence tendered by the Prosecution to determine whether the Prosecution had made out a prima facie case to enable this Court place the accused person on his defence.
5. A total of four witnesses testified in support of the Prosecution's case. Kipkoech Japhet (PW.1) was the first to take the witness box. He stated that he knew the deceased but did not know the Accused. He said that on 25/11/2020, he was at home when he received a phone call from one Kigen Kipngetich telling that his grandfather had been attacked and that he had been rushed to Sigowet Sub-County Hospital.
6. PW.1 said that his grandfather now deceased was referred to Kericho County Referral Hospital. PW.1 further stated that he went to Kericho County Referral Hospital where he found the deceased



- unconscious with severe injuries. He said he left the deceased under the care of the doctors at the Referral facility. He said he later learnt that the deceased was taken to Moi Teaching and Referral Hospital, Eldoret for specialized treatment.
7. PW.1 also stated that the deceased was discharged to continue with home care but he later succumbed to his injuries.
  8. PW.1 said in cross-examination that he was informed that the deceased was attacked by thugs and further admitted that he did not witness the incident.
  9. Samuel Ng'asura (PW.2), stated that on 25/11/2020, he went to school where the deceased was guarding to pick school children. He stated that the deceased managed to open the gate for him after delay. He said he noticed that the deceased had cut wounds on his head and cheeks and was bleeding. He stated that the deceased was unable to talk.
  10. PW.2 said he called the school director to inform him that the school watchman was injured and the school director in turn directed him to take the deceased to hospital. PW.2 and one Jonah, the school cook took the deceased to Sigowet Sub-County Hospital. PW.2 said he recorded his statement at Sondu Police Station.
  11. While testifying in Cross-Examination, PW.2 said that he arrived at the school where the deceased worked as a watchman way after the deceased had been assaulted. PW.2 was emphatic that he did not witness the attack on the deceased and he does not know the deceased's attacker.
  12. Senior Sergeant Caleb Manani (PW.3) stated that on 25/11/2020, he was instructed to visit Tulwet Christian Academy in Kebeneti Sub-Location to investigate an incident of an attack of the school watchman. PW.3 said he visited the school and recorded statements from PW.1 and PW.2 about what they found when they visited the school earlier in the morning.
  13. PW.3 produced in evidence as exhibits a torch and a metal rod. PW.3 said that he learnt that one Hillary Kimutai, who was a student at Kebeneti Secondary School had surrendered himself to Anti-Stock Theft Unit claiming he had done something. PW.3 said he visited the Anti-stock Theft Unit to re-arrest Hillary Kimutai.
  14. In Cross-Examination, PW.3 said that the investigators thought the school had been attacked. PW.3 confirmed that PW.1 and PW.2 did not witness the incident.
  15. Doctor Collins Kipkoech (PW.4) stated that on 9<sup>th</sup> February, 2021, he performed a Postmortem on the body of the late Wilson Boson at Sigowet Sub-County Hospital and produced the Postmortem Report indicating that the cause of the death was massive brain edema secondary to the head injury.
  16. The Court of Appeal for Eastern Africa in *Ramanlal T. Bhatt -vs- Republic* 1957 (E.A) 332 held *inter alia* as follows:-
    - i. The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if, at the close of the prosecution, the case is merely one "which on full consideration might possibly be thought sufficient to sustain a conviction."
    - ii. The question whether there is a case to answer cannot depend only on whether there is "some evidence irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence."



17. I have carefully weighed the evidence tendered by the Prosecution. It is clear from the evidence of the Pathologist that the deceased died as a result of massive brain edema secondary to head injury.
18. The Prosecution did not tender credible evidence linking the accused with the deceased's death. There was no direct or circumstantial evidence showing that the accused assaulted the deceased.
19. PW.3, the Investigating Officer stated that the accused surrendered himself to the Anti-stock Theft Unit claiming he committed a mistake. He said that he merely went to re-arrest the accused from the custody of the Anti-stock Theft Unit. It would appear PW.3 intended to introduce a confession on the part of the accused but he failed to tender any confession made by the accused.
20. In short, there is no scintilla of evidence linking the accused with the death of the deceased. In order words, no evidence was tendered indicating that the accused is the one who inflicted the fatal injuries on the deceased.
21. The element of actus reus was therefore not proved against the accused.
22. The second element which must be proved to establish the offence of murder is malice aforethought. Again, there is no direct or circumstantial evidence showing that the accused had malice aforethought.
23. In sum, the Prosecution failed to establish a prima facie case necessary to enable this Court place the accused on his defence. Pursuant to the Provisions of Section 210 of the Penal Code, this Court finds that a case is not made out against the accused person sufficient to require him to make a defence. This Court proceeds to dismiss the information of murder against the accused.
24. Consequently, the accused namely:- Hillary Kiplangat Mutai is hereby acquitted. He should be set free forthwith unless lawfully held.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 26<sup>TH</sup> DAY  
OF NOVEMBER, 2025.**

.....

**J. K. SERGON**

**JUDGE**

In the Presence of :-

C/Assistant – Rutoh

Prosecutor - Maundu

Accused – Present in Person

Nyadimo for the Accused

