



**Republic v Sanya (Criminal Case E004 of 2024)
[2026] KEHC 982 (KLR) (2 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 982 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E004 OF 2024
WM MUSYOKA, J
FEBRUARY 2, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

PHILIP ODUOR SANYA ACCUSED

JUDGMENT

1. The accused herein faces a murder charge, contrary to sections 203 and 204 of the Penal Code, Cap 63, Laws of Kenya. He is alleged to have had unlawfully caused the death of Harriet Mary Akinyi, on 13th June 2024, at Galumuyo village, Wakhungu Sub-Location, Samia Sub-County, of Busia County. He denied the charges, and a full trial was conducted. The prosecution presented 11 witnesses.
2. PW1, Vitalis Gabriel Omondi Pamba, a friend of the husband of the deceased, was telephoned, on the material day, and informed that she had been badly beaten, on allegations of stealing vegetables. He rushed to the scene, and saw her. She was so badly hurt, she could neither talk nor stand. She was spitting blood, had had swellings all over her body, and her clothes were torn and bloody. A certain Oketch was at the scene, taunting her, while Patrick Kasimu was asking that she be removed from his gate. PW1 did not find the accused at the scene, and he did not witness anyone assault her then. She was still alive when he arrived.
3. PW2, Patrick Wandera Wasilwa, was informed of the plight of the deceased by PW1. He went to the scene. He found a crowd of people at his gate, beating someone. Oketch was one of them. He saw him beat the deceased. PW2 went and fetched the village elder, and brought him to the scene, from whence they left and went and reported to the police. The police did not have a vehicle, so they advised PW2 and the village elder to take the deceased to hospital, by other means. They went back to the scene, but they were unable to remove the deceased from the scene, for she was so badly injured, she was unable to mount the motorcycle, that they were to use, as means of transport. They went back to the police, to establish if a vehicle had been found. It was still not available, so they were sent back to the scene,



- and found that she had died. They reported the death to the police, who later came, and removed the body. He stated that the persons who had assaulted the deceased included the accused, who was the owner of the kales or sukuma wiki, allegedly stolen, and a certain Elias Kasimu.
4. During cross-examination, PW2 mentioned Oketch and Elias Kasimu, as among those who assaulted the deceased at his gate. He said he saw them do it. He was unclear on whether he saw the accused assault the deceased, for he said that he had heard that he was among the persons who assaulted her. Although he said he saw the accused at his gate, he did not say whether he saw him assault the deceased, at that scene.
 5. PW3, Mary Nabutii Musumba, was the village elder. She was informed of the incident by PW2. She said that PW2 told her that they were assaulting a thief. He advised them not to assault the person. PW2 later came on a motorcycle, and fetched her, PW3, from her farm, and took her to the scene. When they got there, they only found the deceased, who said she had not stolen kales. PW2 and PW3 then travelled to the police station, at Funyula, but they were unable to get a police vehicle, to transport the deceased to hospital, for medical care. The police advised them to take the deceased to hospital, by other means. Back at the scene they were unable to load the deceased onto a motorcycle, due to the nature of the injuries that she had suffered. She later died, and the police came and removed her body. She said that she did not see anyone assault the deceased. During cross-examination, PW3 stated that the deceased had said that she had been assaulted by a crowd.
 6. PW4, Paul Wandera, was the husband of the deceased. He was informed that his pastor was looking for him, and when he eventually met him, he was informed that the deceased, his wife, had been beaten, for stealing. Before he could leave for the scene, where she was, his mother came and informed them that she had died. They rushed to the scene, to the mortuary and to the police. He was present at post mortem. He explained that the deceased had left home at 4.00 AM, with their 13-year-old daughter. He said that the deceased was assaulted by a mob.
 7. PW5, Rosette Nawire, was a daughter of the deceased and PW4. She testified that she and the deceased were on their way to the market, to buy avocados. On the way, they were attacked and chased by people, who were shouting that they were thieves. The deceased advised her to run and hide, which she did. She hid in a maize farm. From her hiding spot, she could see the deceased being assaulted, although she, the deceased, protested that they were not thieves. Those who were assaulting her also took her money, Kshs. 1,500.00. She testified that those assaulting the deceased also said they would find her, PW5, and kill her. She eventually left her hiding place, and went to a Church, and she ended up sleeping at a home near the Church. She said she could see the accused, a youth and a woman assault the deceased. She said that the accused hit the deceased, on the head, with a big stick.
 8. PW6, Dr. Odera Eric Odima, was the doctor/medical officer who conducted post mortem on the body of the deceased. He noted lacerations, on both the lower and upper limbs, a swelling below and above the ear, swellings on the entire right arm, bruises on the right thigh, an abrasion on the right knee, a bruise on the right leg, a bruise on the left upper arm, bleeding into the tissues of the left arm, abrasions on the left side of the thigh, and another on the right thigh, above the genital area, a degloving injury on the left calf, and bruises on the distal end of the left leg. Internally, there was a left lung contusion, a shrunken lung and haemorrhaging into the right ear. He formed the opinion that death was caused by introduction of blood and air into the left lung and on the right side of the brain. He identified the main cause of death as trauma. He ruled out falling, as the cause of the injuries that he noted, most of which, he said, were on the upper part of the body.
 9. PW7, No. 77996 Police Corporal Gabriel Onyango, was the arresting officer. PW8, Margaret Terry Obogo, testified that she found PW5 sleeping in a Church, who claimed that her mother had chased



her away, for not cooking. PW8 handed the child over to a village elder called Mary. PW9, No. 83283 Police Corporal Festus Kebenei, and PW10, No. 240192 Inspector of Police Kennedy Ogal, were part of the investigation team, while PW11, No. 109245 Police Corporal Shem Deya Othoo, handled the forensics side of the investigations.

10. At the end of the prosecution case, I delivered a ruling, on 29th May 2025, where I found that the accused had a case to answer, for a prima facie case had been established against him. I put him on his defence.
11. The accused testified on 7th October 2025. He continued to deny the charges. Regarding the material day of the killing, 13th June 2024, he testified that he woke up at 6.00 AM, and took his cattle to the farm/field. Thereafter, he did a number of chores at his home, for his wife was unwell, and his children were away. He left for the farm at 8.30 AM, and it was while on his way to his farm that he met people, who informed him of what had happened to the deceased. He followed those people to the scene, which was at the farm of Patrick Ngira. He said he did not hear of the person who had killed her. After that he proceeded to his farm, where he found that his vegetables had been harvested, for his crops had been scattered. He did not establish who had done it. After that he went home, to attend to his sick wife.
12. There are 4 elements to the offence of murder, which the prosecution must establish, to obtain a conviction for murder. These are proof of the death, the cause of the death, the role of the accused person in the causation, and malice aforethought on the part of the accused.
13. On proof of the death, there was overwhelming evidence, that the deceased in fact died. PW1, PW2, PW3 and PW4, all civilian witnesses, either saw her dead body at the scene or at the mortuary. PW9, PW10 and PW11 were police officers, who were involved in the investigations, one way or other, and they saw the body of the deceased, either at the scene or at the mortuary. PW11 took photographs of the body at the scene. PW6, the medical officer, performed autopsy on the body, after it was identified to him, by among others, PW4.
14. On the cause of the death, the evidence of the medical officer, PW6 is critical. He noted multiple injuries on various parts of the body. It was trauma, according to him, from those multiple injuries, that caused the death, although he fingered bleeding into the left lung and the brain as the decisive cause of the death.
15. On the role of the accused person in the causing of the death, there are the testimonies of PW2 and PW5, both of whom were at the different scenes, where the assaults happened, albeit at different times. PW5 was with the deceased, on their way to the market, at 4.00 AM. They were accosted by the accused and others, and she said she saw the accused assault the deceased with a big stick, on the head. It is notable that one of the decisive causes of the death, according to PW6, was haemorrhaging into the brain. She said that there was electric light nearby. She hid in a maize farm, and witnessed the deceased being assaulted, repeatedly, by the accused and 2 others.
16. After the assault at dawn, which PW5 witnessed, the deceased did not go home. The assaults on her continued until she died, at about 9.00 AM. or 10.00 AM. PW2 allegedly witnessed the assaults that happened after sunrise. He materialized at the scene at 8.00 AM. The scene, where PW2 came, was not where the earlier assaults had happened, at dawn, but at or near the gate to his own compound. He said that he found the accused, Oketch, and Elias Kasuku, among others, at the second scene. He mentioned that he saw Oketch and Elias Kasuku beat the deceased. However, he did not definitively say he saw the accused assault the deceased, but he had heard that he was among those who assaulted her. None of other witnesses identified the accused as the assailant.



17. The critical evidence should be that of PW5. She was with the deceased at 4.00 AM, when the initial assaults happened. She identified the accused as the main assailant. She said he was with a youth and a woman. She also identified the implement he used to assault the deceased. She described how she knew the accused, and also made reference to the light available to illuminate the scene, to aid her identification of the accused. Should I believe her? I saw and heard her testify. She impressed me as truthful, although a little intimidated. I believe that what she told the court was what she saw and heard.
18. Issues could arise, as to when the decisive injuries were inflicted, given that the assaults appeared to have been spread over a duration, and, perhaps, involving several persons. The initial assault was at dawn, and it involved the accused, a youth and a woman. The deceased did not escape from those 3 assaults; hence she was still available at sunrise, where she was allegedly assaulted further, by the likes of Oketch, Elias Kasuku, and others. The fact that she was not able to escape, after the first assault, at about 4.00 AM, would suggest that the initial assault was so bad, as to have had disabled or immobilised her. PW5 described a hit on the head with a big stick, wielded by the accused, and it would appear that that was the fatal blow. The assaults that followed, at sunrise, were on a person who had allegedly been disabled, and only served to weaken her further.
19. In defence, the accused only placed himself at the scene at daybreak, claiming that he only followed a crowd to the scene. He said that he was unaware that vegetables had been stolen from his farm, and that he discovered that only after visiting the farm, upon leaving the scene, where the deceased was lying dying. His defence was incredible. The matter arose from theft of vegetables from his farm. Without that alleged theft, there would have been no assault on the deceased, leading to her death. The trigger, of the whole episode, from the testimony of PW5, was the accused, for without his initial involvement, at dawn, there would have been no assault on the deceased, leading to the death.
20. The element of malice aforethought is of relevance where it is established that the accused had a role in the causation of the death. The evidence adduced, in this case, placed the accused at the scene of the assault on the deceased at dawn. He was said to be the initiator of the assault, and an active participant in it. There is need to consider, therefore, whether his participation was with malice aforethought.
21. The constituent elements of malice aforethought are spelt out in section 206 of the Penal Code. Malice aforethought is really the mens rea for the offence of murder. There are 2 key ones: intention and knowledge. It is about intention to kill, or to cause grievous harm, which leads to death; or to commit a felony, in the course of which death occurs. Intention, could be direct or implied. Direct, where the actus reus is accompanied by utterances, which point to an intention to kill. Indirect or implied, where an inference can be drawn, from the nature of the injuries inflicted, and the circumstances of their infliction, that whoever inflicted the fatal injuries intended to cause death. Knowledge goes with recklessness and indifference. It could be about the assailant engaging in conduct which could cause death or fatal injury, but is indifferent to the consequences, despite his knowledge that his conduct could lead to that outcome.
22. The deceased, according to PW6, died of trauma, caused by the multiple injuries that she sustained from being assaulted, between 4.00 AM and 10.00 AM, inflicted by different individuals. Before me, I only have 1 of those individuals, the accused herein. He initiated the assaults, according to PW5. She saw him hit the deceased, with a big stick on the head. As noted elsewhere, above, the injuries sustained at dawn must have been so bad, for they effectively disabled or immobilized the deceased, so that she remained at the general scene or area, where she was assaulted, from 4.00 AM to 10.00 AM, or thereabouts, when she died. The assaults at daybreak were only possible because she had been immobilized at dawn, and, therefore, available to be assaulted at daybreak. The person or persons, who inflicted the injuries at dawn, which immobilized the deceased, must have either intended to cause her



death, or to cause her a grievous injury, or to commit another felony, all of which are elements of malice aforethought. That person was identified, by PW5, as the accused person herein. It may be concluded that the accused then had malice aforethought, when he inflicted that decisive injury.

23. The deceased, from the testimony of PW6, died from trauma, caused by accumulative assaults, by multiple persons, over a period spanning from 4.00 AM to 10.00 AM. That could raise issues around complicity. The assault, at dawn, where the accused was said to have been active, did not cause immediate death. Other assaults followed, before the death at 10.00 AM, or thereabouts. It is possible that the latter assaults were more decisive, or accelerated the death. Whatever the case, all the assaults worked together, to weaken the deceased, and expose her to death. Those involved, in the said assaults, were engaged in unlawful acts. They might have intended death, or to cause her grave injury, or to commit some felony. The common thread, running through all those assaults, was an intention to inflict pain and injury on the deceased. There was indifference as to whether she could die from the assaults. There was common intention, to cause either death, or grievous harm, or to commit some felony, by assaulting her. All those involved had malice aforethought, and, on account of that, the accused cannot escape liability, on grounds that other assaults intervened, after his initial assault on the deceased.
24. Overall, it is my finding and holding that the prosecution has established, beyond reasonable doubt, that the accused person herein did, unlawfully, cause the death of Harriet Mary Akinyi, with malice aforethought, contrary to sections 204 and 205 of the Penal Code, and I hereby convict him, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya.
25. For the purposes of sentencing, I direct the Busia County Director of Probation and Aftercare Services to prepare a pre-sentence report, within 14 days. The sentencing hearing shall happen on 19th February 2026. The bond, issued to the accused, is hereby cancelled, the surety is, accordingly, discharged, and the security deposited, if any, shall be released to the depositor. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 2ND DAY OF FEBRUARY 2026.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Director of Public Prosecutions, for the Republic.

Ms. Waswani, instructed by Laki WI & Company, Advocates for the accused person.

