



**Republic v Lilumbi & 2 others (Criminal Case 61 of 2015)
[2026] KEHC 911 (KLR) (2 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 911 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 61 OF 2015
AC BETT, J
FEBRUARY 2, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

BONIFACE LILUMBI 1ST ACCUSED

SETH TALIA SHAMALLA 2ND ACCUSED

MESHACK LIPEYA CHIMWANI 3RD ACCUSED

JUDGMENT

1. The Accused persons were charged with the offence of murder contrary to section 203 as read with section 204 of the penal code.
2. The particulars are that Boniface Lilumbi alias Bonny, Seth Talia Shamalla alias Setsu and Meshack Lipeya Chimwani, between 20th and 21st September, 2015, at Mundulu village, Shidodo sub-location in Murhanda Location, Kakamega East District, within Kakamega county jointly murdered Agnes Mmbone Shioso.
3. The Accused persons took a plea after a mental assessment, where they pleaded not guilty to the offence.
4. The prosecution called 4 witnesses in support of its case.
5. PW1, Wilson Tom Mwavaka, was the Assistant Chief. He testified that on 21/9/2015 at 7.30 a.m. He received a call from a village elder informing him that there was a murder at the home of Gerald Liceche. He was informed that Gerald’s wife and 6-year-old had been killed in their house, and when he proceeded to the house, he found a large crowd had gathered, and the body of the deceased was covered in blood.



6. He managed to interview the mother-in-law, who claimed that the deceased had informed her that her life was in danger as the 1st and 2nd Accused persons had threatened her.
7. He stated that he called for the 1st Accused person, who was brought to him armed with a slasher, and when asked, he claimed he was with Seth, the 2nd Accused, who was also brought in but later re-arrested by the police. He claimed that the police searched the 2nd Accused's home and found nothing, but did find a panga at the 1st Accused's home. He identified the 1st and the 2nd Accused as his friends for over 10 years.
8. On cross-examination, he confirmed visiting the scene of the crime and seeing the body of the deceased, bloody and lying on its abdomen, although he never saw any injuries. He confirmed that the 1st and 2nd deceased individuals were together, but he did not inquire into how long they had been together.
9. He stated that the police officer visited the Accused's home, although they did not find anything linking them to the crime.
10. PW2 was Christine Ivayo Vichondo. She recalled that on 21/9/2015, she was at home and on her way to pick tea when she received a call from her neighbour, Julius, informing her that the deceased had been killed and her child rushed to the hospital. She stated that she went to the scene and found the 1st Accused, Boniface, seated with a slasher and Agnes dead in her house. She went inside the house and found the deceased's bloody body lying on the floor.
11. She said that the crowd started attacking the 1st Accused, alleging that he had killed the lady, which he denied, claiming he was with Lewis. She testified that she lived with Lewis, but has not seen him since.
12. She testified that they went to the police to record the statement. She identified the 1st Accused as Boniface and claimed that Lewis, aka Lewi, inherited her after her husband died. She stated that she and Agnes were married within the same family and resided on the same homestead.
13. She claimed that on 19/9/2015, the 1st and the 2nd Accused were drunk and threatened to kill her and the deceased and on 20/9/2015, the deceased came to her house informing her that the 2nd Accused had lifted her skirt, claiming that she smelled of blood and that she would die on that day.
14. She stated that she reported the incident to her mother-in-law and later, when the 1st and the 2nd Accused attacked her, she was advised to report to the village elder. She identified the two Accused persons on the dock, stated that she had been married in the home for 26 years, and denied having any known grudge against either of them.
15. On cross-examination by Mr Osando, she confirmed that she had been married for 26 years in the homestead and that the deceased's husband was working in Nairobi at the time of the incident.
16. She referred to her witness statement dated 20/09/2015, where she recorded that the deceased claimed that she had been attacked by the 1st Accused person while preparing tea for her farm workers. She claimed that she never saw the killing of the deceased, but in the morning, when she went to her house, she found a crowd outside her house, and saw the cuts on the deceased's head.
17. PW3 was Sebethia Muchiti Mukabwa, who, on the night of 20th and 21st September 2015, woke up and went to work at 7.00 am, and at 10.00 am, she received a call from her son John informing her that Agnes had been killed. She said that they went over to Agnes's house and found a crowd who claimed that the 1st and the 2nd Accused had killed the deceased. She claimed that three days later, the 1st Accused came to her house and attacked her.



18. On cross-examination, she testified that she never saw the person who killed the deceased and that she never reported anywhere about her attack.
19. PW4 was Dr. Dickson Mchana, a consultant pathologist with Kakamega County. he stated that the autopsy report was authored by Dr. James Akhonya, who had gone for further studies. He confirmed that he was familiar with the doctor's handwriting and signature. The autopsy was conducted on 24/09/2015. The body was identified by Alexandria Jomu and Josephat Mbadi, and it was well preserved with chemicals and had two external injuries with two deep skull wounds at the back of the head. He stated that she had bled above the brain coverings (massive epidural haematoma).
20. The Doctor concluded that the cause of death was intracranial bleeding due to blunt force trauma. He issued the burial permit No. 299805. He took samples from the body's vagina (High vaginal swab – HVS) and blood. He then signed and stamped the postmortem report on 24/9/2015. He produced it as an exhibit. P. Exh.1.
21. On cross-examination, he confirmed that the specific injuries were the cut and wounds on the back of the head. Although the time of death was not indicated, he stated that there were no defensive injuries on the deceased.
22. On 27th January 2025, the court ruled that the 1st Accused person had a case to answer and placed him on his defence. The 2nd and 3rd Accused were acquitted of all the charges.
23. When placed on his defence, the 1st Accused opted to stay quiet.
24. The 1st Accused's Counsel filed their submissions dated 3rd November 2025, where they asserted that the Accused was innocent, like the other co-Accused, who had been acquitted of the same charges.
25. He raised three issues for determination. On the first issue of whether the evidence was enough to establish a prima facie case against him, he stated that the prosecution witnesses never placed him at the crime scene or linked him to the offence and quoted the Court of Appeal case of Abanga alias Onyango vs. Republic (Criminal Appeal No. 32 of 1990) eKLR and Republic vs. Kiprop & Another [2025] KEHC 1804 (KLR) on reference of a case based on circumstantial evidence.
26. He averred that none of the witnesses saw the 1st Accused inflicting any injury on the deceased and claims that he himself was a victim of mob justice, not a perpetrator of murder. There was no forensic evidence linking him to the murder of the deceased. He stated that no mens rea was established by the prosecution for the unlawful killing.
27. On whether the prosecution had proven its case beyond reasonable doubt, he claimed that the prosecution evidence was based on hearsay evidence of prior threats and purported recovery of a panga that had no forensic evidence or evidential connection to him. he stated that no evidence placed him at the crime scene which left doubts and gaps on the prosecution's case in the required burden of proof and prays to be acquitted under section 215 of the Criminal Procedure Cod

Analysis and determination

28. I have carefully considered the charge and the evidence on record. The following are the main issues for determination;
 - a. Whether the death of Agnes Mmbone Shioso occurred, and the cause thereof;
 - b. Whether the death was caused by an unlawful act or omission



- c. Whether the prosecution proved beyond reasonable doubt that the 1st Accused caused the death of the deceased
 - d. Whether malice aforethought was established within the meaning of section 206 of the Penal Code.
29. On whether the death of the deceased occurred and what caused it. It is not in dispute that Agnes Mmbone Shioso is dead. The fact of death was proved through the testimony of PW1, PW2, and PW3, all of whom saw the deceased's body at the scene, and was conclusively confirmed by PW4, the pathologist.
 30. From the uncontroverted evidence of PW4, Dr. Dickson Mchana, who produced the post-mortem report (P. Exh. 1), the deceased, Agnes Mmbone Shioso, died as a result of intracranial bleeding due to blunt force trauma occasioned by two deep skull wounds and fractures at the back of the head.
 31. The court therefore finds that the prosecution proved beyond a reasonable doubt that the deceased died and the cause of death. This position is consistent with *Benson Ngunyi Ndungu v Republic* [1985] KECA 51 (KLR), where the Court of Appeal held that proof of death and its cause is a foundational requirement in murder trials.
 32. On whether the death was caused by an unlawful act, PW4, the consultant pathologist, in his testimony, described the injuries as severe, targeted and that it could not be self-inflicted. There was no indication that it was due to lawful justification, such as self-defence. In *Republic v Tubere s/o Ochen* [1945] 12 EACA 63, the court held that the nature of injuries and the manner in which they are inflicted may lead to the inference that the act causing death was unlawful.
 33. This court therefore finds that the death of the deceased was due to an unlawful act.
 34. The most crucial issue for determination is whether the prosecution proved that the 1st Accused had caused the death of the deceased. Based on the analysis of the prosecution witnesses, the prosecution's case is premised on circumstantial evidence. The applicable principles governing circumstantial evidence were well articulated in *Sawe v Republic* [2003] KECA 182 (KLR), where the Court of Appeal held that such evidence must:
 - a. Be incompatible with the innocence of the Accused, and
 - b. Be incapable of explanation upon any other reasonable hypothesis than that of guilt.
 35. PW1 testified that the deceased had allegedly complained of threats from the 1st and 2nd Accused before her death. PW2 also spoke of prior threats and suspicious conduct. However, it is noteworthy that none of the witnesses witnessed the act of killing, and no murder weapon was recovered and conclusively linked to the 1st Accused. There was no forensic evidence tendered to place the 1st Accused at the scene at the time of the killing; The panga allegedly recovered was not produced in evidence nor linked to the injuries described in the post-mortem. The alleged threats, while relevant, were not independently corroborated.
 36. Importantly, PW2 testified that when she arrived at the scene, the 1st Accused was seated outside the house and claimed that he had been with another person. This conduct, while suspicious, does not of itself amount to proof of guilt. The court is guided by *Abanga alias Onyango v Republic* [1990] eKLR, in which the Court of Appeal cautioned that suspicion, however strong, cannot be the basis for a conviction.



37. Further, although the 1st Accused had opted to remain silent in his defence, this court is alive to the provisions of Article 50(2)(i) of *the Constitution* and section 306(2) of the Criminal Procedure Code. An accused person bears no burden to prove his innocence.

38. In *Bhatt v Republic* [1957] EA 332, the court held that a prima facie case must not necessarily lead to a conviction, but one upon which a reasonable tribunal could convict if no explanation is offered. At the final stage, the standard remains proof beyond a reasonable doubt.

After a thorough analysis, this court finds that the chain of circumstantial evidence in this case is incomplete, with gaps leaving room for other reasonable hypotheses.

39. On whether the prosecution had established malice aforethought, malice aforethought is defined under section 206 of the Penal Code and may be inferred from the nature of the weapon used, the part of the body targeted, and the conduct of the Accused before and after the incident.

While the injuries inflicted were undoubtedly severe, the court cannot infer malice aforethought in the absence of proof that the 1st Accused was the perpetrator of those injuries.

40. As held in *Nzuki v Republic* [1993] KECA 83 (KLR), malice aforethought cannot be presumed merely from the fact of death; it must be proved by evidence.

41. In light of the foregoing analysis, this court finds that:

- a. The prosecution proved the death of the deceased and that it was caused unlawfully.
- b. However, the prosecution failed to prove beyond reasonable doubt that the 1st Accused, Boniface Lilumbi, caused the death of Agnes Mmbone Shioso;
- c. Consequently, malice aforethought was not established against the 1st Accused.

42. Accordingly, the court finds the 1st Accused not guilty of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He is hereby acquitted and shall be released forthwith unless otherwise lawfully held.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA, THIS 2ND DAY OF FEBRUARY 2026.

A. C. BETT

JUDGE

In the presence of:

Ms. Chala for the State/Prosecution

Mr. Shifwoka holding brief for Ms. Repha for the Accused

Court Assistant: Polycap

