



REPUBLIC OF KENYA



**Republic v Mwangi & another (Criminal Case E010 of 2021)
[2025] KEHC 18350 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18350 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE E010 OF 2021
LN MUTENDE, J
DECEMBER 3, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH NDEGWA MWANGI 1ST ACCUSED

GRACE WAMBUI NJAU 2ND ACCUSED

JUDGMENT

1. Joseph Ndegwa Mwangi, 1st Accused, and Grace Wambui Njau, 2nd Accused, are charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence are that on the 1st day of September, 2020, at unknown time at Mahua Village in Nyahururu Sub-County within Laikipia County, unlawfully murdered Jackson Njoroge.
2. Facts of the case are that the deceased was found dead at Mahua Village beside a road near a maize plantation. The matter was reported to the police who commenced investigations, which culminated into the arrest of the Accused persons who were jointly charged. To prove the case the prosecution called 8 witnesses.
3. PW1 Joseph Wanjohi Ngahu the brother of the deceased was called by their sister Mary Wambui to view the body of the deceased. He went to the scene and found the deceased's lifeless body. The body lay facing upwards half dressed, the jumper was worn inside out while the shirt was placed on the chest. The matter was reported to the police who visited the scene including the scene of crime officer. The scene was documented and photographs taken where after the body was removed and taken to the Nyahururu County Referral Hospital where a postmortem was conducted after he identified the body as that of the deceased.
4. PW2 Mary Wambui Ngige was called by children who directed her to where the body of the deceased was. She proceeded to call the brother of the deceased who ultimately called the police.



5. PW3 John Kalunda Ndatho the son of the deceased saw him drunk while in company of the 2nd Accused and Mama Mwangi.
6. PW4 Lucy Nyambura Kariuki testified to have gone to the 1st Accused's home looking for a person she did not disclose. She was declared a hostile witness and cross – examined. She stated that she saw the deceased who had sustained injuries. That prior to that time she had seen the deceased carrying an empty bottle while in company of both Accused persons and one Baba Mwangi. On cross – examination she stated that she was Mama Mwangi and she was arrested and later released. That she went to Ndegwa's place on 1st September, 2020, where chang'aa was being sold and she found Ndegwa and the two (2) Accused persons who were drinking chang'aa.
7. PW5 Dr. John Omedho conducted the postmortem on the body of the deceased. He formed the opinion that the cause of death was asphyxia secondary to ligature strangulation.
8. PW6 Joseph Kipkoech Koech went to Ndegwa's place (1st Accused) to buy some beer. He found Grace Wambui (2nd Accused), Jackson Njoroge (Deceased), Nyambura and Thumbi and Kariuki son of Joseph Ndegwa. He left at about 1.00pm going home. Thereafter he learnt from his wife of the deceased's demise.
9. Further, it was his testimony that the deceased cohabited with the 2nd Accused at her home. While the 1st Accused was also very close to her but he could not divulge much about their relationship. On cross – examination he stated that the body of the deceased was found near the house of the 1st Accused.
10. PW7 No. 64711 Corporal Fernandez Andove, the Investigating Officer upon receiving the call moved to the scene where he found the body of the deceased. It wore a jacket, shirt but the clothes were inside out. He established that the deceased had moved away from their homestead and was staying with a lover at Mahua called Grace Wa Njau.
11. That the body was found some 5 meters away from the house of the 1st Accused within his compound but near the maize farm. There were some drag marks of the body from the house of the 1st Accused up to where the body lay. The 2nd Accused was nowhere to be seen but was subsequently found and arrested. Evidence pointed to the two (2) Accused who were the last persons to be seen with the deceased. On cross – examination it was stated that the 2nd Accused lived some 500 meters away from the house of the 1st Accused.
12. PW8 Corporal Johnson Limo of the Director of Criminal Investigations seconded to Safaricom Law Enforcement Office was requested by DCI Marmanet to provide data analysis number 0707017650 registered in the name of Joseph Mwangi ID NO. 26519687 and 0741620849 registered in the name of Grace Njau ID NO. 9453635 for the period 20/08/2020 to 05/09/2020. There was communication between number 070707650 and 0700182538 on 01/19/2020 at 10:24 Hours the caller being within Kiamburi area.
13. At the close of the prosecution's case both the defence and prosecution counsel did not tender any submissions.
14. Upon being placed on their defence, the Accused persons opted to remain silent.
15. It was however the submission on their behalf that the Accused did not cause the death of the deceased. That witnesses gave different accounts of what they saw, evidence that was contradictory and could not



be trusted and hence not credible. Reliance was placed on *Ndung'u Kimanyi v Republic* (1979) KLR 282 where it was held that;

“The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.”

16. That evidence that the Accused were the last persons seen with the deceased was not established. Relying on the case of *Sawe v Republic* [2003] KLR 364, it was argued that suspicion however strong, could not provide the basis for inferring guilt.
17. That malice aforethought was not established as none of the Accused persons' actions towards the deceased were indicative of malice aforethought.
18. I have taken into consideration evidence on record and submissions by the defence alongside authorities cited. Section 203 of the Penal Code provides thus;

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

19. The Court of Appeal considered what constitutes the offence of Murder. It delivered itself in *Anthony Ndegwa Ngari v Republic* [2004] KECA 424 (KLR) thus;

“For the offence of murder, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are:

- a. the death of the deceased and the cause of that death;
- b. that the accused committed the unlawful act which caused the death of the deceased and
- c. that the Accused had the malice aforethought.”

20. Therefore, issues for determination are; Whether death occurred Whether the death was caused by an unlawful act or omission and of malice aforethought Whether the Accused were the perpetrators of the act that caused the death
21. The mortal remains of the deceased were found near a maize plantation within Mahua Village. The body was identified by Joseph Wanjohi and Virginia Wanjiru. The autopsy was conducted by PW5 Dr. John Omedho who concluded that the cause of death was asphyxia, secondary to ligature strangulation. This was a fact of death.
22. The primary victim was strangled. PW5 Dr. Omedho described it as ligature strangulation. There were marks of the skin having been constricted at the neck. There was distended neck veins, the tracheal veins (windpipe) had collapsed. The heart had enlarged hence the conclusion reached. Based on the pattern of the marks the strangulation was not self-inflicted but it was by another person. The act committed was hence a direct cause of death and was not legitimate hence making it unlawful.
23. Malice aforethought is defined by Section 206 of the Penal Code as;

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—



- a. an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
 - b. knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
 - c. an intent to commit a felony;
 - d. an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.
24. In *Chesakit v Uganda*, Criminal Appeal No. 95 of 2004 the Court of Appeal of Uganda stated that;
- “In determining in a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person.”
25. The victim was strangled which was an act that was intentional. The act done was purposeful. The perpetrator applied force on the neck of the deceased, scratched it leaving visible marks. The intent to kill or at least cause grievous harm was proof of the presence of malice aforethought. In *Republic v Charles Kyalo Mwathe* [2021] eKLR the Court found that strangulation resulting into death is evidence of malice aforethought.
26. Evidence as to who caused the death of the deceased was circumstantial. In *Ahmad Abolfathi Mohammed & Another v Republic* [2018] KECA 743 (KLR) the Court of Appeal stated that;
- “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 as strong a basis for proving the guilt of an accused person just like direct evidence. Way back in 1928 Lord Heward, CJ, stated as follows on circumstantial evidence in *R v. Taylor, Weaver & Donovan* [1928] CR. App. R. 21:
- “It has been said that the evidence against applicant is circumstantial. So, it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by undesigned coincidence is capable of proving a proposition with the accuracy of Mathematics. It is no derogation from evidence to say that is circumstantial.”
27. The Accused were presumed to be the ones responsible for the death of the deceased because they were the last persons with him. Evidence did not exclude some other people having been with them. PW4 was one such person. The defence urge in submissions that her evidence was contradicted by that of PW3 and PW6. Indeed, the evidence of PW4 could not have been credible as she was declared a hostile witness. She was subjected to cross – examination by the prosecution counsel who called her to testify for the State. Her evidence must be disregarded.
28. PW3 saw the deceased in company of both Accused and Mama Mwangi, they were later found at the house of the 1st Accused imbibing alcohol by PW6 a retired teacher who bought alcohol and left them at the house. Evidence of the presence of drag marks from the house of the 1st Accused up to where the body was found was not explained. Evidence that the deceased lived with the 2nd Accused was not



denied and that there was some relationship between the 2nd Accused and 1st Accused was also not denied.

29. They had been with the deceased up to the time he was found dead. It was presumed that the two (2) Accused persons who were last seen with the deceased were accountable for his death. In that case, they were required to give a plausible explanation of what transpired but they opted to remain silent hence there was no evidence to rebut the presumption. The prosecution did prove that the Accused persons were last seen with the deceased in the afternoon of 1st September, 2020 and his dead body was found in the evening of the same day. This was circumstantial evidence that irresistibly pointed to the Accused persons as the perpetrators.
30. From the foregoing, I am satisfied that the prosecution has proved the case against the Accused persons beyond reasonable doubt. Therefore, I find them guilty and convict them as charged.
31. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD DAY OF DECEMBER, 2025.

L.N. MUTENDE

JUDGE

