



**Republic v Okwomi & another (Criminal Case 30 of 2020)  
[2026] KEHC 480 (KLR) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 480 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL CASE 30 OF 2020**

**RK LIMO, J  
JANUARY 27, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JANE NAKHUMICHA OKWOMI ..... 1<sup>ST</sup> ACCUSED**

**MICHAEL EKWOMI OCHUMO ..... 2<sup>ND</sup> ACCUSED**

**JUDGMENT**

1. Jane Nakhumicha Okwomi and Michael Ekwomi Ochumo are jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on 1/10/2020 at Sikhendu Village, Namanjalala Location in Kwana Trans-Nzoia County together with others not before court unlawfully murdered George Wanjala Khaemba.
2. Both the accused persons denied committing the offence and the prosecution called a total of 7 witnesses to support their case against the accused persons. The prosecution’s case is based on direct evidence.
3. Isaack Wafula Mushebebe (PW1) testified that he was at his home sleeping on 30/9/20 when he heard screams from someone crying nearby. He stated that he woke up and noted that the screams emanated from some 20 metres away from his house. That he saw one Nyongesa approaching where he was and he informed him that George (deceased) was being beaten. That he then saw the 2<sup>nd</sup> accused Michael Okwomi Ochumo beating the deceased with a stick. That he went to where the two were and asked the 2<sup>nd</sup> accused why he was beating the deceased and he told him that the deceased had stolen maize. That he did not see the maize. That after a few minutes, the 1<sup>st</sup> accused came with a torch and began beating the deceased as he cried for mercy and telling the accused persons not to kill him.
4. When pressed under cross-examination to explain how he recognized the accused persons yet it was dark, he stated that both accused persons and the deceased were neighbours to him. That there was



moonlight and that he went very close to where 2<sup>nd</sup> accused was beating the deceased and that the 1<sup>st</sup> accused came with a torch and recognized her by voice.

5. He denied suggestions that the deceased was beaten by a mob. He testified that he left the accused persons beating the deceased and he went to sleep. That when he woke, he was informed by his wife that the deceased was inside the maize plantation and they tried to help him by giving him soup but he succumbed.
6. He recalled that he was in the company of one Nyongesa who was also assaulted by the 2<sup>nd</sup> accused. He stated that he knew the 1<sup>st</sup> accused as Jennifer not Janerose and that she was mother to the 2<sup>nd</sup> accused.
7. Everlyne Nanjala (PW2) the wife to the deceased stated that she woke up on 1/10/20 to the bad news that her husband had been beaten and was lying at the road side in a maize plantation at Sikhendu. That she went and found him beaten, not talking and looking dirty. She stated that she rushed home to get clothes but when she returned she found him dead already. That when she observed his body she saw injuries on the side of his body and that there were many people at the scene. She stated that she was informed that her husband had been beaten but did not see the maize alleged to have been stolen.
8. PC Alex Simbizi (PW3) a crime scene expert stated that he was called to the scene of the incident on 1/10/2020 by officer in charge Namanjalala police post at around 10.30am. That he went upto Sikhendu village where he was shown a body of one George Wanjala (deceased). He stated that the scene was outside a shop. That he processed the scene by taking photographs. he tendered them as follows;
  - a. Photograph of a nearby farm where it was suspected that the deceased was killed and removed PExhibit 1(a), (b) and (c).
  - b. A mud path to the farm with drag marks to where the body was PExhibit (d).
  - c. Photographs of the body PExhibit 1(e), (f) and (g).
  - d. Injuries on the body PExhibit 1(h), (i), (j), (k) and (l).
9. He further stated that he prepared a certificate dated 7/10/20 and signed it. He tendered it as PExhibit 1(m). He testified that when he arrived at the scene he found many people at the scene and that the body was lying next to a shop.
10. Dr. Alex Nanyingi Barasa (PW4), the doctor who performed autopsy on the body of the deceased, stated that he did so on 4/10/20 at Kitale County Referral Hospital. He stated that externally he noted the following; Right massive frontal hematoma with depression deformity – that the neck was deformed. Multiple bruises all over the body ranging from 1cm to 4cm. Fracture of the patella on the left knee. Depressed skull fracture with injury of the brain parenchyma on the right frontal region. Contusion with hemorrhage on right anterior cerebrum. Central vertebra C2, C3 and C4 were displaced with central spine injury.

The doctor upon examination concluded that the cause of death was severe head and spinal injury secondary to assault by blunt object. He stated that he issued a burial permit and tendered the Post Mortem report as PExhibit 2. He further stated that the body was identified by Ezekiel Wasike and Charles Masinde. He further stated that the death was caused by blunt object and multiple injuries could be consistent with a mob attack.
11. Charles Masinde Wasike (PW5) stated that he was a cousin to the deceased and that on 4/10/20 he was called to Kitale County Referral Hospital to identify the body of deceased which he did in the company of his uncle Ezekiel Wasike.



12. Inspector Emmanuel Kasan (PW6), the investigating officer in this case testified that on 1/10/20 at around 10am he received information from Namanjalala police post about a murder incident at Sikhendu. He stated that officers from Namanjalala police post visited the scene and removed the body and took it to Kitale County Referral Hospital. He stated that statements were recorded from witnesses and that after Post Mortem report came out 2 suspects were arrested after the investigations linked them to the murder. That he revisited the scene of crime on 6/10/2020 and that there were allegations that the deceased had stolen some maize but he found no evidence to support the allegations. He further stated that the scene of murder was a land belonging to the accused persons.
13. PC Dennis Masimo (PW7), on his part testified that at the material time he was based at Namanjalala police patrol base. He recalled that he was on duty on 1/10/20 when a lady named Jane Okwomi (1<sup>st</sup> accused) reported a sudden death. That she stated that on 30/9/20 at around 21hours she was patrolling her farm and found a body of a male adult lying in her farm. That he informed his boss and together with DCIO officers from Kwanza they visited the scene and found many people who reported that the farm owner had killed the deceased.
14. He further stated that the body of the deceased was later taken to Kitale County Referral Hospital and he returned to the base. That around 1300 hours one Gabriel Nyongesa reported an assault case against one Michael (2<sup>nd</sup> accused) who was attacking the deceased. He stated that suddenly both Michael and his mother Jane Okwomi went to the station and he arrested them. That the DCI officers later arrived and took them.
15. He stated under cross-examination that the 1<sup>st</sup> accused had reported that she found the body of the deceased the previous night after she heard screams and that she found a mob beating the deceased. He stated the body of deceased was found inside the maize plantation owned by the 1<sup>st</sup> accused.
16. When placed on their defence, Michael Ochumo Okwomi (DW1) denied the murder charge. He stated that on 1/10/2020 he was in Kitale working when he was called by his mother (co-accused) at 2pm and told to go to Namanjalala police post. That he went there and was told to speak with the OCS who inquired from him where he was the previous night because someone had been found killed.
17. He stated that on 30/9/2020 at around 5.30pm he had left for Kisumu and arrived there at 8.30pm. That he came back the following day. He stated that he had been sent to Kisumu by his employer to collect a parcel and that he slept in Kisumu in a friend's house. He however conceded that in his statement to the police he did not mention that he had gone to Kisumu. He insisted that he travelled by public means and paid Kshs.1400/- to Kisumu. He said that he picked the parcel from an individual not a company and conceded that it was cheaper sending the parcel to Kitale rather than going for it himself.
18. According to him the deceased was killed by mob justice.
19. Janerose Nakhumicha Okwomi (DW2) testified that she resided in Namanjalala and that on 30/9/2020 she was home watching TV at around 9pm when someone knocked at her door. She stated that the knock was loud and when she told the person who was knocking to enter, he did not enter and that when she opened the door, she noted that it was Babu who reported to her that a thief had been caught stealing maize from her farm. That she proceeded to the farm in the company of Babu and found many people at the scene including Boda Boda riders inside her farm. That she spoke to the person caught and that it was George (deceased). That he asked for forgiveness and that she told him that he should have asked for maize instead of stealing. That the deceased asked for forgiveness promising not to repeat it again. That it was raining at the moment and she left him at the farm and



- went home and called her husband to inform him of the incident. That her husband was in Nairobi and that he advised her to call the village elder.
20. She testified that the following day she went to check where her maize was stolen before heading to “Nyumba Kumi” elder to report. That after reporting she went home and heard people saying that someone had been called and when she went to check she found it was the same George (the deceased). That he was lying dead about 100 metres away from the farm near a busaa den.
  21. She stated that the village elder advised her to go and report at Namanjalala police post because the deceased had been found stealing her maize. She stated that she went and reported. That the OCS asked her the person she was staying with and she told him that she stayed with her son the 2<sup>nd</sup> accused. That the OCS asked her to call him which she did and the son went to the police station. That both of them were arrested and placed in the police custody and later charged with murder.
  22. When pressed in cross-examination, she stated that the deceased was stealing her maize and was unhappy about it because she had invested much in the maize. She stated that she recognized George (deceased) when she arrived at the scene and did so through his voice. She stated that Wafula (PW1) is a next neighbour and that they have issues regarding chicken belonging to PW1 which keep on crossing to her plot which does not please her. Though she had not reported to anyone.
  23. Shadrack Tanui (DW3) testified that he was a businessman dealing with cosmetics and an employer of the 2<sup>nd</sup> accused Michael Okwomi Ochumo. He confirmed that he sent him to Kisumu on 30/9/2020 to collect some items from there. That he brought the goods to him the following day at 9am and left for home at 10am. That he later learnt that he had been arrested over a case of murder.
  24. When pressed under cross-examination he stated that he had no receipts for the goods he purchased in Kisumu and which the 2<sup>nd</sup> accused had gone to collect. He also stated that he never recorded a statement with the police. That he swore an affidavit regarding sending the 2<sup>nd</sup> accused 4 years after the incident. He stated that the police did not call him to do so.
  25. The defence in their written submissions dated 27/10/25 done through learned counsel Walter Wanyonyi & Co Advocates submits that the prosecution bore the burden of proof and contends that the prosecution are required to demonstrate through evidence that the accused persons committed the offence. They urge this court to be persuaded by the famous position held by learned Author William Blackstone’s maxim that “it is better that ten guilty persons escape than that one innocent suffers”.
  26. The defendants submit that the incident occurred at night and that PW1 stated that he witnessed the incident with one Nyongesa who was not called as a witness. They contest the intensity of the light and how it assisted him identify the accused persons.
  27. They point out that PW1 stated that the name of 1<sup>st</sup> accused is Jennifer not Janerose. It is further contended that PW1 left the scene at 10pm and did not know what transpired thereafter.
  28. They further wonder why PW1 and the wife of the deceased decided to give soup to the deceased instead of taking him to hospital.
  29. They submit that because it was dark there was a possibility of error in identification by a single witness. They rely on the case of Republic –vs- Turnbull & Others (1976) 3 ALL ER 549 where the court observed that recognition maybe more reliable than identification of a stranger but that court should be reminded that mistakes in recognition of close relatives and mistakes are sometimes made and that what is important to consider is quality of the identification evidence. That where the quality is good and remains good at the close of the defence case, the danger of mistake identification is lessened but the poorer the quality the greater the danger.



30. The defence further relies on *Mary Wanjiku Gichira –vs- Republic* (CR.A No.17 of 1998) where the court held that suspicion however strong cannot provide basis for inferring guilt which must be proved by evidence.
31. The defence faults the police for failing to produce the eye witnesses who were at the scene to assist this court unveil the truth. They contend that PW1 and his friend who stay near the scene may have chosen to give incriminating evidence against them to exonerate himself.
32. They submit that there are surrounding circumstances which weaken the inference of guilt against the accused persons and rely on the case of *Paul -vs- Republic* (1976-80) IKLR 1622. They have however not pointed out the surrounding circumstances but insist that they are law abiding citizens who were punished by making a genuine complaint of theft of their maize.
33. The State in its written submissions dated 9/9/25 by Mark Mugun Principal Prosecuting Counsel holds a different view. It submits that it has proved all the ingredients of the offence and has given a summary of the evidence tendered in court.
34. The State submits that the fact of death and its cause were well established by the evidence tendered by PW4 (doctor). That the body of the deceased was identified by PW5 and that the doctor concluded that the deceased did not die of natural causes but from deliberate actions of another.
35. They submit that the accused persons were positively recognized by PW1 as the people who were seen assaulting the deceased. The State admits that it was dark at the material time which meant that identification could be hampered but it points out that this was a case of recognition. That PW1 is a neighbour and someone quite familiar with both the accused persons.
36. The state further discounts the defence of alibi by the 2<sup>nd</sup> accused. It submits that the 2<sup>nd</sup> accused should have raised the issue of alibi at the early stages of trial to enable the prosecution test the veracity. It relies on the decision of *Karanja –vs- Republic* (1983)eKLR where the court observed inter-alia alibi should be raised at the earliest opportunity to prevent suggestions that it is raised as afterthought. The State points out that the issue of alibi was raised for the first time by the 2<sup>nd</sup> accused in his defence which according to them leads to irrefutable inference that it is afterthought.
37. On mens rea – the state cites the provisions of Section 206 of the Penal Code and submits that the 2<sup>nd</sup> accused hit the deceased with a jembe handle and that the 1<sup>st</sup> accused was seen hitting the deceased with a stick several times. It points out that the serious nature of injuries suffered is an indication that a lot of force was used in beating the deceased.
38. The State further submits both accused were annoyed and unhappy about their stolen maize which they had invested time and resources to produce. It submits that both the accused collectively assaulted the deceased in a bid to extract information from him why he had stolen their maize. That with each and every individual and collective strikes from the accused persons, common intention can be inferred. It relies on the case of *Republic –vs- Simon Ikunza Lusuli* (2024)1761/KLR) where a deceased died from injuries sustained from beatings by a mob justice and the court held that the prosecution was only required to prove that the accused person was present, was actively involved or stood by and watched as the deceased was attacked. The State submits that the 2<sup>nd</sup> accused was not in Kisumu as alleged but busy participating in a mob justice, beating the deceased. The State contends that the witness availed by the accused had difficulties explaining why all of a sudden he dispatched the 2<sup>nd</sup> accused to go and collect a parcel in Kisumu.
39. This court has laid out both the prosecution’s case and its submissions. I have also laid out the defence put forward and the submissions made. Both the accused persons as observed are charged with the



offence of murder contrary to section 203 of the Penal Code. In cases of this nature the prosecution are required to establish and prove beyond reasonable doubt the following ingredients through evidence;

- i. Fact of death and its cause.
- ii. Actus reus or that the unlawful act of commission or omission was committed by the accused person.
- iii. Malice aforethought or mens rea.

#### **Fact of death and its cause.**

40. Doctor Alex Barasa (PW4) who conducted autopsy on the body of the deceased testified about the findings he noted upon Post Mortem examination. He tendered the Post Mortem report as PExhibit 2 which indicated that the deceased died due to severe head injury and spinal injury secondary to assault with a blunt object. The doctor stated that the body of the deceased was identified by Charles Masinde (PW5) and Ezekiel Wasike. PW5 testified and confirmed that fact. The element of death of the deceased and its cause were therefore proved beyond any reasonable doubt.

#### **Actus reus**

41. This element is highly contested in this case with the 2<sup>nd</sup> accused raising alibi as a defence. The state however insists that the cause of death of the deceased is linked to the accused persons.
42. It is quite evident that going by the evidence tendered, the prosecution's case on this important ingredient hinges on the evidence of a single witness, Isaac Wafula Mushebebe (PW1) and to some extent circumstantial evidence.
43. The question posed is whether evidence of a single witness will suffice to found a conviction. It is now well settled a fact may be proved by testimony of a single witness but a court must be cautious and warn itself of the risk. It is true that a fact is not necessarily only proven by testimonies of more than one witness. What is important is the quality and credibility of the evidence. In the case of *Maitany – vs- Republic* (1986) KECA 39 (KLR), the court made the following observations;

“Subject to well-known exceptions, it is trite law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification was difficult. In such circumstances what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from possibility of error..... that the court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making the decision. It must do so when the evidence is being considered and before the decision is made”.

44. In the present case PW1 stated that when he heard screams he went outside and realized that someone was being beaten barely 20 meters away. He stated that he saw one Nyongesa who informed him that the deceased was being beaten for stealing maize. He stated that he saw the 2<sup>nd</sup> accused beating the deceased and he went to where he stood with Nyongesa and hit him as well. He stated that it was at night but “there was moonlight”. That the “2<sup>nd</sup> accused came near me. I recognized him. The accused persons are my neighbours”. He further stated that he recognized the 1<sup>st</sup> accused because she went to



the scene with a torch. This is how he put it; “I recognized the 1<sup>st</sup> accused by her voice and the fact that she had a torch”.

45. The defence submits that the evidence of PW1 should not be given weight because he misled the police probably to exonerate himself but the question is what wrong did he commit? There was no evidence showing that PW1 had any ill motive against the deceased or the accuseds. The 1<sup>st</sup> accused stated that PW1 used to allow his chicken to cross over to her homestead because they are immediate neighbours but in my view, if that was the case the person to feel annoyed, even if that fact was true, was the 1<sup>st</sup> accused because it is her who felt aggrieved by the chicken spoiling her garden.
46. This court does not find anything incriminating PW1 in murder of the deceased. Besides that, I do not see any reason advanced that could reasonable make PW1 lie or implicate the accused persons falsely or try to fix them as they submit.
47. This court having taken caution of relying on the evidence of PW1 alone finds that there are other surrounding circumstances that I find support the prosecution’s case. The basis of my finding is based on the following circumstantial evidence;
  - i. The deceased was reportedly caught stealing maize belonging to the accused persons. The persons who felt more aggrieved by the incident were the accused persons. The 1<sup>st</sup> accused stated as much in her defence.
  - ii. Going by the evidence of Scene of Crime officer, Alex Sambizi (PW3), the deceased’s body was found outside a shop but there was evidence that it was dragged along a mud path from the nearby farm that belongs to the accused persons. The photograph taken and tendered as PExhibit 1(d) clearly demonstrates that fact. This poses the question, if the deceased was killed by a mob inside the accuseds’ farm where he was reportedly caught stealing maize, why remove the body from the scene and drag it outside the farm? Is not that evidence of someone trying to escape culpability? The only persons who could have done that or caused that to happen are the accused persons for obvious reasons. The accused persons in their defence tried to rely on the narrative of mob justice and in my view, they tried to remove the deceased from the scene where he was beaten to a road to fit into that narrative.
48. The 2<sup>nd</sup> accused person raised the alibi as his defence and even called a witness (DW3-Shadrack Tanui) to support it. This court has considered the alibi raised by the 2<sup>nd</sup> accused and finds that the same fell short for the following reasons;
  - i. The standard required for an accused to successfully rely on alibi was well captured by the decision in *Erick Otieno Meda –vs- Republic (2015) KEHC 8434 (KLR)* where the court observed as follows;
    - a. “An alibi needs to be corroborated by either witnesses and not just a mere regurgitation of the events from accused’s point of view.
    - b. An alibi needs to be introduced at an early stage so as to allow it to be tested especially during cross-examination at the trial.
    - c. The alibi defence or evidence may often rest on the credibility of the accused and the reliability of the evidence that he or she has presented in court.
    - d. The accused does not need to prove the alibi but the prosecution must have presented its case that the accused is guilty beyond a reasonable doubt so as to allow alibi to fail”.



49. The earlier decision cited by the State in the case of *Karanja* (supra) is even more elaborate. The court held that in testing defence of alibi a court must weigh it against the evidence tendered in the entirety to see if the accused's guilt is established beyond all reasonable doubt. The court further found that the defence of alibi should be raised at the earliest opportunity or early stage of trial so that the same is tested by the person charged with investigations to rule out or prevent suggestion of afterthought.
50. In this instance, the 2<sup>nd</sup> accused only raised alibi when the trial had reached defence stage. The alibi raised by the 2<sup>nd</sup> accused was negated by the following factors;
- i. The narrative that he was sent by his boss to Kisumu on 30/9/20 to collect a parcel was not supported by any concrete evidence. He says he was going to collect supplies for Cosmetic business run by DW3 but he could not explain where exactly he collected the parcel.
  - ii. It was Covid times at the time and most parts of this county were under lockdown. That is a fact that this court takes judicial notice of. DW3 and the accused were hard-pressed to explain why it was not convenient and even cheaper to use courier services rather than send 2<sup>nd</sup> accused physically to Kisumu. Was it not safer and cheaper to use courier services? That question was not answered.
  - iii. Thirdly the evidence of DW3 was a bit shallow and he appeared that he was out to provide cover for his employee rather than telling the truth. There was no documentary evidence to demonstrate the type of goods purchased or even a demonstration of payment that the goods were legitimate and bona fide goods for business. The supplier of goods was not identified and the entire alibi raised in my view was evidently an afterthought and unsupported. This is clearly seen from the initial statement made by the 2<sup>nd</sup> accused to the police. When pressed in cross-examination if he indicated that he had travelled to Kisumu during the material date, he replied that he had not, which clearly shows that the alibi was an afterthought aimed at just providing an escape route to the 2<sup>nd</sup> accused. This court is not persuaded by that defence.
51. The other significant evidence that arose from the testimony of 1<sup>st</sup> accused (DW2) is the fact that she concedes that she went to the scene. That she found deceased being beaten. That he asked for mercy from her but after asking him why he stole, she went home and slept and only decided to report the incident to the authorities the following day, perhaps after learning of the condition of the deceased. Why did she not report the incident immediately to the police as any responsible person would do or even call the area chief or village elder? That omission in my view is quite telling and it goes to show culpability on her part.
52. This court finds that the prosecution's case has been proved beyond reasonable doubt that both the accused were either responsible or part of the persons who seriously assaulted the deceased on account of stealing their maize. The element of actus reus is well proved.

### **Mens rea**

53. The nature of injuries inflicted on the deceased are well captured by Post Mortem report and the evidence of Doctor Alex Nanyingi Barasa (PW4). The deceased suffered serious injuries to wit depressed skull fracture, massive frontal hematoma with depression deformity, multiple bruises and spine injury. These type of injuries by themselves show that whoever caused them did not mean well and intended to cause grievous harm. The provisions of section 206 of the Penal Code come into play in such circumstances.



The section provides;

“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”.

The evidence of PW1 indicated that the deceased was beaten by accused persons using sticks. That fact is corroborated by the findings of the doctor that the injuries were caused by blunt object.

54. This court finds that the prosecution’s case against the accused is proved beyond any reasonable doubt. The issue of mob justice was brought up as an excuse but the real culprits are the accused persons. While the deceased may have been caught stealing maize, there was no reason to cause or inflict grievous harm to him. They should have escorted him to police station and let the law take its course rather than taking the law into their hands. In so doing, they unlawfully caused the death of the deceased and are hereby found guilty as charged. They are convicted accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 27<sup>TH</sup> DAY OF JANUARY , 2026.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of

Mr Mugun for the State

Wanyonyi for accused persons

Both accused persons – present

Duke/Chemosop- Court assistants

