



**Republic v Mukhwana & another (Criminal Case E001 of 2025)  
[2025] KEHC 18999 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18999 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CRIMINAL CASE E001 OF 2025  
RPV WENDOH, J  
DECEMBER 17, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**REUBEN KARAKACHA MUKHWANA ..... 1<sup>ST</sup> ACCUSED**

**TOM WAFULA KHAMALA ALIAS SAMIDO ..... 2<sup>ND</sup> ACCUSED**

**JUDGMENT**

1. Reuben Karakacha Mukhwana and Tom Wafula Khamala alias Samido, are jointly charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the charge are that on 5/9/2024 at Maili Saba area in Kiminini Sub-county, Trans Nzoia County, jointly with others not before the court, murdered Meshack Kipkorir Kipkoech.
3. Both accused denied the offence and the case proceeded to full trial with the prosecution calling a total of 10 witnesses. When called upon to defend themselves, both accused gave sworn evidence but did not call any other witnesses.
4. PW1 Dr. Denis Nanyingi of Kitale County Referral Hospital, performed post mortem on the body of Meshack Kipkorir Kipkoech. He found that the deceased’s head was deformed, bruises on the face, right knee, had wound on frontal scalp. Internally the deceased had a frontal skull fracture with subgaleal haematoma, subdural haematoma to frontal lobe. He formed the opinion that the cause of death was head injury secondary to assault by blunt weapon.
5. PW2 Nelson Lusiola, a clinical officer working at Kitale County Hospital produced a P3 form and treatment notes in respect of Sheila Mwangale (PW3) and Brian Kirwa (PW4). Sheila Mwangale on examination had injuries to the head, hands and leg. Her jumper was stained with blood, had a bandage on the head which had stitched wounds. She also had lacerations and tenderness on the hands and



legs, an X-ray revealed fracture on left temporal region and fracture of 5<sup>th</sup> intercarpal (ring finger) on which plaster was applied; that there was recent vaginal penetration. He concluded that Sheila suffered grievous harm. Brian Kirwa was also examined and found to have suffered injuries to the upper and lower limbs inflicted by a blunt object. He had injuries on the lower limbs, fresh cut wounds and tenderness to right shoulder, trousers were torn and he looked sick. PW1 assessed injuries as assault.

6. PW3 Sheila Mwangale recalled that on 4/9/2024, she was at Soi where she works. About 9.00 p.m. her boyfriend Brian Kirwa (PW4) called and asked her to go to Kitale but she did not get a vehicle. He informed her that he was coming to Soi and he arrived on a motorcycle with Meshack (the deceased). They decided to ride back to Kitale that night and they passed Moi's bridge and on arrival at Maili Saba, they saw torches flashing at them and in the middle of the road. Brian was the rider and she sat in the middle. When near the torches, she was hit with a club on the right shoulder, the rider lost control and the motorcycle fell in the middle of the road. PW3 and Meshack, the deceased, ran towards the left side when coming from Kitale, where there was a perimeter wall; that Brian ran towards the maize plantation in the opposite direction; that PW3 and on reaching the wall, it was a dead end; that there were lights on the wall but not very bright. She was hit on the head and fell while Meshack fell about 5 metres ahead of her; that there were two people, one taller than the other; that they were armed with clubs with which they assaulted her and Meshack. She was able to see their faces because of the security lights; that they went to Meshack and asked for his phone and Mpesa pin and phone password and when Meshack hesitated to give them, they beat him with the club. Meshack told them that he was a soldier but they said they hate soldiers and continued to beat him till he gave them what they wanted. The people went back to her, searched her and asked for her phone but she told them the person who ran off went with it and that is when they said they would rape her because she had nothing; that the tall person raped her first then the shorter one and they used her clothes from the bag to wipe themselves. They ordered her to remain there for five minutes. They went away with the motorcycle which they had moved from the road. After they left she went to check on Meshack and found him unconscious and his breathing was faint. She got the phone, entered the maize farm and called Brian who responded and told her not to leave the place because he had reported to police. Police came about 4.00 a.m. and took Meshack and her to Kitale hospital for treatment, later she learnt that Meshack had died. Later she was called on an identification parade at Kiminini Police Station and she was able to identify the two accused as the culprits.
7. PW4 Brian Kirwa recalled 4/9/2024, he was with his cousin Meshack and about 10.00 p.m., he decided to go to Soi with Meshack to get his girlfriend PW3 Sheila. They went on motorcycle KMDW 736R Red Honda. While returning from Soi with Meshack and Sheila, at Maili Saba, a torch was shone at his face and when he reached the light, he was suddenly hit on the right shoulder, lost control and the motorcycle fell on the road. He noticed that he was hit by a tall person but he did not see the face. After the motorcycle fell, he ran towards the maize farm and did not know where the other two went. After he entered the maize, he walked along the railway line till he reached Sirende Police Station. He reported and went with police to the scene and found PW3 crying and bleeding from the head. Meshack lay near a wall and breathed with difficulty; that Meshack had a hole next to the eye and the head was swollen. Both PW3 and Meshack were taken to Kitale hospital. Meshack was pronounced dead on arrival. He said that Meshack had two phones and a wallet but they were not found on him. He identified the deceased's phones as techno camon 30 and techno spark 7 Pexhibit 14 (a) and 15 (a). PW4 also identified the motorcycle that he had been riding on day of the attack Pexhibit 17.
8. PW5 Pc Wesley Masibo of crime scene investigation recalled that on 25/3/2025, he prepared a report in respect of several photographs of a scene of crime at Kaliwa village, Kiminini sub-county. He first photographed the house front and back, and whole compound Pexhibit 6 a, b and c. He photographed a motorcycle KMAW 736 (MFI 4). Photographs of 13 national ID cards placed on a solar panel MFI



- 7 (a) and deceased's ID card Pexhibit 4. PW5 also took photographs of suspected police uniforms; a partly burnt bag, assorted household items which were both inside and outside the house i.e. chairs, tables, gas cylinder, sufurias, jungle boots, shoes e.t.c. PW5 also photographed school identification card of Kitale polytechnic for Kipkorir Meshack Kipkoech (the deceased). He also photographed KCB bank ATM for Meshack Kipkoech; identity card of Meshack Kipkorir 39077821 all produced as MFI No. 4 – bundles. He produced a certificate certified the photographs and dated it 25/3/2025. In cross examination, PW5 admitted that not all items photographed were captured in the report.
9. PW6 Jackline Ayoo recalled that her husband died in 2023 and his fellow workmates bought for her land at Mukoyet in Kiminini 50 x 100 as evidenced by a copy of the agreement. She started to build a house on the land in 2023; that her brother Jared Odhiambo (PW7) used to look after the house but nobody lived there. PW6 identified her home in the photographs (Pexhibit 4).
  10. PW7 Jared Odhiambo recalled that in 2022, land was bought for his sister PW6 at Kaliwa Mukoiwet. The family decided that he starts constructing a house for his sister on the said land – semi-permanent. He did not live at the house but only supervised its construction; that in May, 2024, one Reuben Karakacha, his customer at his hotel and a motor cyclist, told him that he was looking for a place to live. PW7 asked him to stay in the sister's house for a while; that he was not paying for the house; that whenever he went there, he sometimes found accused 1 and sometimes he did not.
  11. On 7/9/2024 a police officer called to inform him that he was required at Kitale police station and was asked if he knew of the sister's house at Kaliwa. He was informed that people had been found there with stolen property and if he knew them. He told them he knew Reuben. On 8/9/2024 he was asked to record a statement at Kiminini police station. He identified accused 1 as Reuben. He did not know how police got his contact. He did not see the alleged stolen goods.
  12. PW8 IP Edward Ekisa Deputy OCS Kiminini police station testified that on 8/9/2024, he conducted a parade in respect of two suspects; that his parade consisted of 11 people who were about the same height and body size of the suspect and the first suspect to be identified by Sheila Mwangale by touching was Reuben Karakacha (Accused 1). The parade form was Pexhibit 6 (a). The second parade was in respect of Tom Wafula where he lined up 9 people including the suspect; that the suspect stood between parade members 5 and 6. Again PW8 said that the members of the parade were of nearly the same size and that the parade was in the office where the witness could not see the suspects. The parade forms were produced as Pexhibit 6 (a) and (b).
  13. PW9 Francis Manyonge of DCI Kiminini was the investigating officer in this case. PW9 testified that a murder report was made at Maili Saba Police Station under OB 3/5/9/2025 and he proceeded to the scene with Sgt Faith and learnt that robbers had attacked three people on a motorcycle. The owner of the motorcycle had been killed while two survived, and one Sheila had been raped. On 7/9/2024 they received a tip off of a gang operating from Kaliwa village where a dead body had buried in the compound. A team of officers from DCI visited the scene and were shown the house. They knocked on the door and the occupants refused to open. They broke the window and on entering, found the people had tried to set their things on fire, phones and police uniform. They recovered assorted items including ID cards which included that of Meshack Kipkorir, KCB ATM (Pexhibit 13) and Kitale polytechnic identity card and two phones, Techno camon and Techno spark which belonged to the deceased Meshack. Also recovered was motorcycle KMDW 736R stolen from the deceased at time of attack.
  14. An inventory of the recovered items was made by IP Omondi and the suspects (42 items). He signed the inventory. He identified the photographs taken of the scene and recovered items. He identified both accused 1 and 2 as the suspects who were found in the said house.



15. PW10 Sgt Faith Kishoin was the lead investigating officer in this case assisted by PW9 Pc Manyonge. PW10 said that was a case of robbery with violence reported at Maili Saba Police Station, vide OB 3/5/9/2024. They proceeded to the scene, then Kitale hospital where Sheila (PW3) was admitted but PW4 Brian had been treated and discharged. After her discharge, PW10 recorded PW3 statement where she narrated how they had been attacked on the night of 4/9/2024; that Brian ran one direction while she ran opposite direction with the deceased (Meshack) where the robbers caught up with them because there was a wall. She was injured on the head and raped while the deceased who fell a few metres from her was seriously injured and his property stolen and was later pronounced dead on arrival in hospital at Kitale.
16. When recording her statement, Sheila informed PW10 how the suspects wiped themselves with her blouse after they raped her and produced it in evidence as Pexhibit 7 (white with flowers) and that which she wore at time of attack white/black – Pexhibit 8 and her black jumper Pexhibit 9.
17. On 7/9/2025 they received a tip off and with other officers went to surround a house at Kaliwa area. They knocked but the door was not opened and they broke the window and one of the suspects started setting the house ablaze. They recovered assorted items in the house. They recovered a motorcycle in the house and later got the sale agreement in respect of the motorcycle from the deceased's father, dated 10/4/2024, between Meshack Kipkorir Koech and Noah Kipkemei Sitienei made before Isaac Bungei advocate (Pexhibit 10) registration number KMDW 736R. It was red in colour with black seat (Pexhibit 11). PW10 stated that many things were recovered at the said house which are not related to this case; that in the inventory, 42 items were recorded by IP Paul Omondi (Pexhibit 12). PW10 said that several ID cards were recovered including that of the deceased (Pexhibit 13). Deceased's KCB ATM card (Pexhibit 13 (b) and deceased's Kitale polytechnic ID card (Pexhibit 13 c). They recovered 4-5 phones and two belonged to the deceased, Techno camon 30 and techno spark 7. A box, a receipt for the Techno camon was dated 17/6/2024 bearing the IMEI No. of the phone was produced in court (Pexhibit 14 a, b and c). For the techno spark, receipt bearing the IMEI No. dated 29/11/2024 and box Pexhibit 15 (a, b, c) were produced.
18. PW10 established that the house where they were arrested belongs to PW6 Jackline Ayoo who had left it under the care of her brother (PW7) who in turn gave it to accused 1 as a caretaker. After an identification parade was conducted and PW3 identified the accused, they were charged with this offence.
19. Accused persons were called upon to defend themselves. Accused 1 Reuben Karakacha testified on oath (DW1). He denied having committed the offence and stated that he is a motorcycle rider and that on 5<sup>th</sup>, his motorcycle was spoilt and he had no money to repair it. He did not work that day and on 6<sup>th</sup> September, 2024, he went to the stage and somebody came there on a motorcycle and said that he was looking for people to go and till some land and plant beans/maize; that he agreed to go with the person (Jared PW7). He went with Jared to see the land, cut maize, dig and plant beans; that the land was at Mukoyet and they used Jared's motorcycle. Jared told him to sleep in the house so that he could start the work early next day; that the house had things inside, a bed, jericans and other household things. He slept in one of the rooms, one room was locked and nothing was in the sitting room. He denied knowing PW3 Sheila and that she was seated in the OCS's office where they went to the parade and that PW10 pointed to them and told PW3 to pick them out; that on the parade the members wore different clothes.
20. He further stated that Jared brought accused 2 next morning and went to get sugar when the police arrived; that they were told to sit down and they ran into the house for safety. He admitted to signing the inventory, but that he did so at police station after PW10 forced him to do so. He admitted that the



things produced in court were found in the house where he was arrested. He denied knowing about the items produced in court.

21. DW2 Tom Wafula (Accused 2) testified on oath that he used to sell chang'aa. He denied the charge and stated that on 6<sup>th</sup> he was seated at the club 100 when somebody called him by his nickname Sam and asked him to go and help him with work at Kaliwa Mukoyet. They went to the place and found Accused 1 and that Jared (PW7) left to go and buy sugar and DCI officers arrived; that Accused 1 ran into the house and he followed him. The DCI officers knocked the door but they refused to open because they were scared; that the officers broke the door and removed them and took them to Kitale then Kiminini while the recovered items were taken to DCI offices. He did not know whether the things were for accused 1 or the owner of the house. They were forced to sign statements. He signed the inventory on 7/9/2024. He said that Jared knows him well. As regards the parade, he said that indeed PW3 touched him.

22. The accused persons face a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. It is the duty of the prosecution to prove its case beyond reasonable doubt. The standard of proof in criminal cases was discussed in the case of Woolmington -vs- DPP 1935 UKHL1, where the court stated thus;

“Throughout the web of the English Law, one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner’s guilt..... if, at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given by either the prosecution or the prisoner, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained”

23. Lord Denning in Miller -vs- Ministry of Pensions [1947] ALL ER 372 defined what ‘beyond reasonable doubt’ means, and said:-

“The degree is settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The Law would fail to protect the community if it admitted fanciful possibilities to defeat the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice”.

24. In this case the prosecution has the duty to prove beyond reasonable doubt the following ingredients:-

1. The death of the deceased;
2. That the accused caused the death through an unlawfully act or omission;
3. That the accused possessed malice aforethought.
  1. Death of the deceased

25. PW4 Brian Kirwa was present when the deceased arrived in hospital at Kitale and was pronounced dead on arrival. PW10, the investigating officer was present when PW1 Dr. Nanyingi performed post mortem on the deceased. He found the head to be deformed, a frontal skull fracture amongst other injuries and found the cause of the death to be head injury secondary to assault by a blunt object. PW3



testified that they were assaulted using clubs. The deceased did not die of natural causes but due to blunt injuries inflicted on him.

2. Whether the accused caused the death

26. The attack on the deceased, PW3 and 4 occurred deep in the night after 1.00 a.m. PW4 was not able to identify anybody at the scene. The only identifying witness is PW3, Sheila. When a case entirely turns on evidence of identification or recognition, the trial court has to warn itself of the dangers of relying on evidence of a single identifying witness because of the possibility of error.
27. In *Wamunga -vs- Republic* [1989] KLR 422, the Court of Appeal said inter alia:-
- “Where the only evidence against the defendant is evidence of identification, or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can make it a basis of a conviction”.
- Again .....”if a case depends entirely on evidence of identification, the court must warn itself of the dangers of such evidence because of possible errors that can be made and lead to injustice”.
28. In *Anjononi -vs- Republic* [1980] eKLR 59, the Court of Appeal said
- “This was a case of recognition, not identification of assailants; recognition of an assailant is more satisfactory, more assuring and more reliable than identification of a stranger because it depends on personal knowledge of the assailants in some form or other”.
29. PW3 told the court that she was able to see the accused persons because she was attacked when she reached a dead end, that is at the perimeter wall, where there were security lights. PW3 spent time with the attackers for a while as they robbed them. In addition, PW3 was raped by the two attackers and therefore came into very close contact with the assailants during her ordeal. PW3 said as much. She described their body built and their clothing on the said night.
30. Having warned itself of the dangers of relying on the evidence of a single identifying witness this court is satisfied that due to the proximity of the accused to PW3 during the whole ordeal and time spent together, she positively identified her two assailants.
31. An identification parade was conducted by PW8 at Kiminini Police Station where PW3 purported identified the accused persons. Whereas this court has no issue with PW3 identifying the accused persons yet clearly from his own admission, PW8 did not comply with all the Force Standing Orders. At paragraph B of the parade form although both the accused were asked if they wanted a friend or solicitor to be present at the parade, they responded in the affirmative. However, PW8 never did anything towards ensuring that their request was met. Attendance of the parade by a friend or solicitor is to ensure that the parade complies with Force Standing Orders and safeguarding the rights of the accused persons. Failure to allow the accused persons to have their friends or solicitors at the parade was prejudicial to the accused persons and the court will therefore disregard the identification parade.
32. The deceased was murdered on 5/9/2024 during a robbery where property was stolen from him. On 7/9/2025, two days later, the accused persons were arrested in a house at Kaliwa where many items were recovered including some of the deceased’s stolen items. There is no dispute that the accused persons were arrested in the house where a lot of suspected stolen goods were recovered which were listed in the inventory produced in court as evidence Pexhibit 12. PW10 produced the deceased’s identity card in the



name of Meshack Kipkorir Kipkoech (Pexhibit 13 a), KCB ATM in the name of the deceased (Pexhibit 13 b), Kitale polytechnic identity card for the deceased (Pexhibit 13 c). Although the investigating officer did not verify with Safaricom to confirm whether the two phones recovered in the said house, Techno cammon 30 Pexhibit 14 (a) IMEI No. 351129550236469 and Techno spark (Pexhibit 15) IMEI No. 357576284285903, were used by the deceased before his death, the receipts issued when the phones were purchased showing the IMEI numbers and the boxes in which they were purchased were produced in evidence as (Pexhibit 14 b and c) and 15 (b) and (c) respectively. PW4 had seen those phones with the deceased. I find that the prosecution proved that the two phones also belonged to the deceased.

33. Also recovered at the house was the motorcycle stolen after the attack. PW4 identified it as the deceased's, motorcycle registration number KMDW 736R, red in colour covered with a black cover (Pexhibit 17). A sale agreement and receipt issued to the deceased in respect of the motorcycle were produced as Pexhibit 10.
34. Both accused 1 and accused 2's defence is that they had been hired by PW7 (Jared) to work on his land at Kaliwa. The accuseds narration of how they were found outside the house by DCI officers and that they ran into the house for safety makes no sense and is unbelievable. If indeed the accuseds were outside the house, the logical thing would have been to run away from the scene. PW9 and PW10's testimonies were consistent, that the occupants of the house where they later recovered several items refused to open the door and they were forced to break the window to gain entry and that in the process, accused tried to set ablaze some of the exhibits, like the deceased's phone (Pexhibit 14 b) which was partially burnt.
35. Further the accuseds' defences are unbelievable because PW7, PW9 and PW10 testified before this court. The accuseds counsel cross-examined the witnesses at length and it was never alleged that PW7 had hired the accused persons to work for him on that day. PW7's evidence that he had allowed accused 1 to use the house and care for it stands unchallenged. The defences were an afterthought and I dismiss them as such.
36. After considering the evidence on record, this court finds that the accuseds were in recent possession of the deceased's property. In the case of Isaac Ng'ang'a Kahiga alias Peter Ng'ang'a Kahiga -vs- Republic [2016] eKLR the Court of Appeal set down the criteria that must be established before a finding of recent possession. The court said;-

“It is trite that before a court of law can rely on the doctrine of recent possession as a basis for conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first, that the property was found with the suspect, secondly, that the property is positively proved to be the property of the complainant, thirdly, that the property was stolen from the complainant and lastly, that the property was recently stolen from the complainant. The proof as to time, as has been stated over and over again, will depend on the easiness with which the stolen property can move from one person to the other.”

See also Malingi -vs- Republic [1989] KLR 225.

37. In this case, the items stolen from the deceased on morning of 5/9/2024 were recovered in the accuseds' hideout on 7/9/2024. The items were positively identified as the deceased's and I find that the recovery of the deceased's property with the accused, two days after the robbery and murder, placed the accused at the scene of the murder. This court has no doubt that PW3 positively identified the two accused as the people who caused the deceased's death.



## Proof of Malice Aforethought

38. Malice aforethought is defined in Section 206 of the Penal Code as follows:-

“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.

39. In *Hyam -vs- DPP* [1974] AC the court held inter alia;

“Malice aforethought in the crime of murder is established by proof beyond reasonable doubt when during the act which led to the death of another, the accused knew that it was highly probable that, that act would result in death or serious bodily harm.”

40. Malice aforethought can also be inferred from the acts of the accused person as stated in *Ernest Asami Bwire Abang’a alias Onyango -vs- Republic* CACR A. 32/1990 where the court held:-

“The question of intention can be inferred from the true consequences of the unlawful acts or omission of the brutal killing, which was well planned and calculated to kill or do grievous harm upon the deceased.”

41. In *R.V Tubere s/o Ochen* [1945] 12EA CA 63. the court held:-

“In determining existence or non-existence of malice, one has to look at the facts proving the weapon used, the manner in which it was used, and the part of the body injured.”

42. PW3 who was with the deceased narrated how the robbers assaulted them with clubs. The deceased’s head was found to have been deformed with fractures to the skull. The assailants must have used a lot of force when inflicting the injuries. They aimed at a delicate part of the body, the head. Their intention was obvious, to inflict grievous harm on the deceased or end his life and they achieved their objective. Malice aforethought was proved.

43. Consequently, I find that the prosecution has proved beyond any doubt that the two accused, with malice aforethought murdered the deceased. I find them guilty of the charge of Murder under Section 203 of the Penal Code and convict them accordingly.

**DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 17<sup>TH</sup> DAY OF DECEMBER, 2025**

**R. WENDOH**

**JUDGE**



Judgment delivered in the presence of:-

Mr. Mokaya for the State

Mr. Kimani for the accused

Accused 1 – Present

Accused 2 – Present

Juma/Hellen – Court Assistants

