



**Republic v Langat (Criminal Case E034 of 2022)
[2026] KEHC 644 (KLR) (21 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 644 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E034 OF 2022
TA ODERA, J
JANUARY 21, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

VINCENT CHERUIYOT LANGAT ACCUSED

JUDGMENT

1. vincent Cheruiyot Langat, the accused herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 19th February 2019 at Ramasha Trading Centre within Masaba South Sub-County, the accused murdered Charles Onditi Omwancha (the deceased).
2. The accused pleaded not guilty and the matter proceeded to full trial. He is duly represented herein by Mr. Wilkins Ochoki Advocate.
3. The prosecution called a total nine (9) witnesses, At the close of the prosecution case, the court found that a prima facie case had been established and placed the accused on his defence pursuant to Section 306(2) of the Criminal Procedure Code. Defence called two (2) witnesses.

Prosecution’s Case

4. PW1 Francis Omwenga Alias Bokora testified that in the morning of 19.2.2019, he found the deceased lying in a ditch along Ramasha–Masimba Road. The deceased was alive but unable to speak and breathing with difficulty. He was taken to hospital where he remained until he later died.
5. PW2, Charles Onditi Ntabo an uncle to the deceased, testified that on the evening of 18.2.2019, he had been drinking with the deceased at Club 23. He later learnt from a bar attendant that the deceased had caused disturbance over an unpaid bill and that police officers were called and took him away.



6. PW3 Peter Nyachoti Omwancha and PW4, Meshack Omwancha Ntabo are relatives of the deceased, they are testified that they found the deceased unconscious, with no visible injuries, and that he later died after undergoing treatment in several hospitals.
7. PW5, Jared Momanyi the owner of Club 23, testified that he was informed of a disturbance involving the deceased and that the accused, a police officer, had been called to the scene.
8. PW6, PC Jesse Kariuki, testified that he accompanied the accused to Club 23 on the material; day after a distress call. He stated that the deceased was drunk and uncooperative. He testified that the accused pointed a stick at the deceased, who then fell on cemented stairs. He denied seeing the accused assault the deceased. He said that a man known to him as CPC raised up deceased and they advised that he escorts deceased home as CPU said they were neighbours.
9. PW7, Zablon Omwancha the deceased's brother, testified that he saw boot marks on the deceased's ribs and that scans revealed a fractured skull caused by blunt force trauma.
10. PW8, Dr Leah Obosi Okoro the pathologist, produced the post-mortem report and opined that the cause of death was raised intracranial pressure due to epidural haematoma caused by blunt force trauma.
10. PW9, Godfrey Chelasi an IPOA investigator, testified that his investigations revealed that the accused had hit the deceased using a piece of wood which he had. On cross-examination, PW9 admitted that none of the witnesses who testified in court stated that they saw the accused hit the deceased and that the statement of PW6 did not reveal that accused hit deceased. Also, and that the initial police investigations had earlier found insufficient evidence to charge accused.
11. The accused opted to adduce sworn testimony. He admitted responding to a distress call from the bar but denied assaulting the deceased and causing him the fatal injuries alleged. He stated that the deceased was who was drunk had refused to pay his bill and leave the bar. He removed deceased from the bar and he was eventually escorted away by a civilian known as "CPU". He maintained that he left the scene without incident.
12. DW2 testified that the deceased was heavily intoxicated, violent, and disorderly at the bar, and that he left him in the bar with one patron and the bar workers.
13. The defence submitted that the prosecution has failed to prove their case beyond any reasonable doubt and that the evidence on record cannot sustain a conviction as mere suspicion, a scintilla of evidence, or discredited testimony is insufficient.
14. Defence also submitted that though it was proved that deceased was killed the prosecution failed to prove the remaining essential elements: that the accused committed the unlawful act or omission causing death, and that he acted with malice aforethought.
15. The defence argues that the prosecution's case rests entirely on circumstantial evidence, with no direct evidence linking the accused to the death of the deceased. Citing authorities on circumstantial evidence, including Kipkering arap Koske, Mwangi v Republic, and Daniel Musyoka Muasya, it is submitted that the evidence does not irresistibly point to the guilt of the accused nor exclude other reasonable hypotheses. Also, that the testimonies of PW1–PW5 and PW7 only relate to discovery of the body and does not implicate accused.
16. On malice aforethought, the defence submits that no evidence was led to demonstrate motive, intention, or knowledge on the part of the accused as required in law. None of the prosecution witnesses established circumstances from which malice aforethought could be inferred. Authorities



such as *Republic v Peter Ingoka Khatsimba* and *Republic v Silas Onzere* are relied upon to show that failure to prove malice aforethought is fatal to a murder charge,

17. Defence prayed for acquittal of accused.

18. Prosecution did not submit in this case.

Issues for Determination

19. I have carefully considered the prosecution's case defence and submissions by defence. The following issues arise for determination:

1. Whether the death of the deceased occurred and the cause thereof;
2. Whether the accused committed an unlawful act or omission that caused the death;
3. Whether malice aforethought.

Analysis

(a) Proof of Death and Cause

20. There is no dispute that Charles Onditi Omwancha died. The post-mortem report produced by PW8 conclusively established that death resulted from raised intracranial pressure due to epidural haematoma caused by blunt force trauma. This element was proved beyond reasonable doubt.

(b) Whether the Accused Caused the Death

21. The issue of identification of the assailant of deceased is the central issue herein. No witness testified to have seen the accused assault the deceased. PW6, a police officer who was in company of accused in the bar that night police officer present, expressly denied seeing the accused hit the deceased. He said accused pointed at deceased with a stick he was carrying and deceased fell down the stairs. The IPOA investigator's evidence (PW9) that the accused hit the deceased was thus hearsay as it was not supported by evidence.

22. This court noted material contradictions and gaps in this case. Pw6 said the disputed unpaid bill was Kshs. 300/=, PW2 said it was Ksh. 1000/= while PW9 said it was Kshs. 750/=. These witnesses were giving different accounts of the gist of the reason why deceased refused to leave the bar. The evidence of PW2 is hearsay as Margaret who narrated the incident to him was not called as a witness. Pw9 said his evidence was based on the testimony of PW6. However, his evidence and that of PW6 varied. This goes to the root of investigations and credibility of the witnesses as was held in the cited case of *Irene Rose Wanjira vs Republic* (2016) eKLR.

24. It has also emerged that the bar workers, namely Lydia, Margaret., Judy and Charles Osoro alias "CPU" who were allegedly in the bar at the material time were not called to testify herein. The evidence of the bar workers was crucial as it was direct evidence to show whether accused assaulted deceased, the gist of the incident and what happened between the bar and the scene as the said "CPU" is the one who allegedly left with deceased as per the evidence of PW6 and PW9. No plausible explanation was given for failure to call the said witnesses or whether they recorded statements. Failure to call the said witnesses leaves doubts in the mind of the court as to what happened in the bar on the material night and also at the scene. It is trite law that failure to call a crucial witness would lead to an inference that had the witness been called then his evidence would have been adverse to that of prosecution as was



held in the case of *Bukenya & Others v Uganda* [1972] EA 549 where court held that: -. In the case of *Bukenya & Others v Uganda* [1972] EA 549 court addressed itself thus: -

- “(i) The prosecution must make available all witnesses necessary to establish the truth even if their evidence may be inconsistent.
- (ii) That Court has right and the duty to call witnesses whose evidence appears essential to the just decision of the case.
- (iii) Where the evidence called is barely adequate, the court may infer that the evidence of uncalled witnesses would have tendered to be adverse to the prosecution.”

25. There was no direct evidence to point to the accused as the assailant of deceased, I now move to consider whether there was circumstantial evidence which can sustain a conviction. Circumstantial evidence must meet the threshold set out in *Sawe v Republic* [2003] KLR 364 where the court of appeal was observed that in order to justify circumstantial evidence, the inference of guilt, inculpatory facts must be incompatible with the innocence of the accused and the incapable explanation upon any other than of guilt and that there must be no other co-existing circumstances weakening the claim of circumstances relied upon. The Court of Appeal equally stated that the burden of proving fact that justify the drawing of the inferences from the facts to the exclusion any other reasonable hypothesis of innocence lies with the prosecution and does not shift at any time to the accused. Also, so in the case of *Rex v Kipkering Arap Koske & 2 others* (1949) EACA 135 the court stated that:

“In order to justify a conviction 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 hypothesis than that of his guilt and the burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is always on the prosecution and never shifts to the accused.”

26. In this case, the accused interacted with deceased hours before he was found with the serious injuries which caused his death. I have considered prosecution’s case and defence of accused in which he denied assaulting the deceased. The evidence adduced by prosecution does not exclude the possibility that the deceased sustained the fatal injuries after leaving the bar, especially considering his intoxicated state and the fact that he left the bar with “CPU” who was not called to explain what transpired between the bar and the scene as he was the last person to be seen with the deceased. The deceased was found alive, several hours later, away from the bar, and with no visible injuries according to most of the witnesses who saw the body. There is a clear break in the chain of events between the time the accused left the bar and the time the deceased was found unconscious. The evidence herein is a based on mere suspicion against accused which however strong, cannot form a basis for a conviction as was held in the case of *Mary Wanjiku Gichira v Republic*, Criminal Appeal No 17 of 1998, the court held that suspicion however strong, cannot provide a basis for inferring guilt which must be proved by evidence. Before a court of law can convict an accused person of an offence, it ought to be satisfied that the evidence against him is overwhelming and points to his guilt. This is because a conviction has the effect of taking away the accused’s freedom and at times life”.

(c) Malice Aforethought

26. Having found that the prosecution failed to prove that the accused caused the fatal injuries to the deceased, the issue of malice aforethought does not arise.



27. This is a criminal case and the standard of proof is that of beyond any reasonable doubt. It is also trite law that he who alleged must prove under Section of the law of *Evidence Act*. Prosecution failed to discharge its burden of proving the charge of murder against accused any beyond reasonable doubt as required. The evidence against the accused is insufficient to sustain a conviction against him.

Disposition

28. I accordingly, find vincent Cheruiyot Langat the accused NOT GUILTY of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. I proceed to acquit him of the said offence under under Section 322(1) of the Criminal Procedure Code. Security deposited as bond be released to the depositor.

28. 14 days Right of Appeal.

T.A ODERA

JUDGE

21.1.26

Delivered virtually on this 21st day of January 2026 in the Presence of:

Accused

Mr. Ochoki for the Accused

Mr. Koima for the State

Court Assistant - Mr. Kipchirchir.

