



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ochieng & 4 others (Criminal Case E098 of 2021)
[2026] KEHC 937 (KLR) (2 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E098 OF 2021
AC BETT, J
FEBRUARY 2, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH OCHIENG 1ST ACCUSED

VINCENT MWANJE 2ND ACCUSED

TITUS ONDEYO 3RD ACCUSED

PATRICK MAKOKHA 4TH ACCUSED

MOSES MUNALA 5TH 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. The particulars are that on the 11th day of January 2021, at Ebungaya village in Emusala sub-location, Kakamega Central Sub-county within Kakamega county, murdered one Douglas Mirimi Muhanda.
2. The Accused persons all pleaded not guilty, and the matter proceeded to a full hearing, during which the prosecution called 4 witnesses.
3. PW1 was Leonita Angado Milimo, the mother of the deceased. She testified that she knew all five of the Accused and identified the 1st Accused as “Mdosi”, the 2nd Accused as Tito, the 3rd Accused as Joseph Ochieng, the 4th Accused as Bahati Patrick and the 5th Accused as Musa. She said that they came from the same area.
4. She recalled that on the eventful day at 7.00 pm, they were having supper with the deceased when they were joined by Kevin Muteyo, who asked the deceased for a cigarette, but the deceased did not have



- one. He proposed that they go to the 3rd Accused's home to buy cigarettes, but she was skeptical, as the deceased and the 3rd Accused had had a fallout in 2020, after the 3rd Accused had threatened to kill him.
5. She testified that Kevin persuaded the deceased to go with him with the promise that he would leave the deceased on the road and go to the 3rd Accused's alone. That the deceased and Kevin went to buy cigarettes at the 3rd Accused's place which was two bomas away from their house, and 20 minutes later she heard screams. She was informed that her son was being beaten by the 3rd Accused, and when she went to investigate, she met Geoffrey and Collins, who informed her that her son had been killed and the persons responsible were Bahati, Tito, Mdosu and James.
 6. She inquired about her son's whereabouts and was informed to go down the road, only to find him near a fish pond, lying on his back with injuries on his head and arms. There was no one at the scene when she got there.
 7. She testified that the owner of the fish pond rushed to the police station to report the incident. They had to wait at the crime scene in the company of some women from 8.00 p.m. to 3.00 a.m. until the police came to the scene and inquired about the perpetrators, and later took the deceased out of the fish pond and to a mortuary in Kakamega.
 8. On cross-examination, she acknowledged that she never mentioned Collins or Geoffrey in her statement to the police. She denied seeing her son's attackers or finding any weapon at the scene. She testified that the deceased and the 3rd Accused were not on good terms, as the 3rd Accused had threatened the deceased.
 9. She admitted that no identification parade was conducted after the Accused persons were arrested. She claimed that Collins and Geoffrey came back to the scene after the police had arrived to take the deceased's body. However, she never told the police that she suspected the 3rd Accused of killing her son or that he had sent Kevin to lure his son to his boma nor did she see her son or Kevin enter the Boma.
 10. On re-examination, she stated that the 2nd Accused was standing outside his boma with his wife and that the 3rd Accused was behind him wearing muddy clothes, although he never came to the crime scene.
 11. PW2 was Boniface Kuria Milimu. He stated that PW1 was his mother and that the deceased was his brother. He testified that on the fateful day, he came home at 8.00 pm and a lady from the 3rd Accused's home informed him to go and assist his brother, the deceased, who had been beaten and injured. He testified that he found two askaris at their home, and the 3rd Accused gave him directions to where his brother was, only to find his brother dead at the pond.
 12. He testified that the deceased had been hit on the face and back of the head, although there was no one else at the scene.
 13. On cross-examination, he denied having any relationship with the 3rd Accused nor knowledge of any differences between the deceased and the 3rd Accused or why the 3rd Accused would kill his brother.
 14. He testified to seeing the deceased lying in the mud with his trousers pulled to the knees. He stated that he remained at the scene until the police came to pick up the body. He claimed that Collins saw the persons who killed his brother, although there were no weapons at the crime scene.
 15. PW3 was Dr. Dixon Mchana, a consultant pathologist who conducted the postmortem on the deceased on 19/1/2021. He testified that there were lacerations on the head and a bulge of the nose and a second one beside it, on the back of the scalp on the right and the left side. He testified to a fracture on the base of the skull on either side with bleeding below the brain coverings on the right side.



16. He opined that the cause of death was severe head injury secondary to blunt force trauma, following assault. He produced the post-mortem report dated 18.1.2021 as PEx.1.
17. During cross-examination, he stated that the deceased was a victim of mob justice and the injuries were consistent with mob justice.
18. PW4 was PC Emmy Chepkoech Force No. 92814, attached to DC Kakamega Central. She recalled that on 14/1/2021, she was in the office when she was called by a colleague to take up a case that had been referred, involving mob justice, in the Emusala area.
19. She interviewed one witness, Leonida, who claimed that they were having supper with the deceased when his friend Kevin came to visit and wanted a cigarette. He asked the deceased to accompany him to Ochieng to get the cigarette, and later, she came to know that the deceased had been killed.
20. She claimed that upon investigation, they found that Joseph Ochieng was with some people. That he started shouting "thief" when the deceased was outside and people came and started beating the deceased. He tried to run, but he fell. They followed and beat him to death.
21. She stated that a report was made to Kakamega police station, and the body was taken to Kakamega Referral Hospital, and a post-mortem was done. The suspects were arrested and charged. She testified that she never saw Kevin. That PW3 told them that the 1st Accused was the one who was shouting "thief" although they never traced the weapon of attack. The deceased was hit on the head with a blunt object.
22. During cross-examination, she confirmed that the cause of death was a blunt object and that she had only viewed the deceased's body at the time of the post-mortem. She claimed that she had witnesses, although they never testified and did not conduct an identification parade. She referred to her statement, which did not indicate that Joseph Ochieng was the person who hit the deceased.
23. She stated that she never saw the panga or any blunt object or blood at the scene or any item linking the Accused to the deceased, and acknowledged arresting the Accused based on suspicions. Although Kevin was the last person seen with the deceased, he went missing and was never charged.
24. The prosecution closed its case, and the court found that it had established a prima facie case and placed the Accused persons on their defence.
25. DW1 was Joseph Ochieng. He testified that on 11/1/2021, he was at home with his wife, Mary Evaline a sister to the deceased's mother. He claimed he was not at the crime scene at the time, as he was at home. He stated that he was arrested on the allegations that he had killed the deceased although no weapon was discovered on him. He confirmed that he knew of Kevin Mutengo and Collins, referred to by Pw1 and Pw2 and denied killing the deceased.
26. DW2 was Evaline Sembe. She testified that DW1 was her husband, while PW1 was her sister, and the deceased was her sister's child. She testified that on 11/01/2021 at around 8.00 pm, her husband was at home. She denied the allegations that the deceased or Kevin came to their homestead, and that her husband killed the deceased.
27. During cross-examination by the prosecution, she stated that her husband was a businessman and denied the allegation that he sold cha'ngaa, nor the fact that Kevin or the deceased came to their homestead. She stated that she never heard any commotion. She said that she came to learn of what happened when the police came to their home.



28. DW3 was Vincent Mwanja. He denied knowing the deceased. He testified that on the material day at 8.00 am, he was not at home because he had gone to supply materials and was on the road; he arrived home at 9.50 pm. While on the road heading home, he met the police, and he was arrested with claims that he killed the deceased. He denied knowing Kevin, Geoffrey, or Collins, who PW1 mentioned.
29. On cross-examination, he stated that he knew his co-Accused, Josephat, who was his neighbour. He said he used to know the 3rd Accused, while the 4th Accused was his former fundi. As for the 5th Accused, he used to send him on errands as they came from the same place.
30. He denied being at the crime scene or having any differences with Geoffrey or Collins. He insisted that he was away with Javan on the material day.
31. On re-examination, he denied knowing Collins and Geoffrey and stated that he did not have a reason to kill the deceased.
32. DW4 was Titus Odeny. He acknowledged knowing the co-Accused and denied killing the deceased. He recalled that on 11/01/2021, he was asked to go to Shilomba. He stated that he had called Godfrey Makomere and that he was with Benson, Brilliant, Nickson, and John, who were preparing for a funeral.
33. He claimed that he only came to learn about the killing at the station when he was arrested. He denied there being an identification parade and denied knowing the deceased or who killed him.
34. During cross-examination, he claimed that on the material day, he came home at 6.00 am but he did not record his statement, but told the police he had been called to attend a funeral preparation.
35. On re-examination, he denied writing any statement. He claimed that he was never mentioned by any of the prosecution's witnesses and had denied killing the deceased, stating that he had no reason to kill him.
36. DW5 was Patrick Makokha. He claimed that on the fateful day, he was at home with his children and that he only learnt of the charges at the police station. He denied knowing Geoffrey Collins or Kevin Otengo, and denied that there was any identification parade.
37. During cross-examination, he testified that he was at the workshop on 11/1/2021 until 6.00 pm, and he was at home the whole time and only came to know about the killing after 2 days. He said that he was not informed of the killing, although they were related to the deceased.
38. On re-examination, he stated that the deceased was DW1 Joseph's wife's nephew, and he was informed of the incident on 13/11/2021 when he visited DW1. He denied having any motive to kill the deceased.
39. DW6 was Moses Swike. He denied killing the deceased. He claimed that on the material day he went to watch football and returned home at 10.00 pm. He said he did not know how the deceased died. He claimed that he was arrested on 18/1/2021 at about midnight and was not informed of the reason until he was at the police station, although no identification parade was conducted.
40. He acknowledged knowing the deceased, although he had no reason to kill him. He denied knowing Collins, Geoffrey or Kevin Otengo.
41. During cross-examination, he claimed that the 1st Accused, Patrick, Citrus, and Moses were his relatives. He stated that on the material day, he was out watching football and came home at 1 pm. However, he had no witness and came to know of the death of the deceased on 18/01/2021. He denied having any differences with the deceased.



42. The defence closed its case, and the parties were instructed to file written submissions, which this court has duly considered.

Analysis and determination

43. I have carefully examined and analysed the evidence on record. The ingredients of the offence of murder are well settled. The prosecution must establish:-

- a) the fact of the death of the deceased and the cause thereof;
- b) that an unlawful act or omission caused the death;
- c) that the accused persons perpetrated the unlawful act or omission; and
- d) that the accused persons acted with malice aforethought as defined under section 206 of the Penal Code

44. On the fact of death, there is no dispute that Douglas Mirimi Muhanda is deceased. The death was confirmed by PW1 and PW2, who identified the body, and further corroborated by the post-mortem evidence of PW3, Dr. Dixon Mchana, a consultant pathologist.

45. PW3's post-mortem report (PExh.1) established that the deceased sustained multiple lacerations to the head, fractures at the base of the skull, subdural bleeding, and brain swelling, and opined that the cause of death was severe head injury secondary to blunt force trauma.

46. This medical evidence was neither controverted nor shaken on cross-examination. The court therefore finds that the prosecution sufficiently proved the fact and cause of death.

47. On whether the death was unlawful, the nature of the deceased's injuries indicated that there were multiple lacerations and fractures to the skull, which resulted from assault by blunt force trauma, which is prima facie unlawful unless justified under law, such as in self-defence. No such justification was presented before this court to conclude that the injuries were a result of self-defence. It was PW3's testimony that the deceased was a victim of mob justice.

48. The courts have repeatedly held that mob justice is unlawful and criminal. In *Republic v Mohammed Dadi Kokane & 7 others* [2014] KEHC 1088 (KLR), the court emphasised that mob justice is an affront to the rule of law and cannot be justified under any circumstances. The court is satisfied that the death of the deceased resulted from an unlawful act.

49. On whether the perpetrators were positively identified, the prosecution's case was based on circumstantial evidence. It was the testimony of PW1, the deceased's mother, that she neither saw the person who attacked her son nor the attack itself. Her testimony was based on hearsay evidence from two individuals, who were not called as witnesses. PW2 similarly did not witness the assault and arrived after the deceased was already dead. His testimony equally relied on information allegedly given by third parties who were not called as witnesses. Similarly, PW4's reference to uncalled witnesses' statements constitutes hearsay and has no probative value.

50. Section 63 of the *Evidence Act* prohibits hearsay evidence unless it falls under specified exceptions, none of which apply here. It is trite law that hearsay evidence is inadmissible and cannot form the basis of a conviction in a murder trial as it violates the Accused person's right to adduce and challenge evidence as guaranteed under Article 50 (2) (k) of *the Constitution*.

51. Regarding identification, the witnesses stated that there was no identification parade conducted despite the arrests occurring days after the incident. PW1 claimed to have recognised the Accused as



neighbours, but her evidence places them near their homes rather than at the scene. In *Maitanyi v Republic* [1986] KECA 39 (KLR), the Court of Appeal cautioned that evidence of identification at night requires scrutiny, considering factors such as light, distance, and duration of observation, factors absent here.

52. The Investigating Officer claimed that her investigation was based on the 3rd Accused shouting "thief," but this was unsupported by direct witnesses. For circumstantial evidence to suffice, it must form a chain so complete as to exclude any reasonable hypothesis of innocence. It is well settled that circumstantial evidence must point irresistibly to the accused's guilt, with no co-existing circumstances weakening the inference. Here, the failure to call Collins, Geoffrey, and Kevin, the last person with the deceased, invites an adverse inference under Section 119 of the *Evidence Act*, as their testimony may have as well been unfavourable to the prosecution.
53. No weapons were recovered, and no forensic evidence links the accused to the scene.
54. On malice aforethought, Section 206 of the Penal Code provides for inference from the nature of injuries or weapons used. While the injuries suggest an intent to cause grievous harm, absent proof of causation by the accused, malice cannot be attributed to the accused.
55. In conclusion, the prosecution has not discharged its burden. The evidence is riddled with gaps, reliant on inadmissible hearsay, and is insufficient to prove identification or causation beyond reasonable doubt. Yes, there were grounds for suspicion based on alleged bad blood between the deceased and the 3rd Accused that the Accused persons committed the offence. But it is trite that however strong, cannot ground a conviction.
56. Accordingly, I find the Accused persons Joseph Ochieng, Vincent Mwanje, Titus Ondeyo, Patrick Makokha, and Moses Munala not guilty of the charge of murder. They are hereby acquitted and shall be released forthwith unless otherwise lawfully detained.

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 for the Accused

Court Assistant: Polycap

