



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Achuth & 2 others (Criminal Case E047 of 2021)
[2025] KEHC 19079 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E047 OF 2021
HI ONG'UDI, J
DECEMBER 19, 2025**

BETWEEN

REPUBLIC STATE

AND

HENRY OWITI ACHUTH 1ST ACCUSED

AMOS KINYANYA AYIERA 2ND ACCUSED

LIVIN GACHANGA NYAKWARA 3RD ACCUSED

RULING

1. Henry Owiti Achuthi, Amos Kinyanya Ayiera and Livin Gachanga Nyakwara hereinafter referred to as 1st, 2nd and 3rd accused (A1, A2 A3) respectively are charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars are that A1, A2 and A3 on 8th September, 2021 at Exodus building in Nakuru town Nakuru East sub-county within Nakuru county jointly murdered Samuel Kariuki Gachanja
2. They all denied the charge and the case proceeded to full hearing with the prosecution calling ten (10) witnesses before closing it case. The case now is for a ruling on whether the prosecution has proved a case against all the accused or any one of them to warrant this court to place them/him on their/his defence.
3. The prosecution and all counsel filed their submissions after the close of the prosecution case.
4. A summary of this case is that on the night of 8th September, 2021 the deceased was attacked at Exodus building which was not far from Legacy Hotel & Conference Centre. The male attackers were boxing, kicking him and dragging him on the ground. They also had a jembe handle which they used to assault him. He was left for dead until morning when he was taken to Nakuru Referral Hospital. He passed on while being treated at the I. C. U.



5. PW1 – Richard Wainaina Njoroge who was the deceased’s employer only received a call on the attack. He was not able to go to the scene that night because of the Corona curfew. He arrived at the scene at 6.30am and that’s when the deceased was taken to hospital.
6. PW2 – Micheal Mwangi Gachanga a brother to the deceased attended the post mortem on 10th September, 2021. He observed injuries on the body.
7. PW4 Collins Kiprono Ngetich is a receptionist at Legacy Hotel and Conference Centre. On the material night he heard PW3 talking to some people outside and he went to see what it was. She told him a thief was being beaten at a neighbouring building.
8. He went there and found a person lying down. He flashed and saw a person lying down and he identified him as the deceased. There wasn’t sufficient light where he lay. He saw no weapons and he did not witness the beating. He did not identify any of the people he found there.
9. PW5 William Odidi Adongo was the employer of Henry Owiti (A1) and had on the material day sent him to Exodus building to guard the place. When he received the death report he looked for A1 who explained to him what had happened. He also gave him the deceased’s phone, (Exb 5a), Padlock (Exb 5b) and bunch of keys (Exb 5c). They went to the police station and he was released while A1 was placed in cells.
10. PW6 – No. 71843 P. C Stephen Amanja of Nakuru Central Police Station was on duty when he was notified of the murder. He rushed to the scene with others and found the victim in a pool of blood. They rushed him to hospital, accompanied by PW1. Later they were notified by the hospital of the deceased’s death. Later A1 came to the station with the deceased’s items (Exb 5a – c). In cross examination he said A 1 came to surrender and not to report.
11. PW7 Dr. Titus Ngulungu the pathologist conducted the post mortem on the deceased’s body. The body had several injuries. He found the cause of death to be injury to the brain and sub-dural haematoma due to multiple blunt trauma to the head. He produced the report as Exb 3.
12. PW8 – C. I. Jestimore Maldit received a request from the Nakuru sub-county to certify ten photos which he did. He produced the photographic certificate of print and Enlargement (Exb 4b), request letter (Exb 4a) and the photos (Exb 4c (i) – (x)). This witness is gazetted as No. 8385 of 31/8/2001.
13. PW9 – No. 240523 I. P Irene Chemutai from DCI HQ Counter violence Entremism Unit but was previously based at Nakuru DCI. On 8th September, 2021 she took over the matter reported by PW1. Investigations started and an eye witness Caroline Atieno Owino (PW3) was identified. Other eye witnesses were Richard Mogaka who never testified and Collins Kiprono Rotich (PW4). She gave a summary of what the witnesses told her.
14. It was Richard Mogaka who gave them the names of the culprits who she said were A1, A2 and A 3. That A1, A2 and A3 told her they suspected the deceased to be a thief and so they beat him. She confirmed that identification parades were conducted by I. P Ngare (PW10). She also produced a work book report from A1’s work place confirming he was on duty. She produced the deceased’s treatment notes and a summary of the treatment given to him (Exb 7a & b).
15. In cross examination she said A1 & A2 were arrested on 9th September, 2021 and were in cells up to 24th September, 2021. She was not aware of any orders allowing them to keep them in the cells for that long. She said the three (3) accused person’s were never in the same parade. It was her evidence that there were security lights at the scene.



16. It was her further evidence that the accused were kept in cells for long because they were to go for medicals. In re-examination she said she had filed a Miscellaneous Application seeking to keep the accused in police custody to allow them complete investigations.
17. It is further her case that she attended all the Identification parades save for that of A1. To her all was done procedurally. She could not recall what they A1, A2 & A3 were wearing during the identification parades. She however confirmed they had been arrested from their places of work. These accused persons were working as security guards.
18. PW10 – C.I.P No. 236246 conducted the identification parades on 20th September, 2021. The identification parade witness was PW3. According to him the witness did repeat identifications for the same suspect – the only difference being changing positions by the parade members. He could not remember how the suspects were dressed. He produced the identification parade forms (Exb 8, 9 & 10) showing how many times the witnesses identified the suspects with the same parade members.
19. PW3 – Caroline Atieno Owino is the star witness, who is said to have participated in the identification parades. She said she was attracted to the scene by the noises and there was light there. It was her evidence that the only person she identified among the four (4) was ‘Owiti’ identified as A1. Later she said she was however able to identify all the four (4) men who were beating the deceased.
20. In cross examination she said there were 6 people in each parade. She did 3 parades for A1. That there was a time all the four (4) suspects were in one parade but different positions. She also said she had seen A2 & A3 for the first time that night and she even described how they were dressed.
21. I have considered all this evidence, submissions by all counsel and the law. The issue for determination is whether the prosecution has established a prima facie case to make this court place the accused persons or any of them on their defence. What then is a prima facie case?
22. The Black’s Law Dictionary Tenth Edition at pg 1382 it is defined as:
 - a. The establishment of a legally required rebuttable presumption
 - b. A party’s production of enough evidence to allow the fact trier to infer the fact at issue and rule in the party’s favour.
23. This is a charge of murder and the 3 ingredients must be shown to exist. These are:
 - i. The fact and cause of death
 - ii. The unlawful act causing the death and who caused it (actus reus)
 - iii. That the act was caused by malice aforethought - mens rea.
24. There is no dispute about the fact of death and its cause. PW1 and PW2 confirmed the fact of death, while PW7 did the post mortem. The cause of death was brain and head injury, (Exb 3).
25. The incident resulting in the death occurred late in the night. PW3 said there was light at the scene but PW4 denied that. He said the scene was dark and he had to flash to see the person lying on the ground. There is therefore uncertainty about the issue of light at the scene.
26. Contrary to PW9’s evidence PW4 was not an eye witness and Richard Mogaka another alleged eye witness never testified. PW3 who appeared to be the only eye witness gave evidence that could not be relied on without further evidence. She said she only identified one person who had a white jumper at the scene and this was Owiti who is A1. If indeed she knew A1 by name why had she to identify him again on the identification parade? She would just have given the name, which was not the case here.



27. There is no evidence on record showing she gave any description of the people she was identifying on the parade. At what point did she identify them when in her evidence in chief she said it was only A1 she knew and could identify? Furthermore, the investigating officer (I.O.) (PW9) said the accused persons admitted having beaten the deceased whom they suspected to be a thief. Where is that evidence? No confession was taken from the accused by a competent officer. PW9 in her position/rank knows the procedure of taking confessions.
28. The identification parades in this case were conducted in a very strange manner. The evidence of PW3, and PW10 plus the identification parade Forms (Exb 7a-c) speak to all that. The scenario was the same and the set of members being in one parade and only changing positions to enable PW3 to select one, was the same. In general, a witness should only participate in an identification parade once for a specific suspect. These strict procedure and guidelines are designed to prevent witnesses from being influenced and to ensure fairness and reliability of the identification evidence. The evidence is clear that PW3 identified each accused twice or three times in the same parade, which is unprocedural.
29. In this case I find the identification evidence to be so unreliable. Furthermore, A1, A2 A3 were arrested from their work place as security guards while in their uniforms. How did they appear in the identification parades? Were they in their uniform and if so how were the other members of the parade dressed? Did they also wear similar security guard uniforms during the identification parades?
30. All this evidence put together shows lack of proper investigations of this case and a lot of presumptions. The accused persons were kept in police cells from 9th September, 2021 – 24th September, 2021 with no court orders. PW9 said she was not aware of any such court orders. She later in re-examination said she had filed a Miscellaneous application seeking for authority to keep them. I found this to be an open lie.
31. Upon considering all these loopholes I have pointed out it is my finding that the prosecution has failed to establish a prima facie case against all the accused persons. I hereby acquit A1, A2 and A3 under section 306(1) of the Criminal Procedure Code. They shall be released unless held under separate warrants.
32. Orders accordingly

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 19TH DAY OF DECEMBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

