



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Njeri (Criminal Case 54 of 2017)
[2025] KEHC 18634 (KLR) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 54 OF 2017
HI ONG'UDI, J
DECEMBER 18, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

NAOMI NJERI ACCUSED

JUDGMENT

1. Naomi Njeri hereinafter referred to as the accused is charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars are that the accused on 18th December, 2017 at Kiwanja Ndege, Njoro town in Njoro sub-county within Nakuru county murdered Samuel Mwangi Kiragu.
2. The accused denied the charge and the case proceeded to full hearing with the prosecution calling a total of seven (7) witnesses. The accused made an unsworn defence without calling any witness.
3. PW1 – Pauline Muthoni Muhia testified that on 20th December, 2017 at 5.00pm she was at home when the accused came there and told her that the deceased who was her brother had not woken up. That the accused was the deceased's wife. Together they left for the deceased's house. It was dark and so she opened the curtain and saw that he had not woken up. She saw an injury on his head, right hand and right leg. That the hand looked like it was burnt while the leg looked like it was pricked, the chest was bruised, the rasta on the big portion of his head had been removed.
4. They took the deceased to the Njoro sub-county hospital. After a while they were referred to Nakuru Medical Hospital (PGH). At around 1.00am her brother passed on. In the morning the body was taken to the mortuary.
5. In cross examination she said the deceased used to take alcohol, and lived alone in the plot. That at that time of incident the deceased and the accused had separated. She did not know how long the brother had been lying in bed.



6. PW2 - Beth Wanjiru Waweru is a sister to the deceased. She was only notified of the death of the deceased.
7. PW3 – Magdalene Nyambura Kiragu, said she went to hospital to witness the post mortem of the deceased. She was with her son Peter Kamau,
8. PW4 - Anastancia Ngina an auntie to the deceased was notified by PW1 of the deceased’s illness on 20th December, 2017 9.00pm. He was taken to hospital in Njoro. PW1 kept briefing her of the progress. She later informed her that the deceased had died. She went to the hospital the next morning and saw injuries on the head, chest and a toe of the deceased, before he was taken to the mortuary. She did not know what happened to the deceased. She had not known the accused.
9. PW5 – Joseph Nyoro Thuo was in his house on 24th December, 2019 when the accused came there asking for assistance. They looked for the village elder as the deceased’s brother was threatening the accused over the deceased’s death. He told them to go to the police station.
10. PW6 - No. 67817 P. C Sanga Tunje testified that on 24th December, 2017 at 11am he was in the office at DCI Njoro when 2 ladies (PW2 and PW3) came there. They had received a call from PW1 who told them that their brother (deceased) had been very ill and taken to Njoro sub-county hospital. Further that the deceased had died at the Nakuru PGH and they needed help from the police.
11. The police recorded PW1’s statement in which she said the deceased and accused had collided on the night of 18th December, 2017, because the deceased had gone to accused’s place to pick his child. She explained that the deceased returned the next day while armed and a wrangle ensued. The deceased was injured by the accused and her son. Neighbours came and separated them and the deceased went back to his house but he never woke up the next day. The report was made at the station on 26th December, 2017. That the eye witnesses refused to record statements.
12. In cross examination he said the deceased went to where the accused lived at midnight. This is information the accused allegedly gave to PW1. The witness said he visited the scene and never took any photos, and no weapons were recovered.
13. PW7 - Dr. Titus Ngulungu a pathologist at Nakuru Teaching and Referral Hospital conducted the post mortem and did the report dated 23rd December, 2017. The body had several injuries including a swollen skull, scars on the head, massive blood clot in the skull and brain injury. He found the cause of death to be the head injury – haematoma to the head which was in keeping with fatal assault. He produced the post mortem report as Exb 1.
14. The accused gave an unsworn statement of defence. She said the deceased was her husband but for sometime they had not been living together, as a couple. She said on 18th December, 2017, 11pm – 12 midnight she was in Njoro where she lived with her mother. The deceased lived 1km away. The deceased came there while drunk and knocked on the door but she did not open. He told her he wanted to finish her and the children since he knew her parents had given her a lot of properties and she would not go back to him. She never opened for him.
15. On 20th December, 2017 at 6pm PW1 sent her 4 years old daughter to her telling her to go to her husband’s house. She went and found the deceased lying on the bed. He was sick but alive. She and PW1 took him to Njoro sub county hospital then to Nakuru PGH upon referral, but he later died. She denied killing the deceased saying she only responded to PW1’s call.
16. The prosecution did not file any submissions.



17. The submissions for the accused were filed by Mongeri his advocate. The same are dated 20th November, 2025. Counsel gave a summary of the evidence by the prosecution witnesses. Counsel while relying on the case of Republic V Gedion Wambua Koko & 2 others [2019] eKLR set out the ingredients to be proved by the prosecution for a murder charge to succeed. These are:
- i. The death and cause of death of the deceased
 - ii. That the accused caused the death an unlawful act on omission; and
 - iii. The accused possessed the intention to cause harm or kill.
18. He submitted that the prosecution had failed to establish the (ii) and (iii) ingredients in this case. It's his case that the prosecution failed to link the accused to the act that caused the death. That there was no eye witness and the alleged confession by the prosecution witnesses was hearsay not recorded anywhere. The cause of death was head injury which was not connected to the accused and no blunt object was produced in court. Secondly no element of malice aforethought/intention was placed before the court.
19. Counsel further argued that the prosecution case is riddled with contradictions, gaps and speculative assertions causing doubts on the credibility of the prosecution witnesses and the integrity of the investigations. Counsel contends that there is no connection between the deceased's deteriorating condition and the encounter with the accused. To him it is PW1 who knows what happened to the deceased. This is because she administered a sugar mixture to him and no one knows what the contents were.
20. He further submitted that no blunt object was recovered or produced to confirm the actual instrument of death. Further that no evidence was adduced to really connect the accused to the deceased's death.
21. The next issue he addressed is whether failure to call crucial witnesses is detrimental to the prosecution case. He mentioned the woman who accompanied PW1 and who was never called as a witness yet her evidence was critical. He also blames the prosecution for not calling Allan Muya (former 2nd accused) as a witness. Lastly there was no evidence by a Scene of Crime officer to produce photographs, forensic chain of custody for any instrument or blood pattern analysis.
22. On this he cited the case of DMK V Republic (Criminal Appeal E056 of 2022) [2023] KEHC 25235 (KLR) (9 November, 2023) (Judgment) which cited the case of Bukenya & others V Uganda [1972] EA 349 which held that;
- “While the prosecutor is not required to call a superfluity of witnesses, if he calls evidence which is barely adequate and it appears that there were other witnesses available who were not called, the court is entitled under the general law of evidence, to draw an inference that the evidence of those witnesses, if called, would have been or would have tended to be adverse to the prosecution case”
23. Counsel referred to the accused's defence and submitted that the prosecution failed to prove its case against the accused. Thus, there are gaping holes in the prosecution case, making it unstainable. Reliance was placed on the case of Paul V Director of Public Prosecutions (Criminal Appeal E069 of 2023 [2024] KEHC 5520 (KLR) 25th April, 2024). (Judgment) Wamae T. W. Cherere J which held as follows at paragraph 13 & 14.
- “From the totality of the evidence, I find that this is a case where Appellant ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case does not require many circumstances creating the doubt that the guilt of an accused



is sufficient. The accused is entitled to the benefit of doubt not as a matter of grace and concession, but as a matter of right”.

Analysis and determination

24. I have carefully considered the evidence on record, submissions cited cases and the law. The main issue for determination is whether the charge of murder has been established against the accused person. Section 203 of the penal code defines the offence of murder as follows:

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

Further section 204 of the penal code provides for the punishment of the said offence as follows:

“Any person convicted of murder shall be sentenced to death”.

25. For a charge of murder to be proved the following ingredients MUST be established:

- i. Death and cause of death of the victim
- ii. That the death was caused by the accused’s unlawful act (actus reus)
- iii. That the accused had the intention to kill (malice aforethought - mens rea) See Republic V Gedion Wambua Koko & 2 others (supra)

26. The burden of proof in criminal cases rests on the prosecution. The proof must be beyond reasonable doubt. In this case there was no evidence of an eye witness. The evidence relied on is therefore circumstantial. This is what the Court of Appeal in the case of Sawe V Republic [2003] KLR 364 stated on circumstantial evidence.

1. 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 hypotheses than that of his guilt.
2. Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on.
3. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.

27. Further in Nzivo V Republic [2005] I KLR 699 the Court of Appeal stated the following on circumstantial evidence:

“5 In a case dependent on circumstantial evidence in order to justify the inference of guilt the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt. It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy the inference”.



The fact of death and its cause

28. PW1 – PW6, confirmed the death of the deceased. PW7 Dr. Titus Ngulungu conducted the post mortem on the deceased's body. He found the cause of death to be head injury – haematoma to the head which kept in line with fatal assault. He produced the post mortem report as Exb 1. There is no dispute on the death of the deceased and its cause. The cause was not a natural one.
29. The next ingredient is whether it is the accused's unlawful act which caused, the deceased's death. None of the witnesses who testified saw the person/people who injured the deceased causing his death. It was PW1's evidence that her brother (deceased) lived alone on a plot as him and the accused had separated. PW1 however added that despite the separation, the accused used to visit him. It was her evidence that on 20th December, 2017 at 5pm she was at home when the accused came to call her and told her the deceased had not woken up. They then went to the deceased's house.
30. On the other hand, the accused said infact on 20th December, 2017 6pm it is PW1 who sent her daughter aged 4 years to tell her to go to the deceased's house. She went and found PW1 already there and the deceased was lying on the bed and indeed he was sick. On this issue its not certain as to who between the two of them is speaking the truth. It is however not disputed that PW1 and the accused took the deceased to hospital at Njoro then to Nakuru PGH, together.
31. PW6 PC Sanga Tunje testified that the report was made by PW2 and PW3 at the Njoro police station on 24th December, 2017 at 11am. The witness just said the two (2) witnesses had been given the report concerning their late brother by PW1. The officer then recorded a statement from PW1. He gave a lot of information which he allegedly received from PW1.
32. I have had the opportunity of reading the recorded evidence of PW1, PW2 and PW3 and I do not see anything close to what PW6 was telling the court. None of them has mentioned anything in respect of what the accused allegedly told PW1 about her encounter with the deceased. It is therefore not clear where PW6 got all this evidence he gave to court.
33. This investigating officer (PW6) visited the alleged scene of crime but did nothing more than the visitation. Who showed him the scene and what did he see that convinced him that was the scene? Strange enough he never went to the deceased's house where he is said to have been lying while being unresponsive.
34. If indeed PW6 was told by PW1 what he alleges, did he ever arrange for a confession to be recorded from the accused by a qualified officer? There is no evidence that he did so. PW6 also told the court that following the confrontation at the accused's mother's home neighbours came and separated them. Separated who and by who? The officer said the deceased went back to his house and slept. How did he know that the deceased was able to walk back to his house on the night of 18th December, 2017 and even sleep? Did the officer ever find out what happened on 19th December, 2017 and part of 20th December, 2017 because PW1 and accused only took him to hospital on 20th December, 2017 evening? This should have formed part of his investigations. Back to the alleged scene, did PW6 interrogate the accused's mother plus the neighbours whom he alleges separated the people who were fighting?
35. The accused in her defence denied having any physical confrontation with the deceased on the night of 18th December, 2017 since she never opened the door for the deceased.
36. PW4 Anastancia Ngina an auntie to the deceased in her evidence stated this:

“I met the accused and she confessed to me what had transpired”



It is nowhere indicated what the accused told her. She further stated this:

“I did not know he (deceased) was married. Muthoni (PW1) is sister to deceased. It’s the sister who knows what happened that night”.

Again, here it is not clear what night she was referring to. Was it the night the deceased was injured or the night he passed on?

37. The sister PW4 was referring to is PW2. I note that this is the same witness the accused is blaming for her woes. If PW4 said it is PW2 who knew what transpired on that night then its clear that the prosecution witnesses are not speaking in one voice as already pointed out elsewhere.
38. The burden of proof in a criminal case has never shifted from the prosecution to the accused person. From my assessment of the evidence adduced herein the accused was just suspected because of her broken relationship with the deceased and their struggle over the children. Can mere suspicion be sufficient to found a conviction?
39. The answer is found in the case of *Sawe V Republic* [2003] KLR 364 where the Court of appeal held:

“7 Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt”.

It has come out clearly that the allegations against the accused are based on mere suspicion. There is no concrete evidence that has been brought against her.

40. The above being the position it is my finding that the prosecution has failed to prove that the accused did any unlawful act that caused the deceased’s death. That being the case I will not belabor the point on malice aforethought/ intention.
41. The upshot is that the prosecution has failed to prove its case against the accused. On my part I find her not guilty and acquit her under section 322(1) of the Criminal Procedure Code. She shall be released unless otherwise lawfully held under a separate warrant.
42. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 18TH DAY OF DECEMBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI
JUDGE

