

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CRIMINAL CASE NO. E010 OF 2023**

**REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS**  
**VERSUS**  
**DENNIS PROTUS WAFULA.....ACCUSED**

**JUDGMENT**

1. The accused, herein, stands charged with the murder of Pamela Ndindi Ndubi, on 14<sup>th</sup> April 2023, at Nang'eni village, Bukhayo Central Location, Nambale Sub-County, in Busia County, contrary to sections 203 and 204 of the Penal Code, Cap 63, Laws of Kenya. He denied the charges, and a trial was conducted. The prosecution presented 9 witnesses.
  
2. PW1, Duncan Wandera Munyekenye, was a son of the deceased. He was telephoned, on the material day, and asked to go home. At home he found a crowd of people, and saw the body of the deceased, who was his mother, lying there, dead. There were injuries on the neck. He did not know what had happened to her. He identified the accused as his brother. He said that he did not know whether the accused had anything to do with the death. He said it was the accused who was staying at the home with the deceased, but he could not tell how the 2 related. He said that the deceased previously lived in Mombasa, and had recently relocated to the home. He mentioned that the accused lived in a separate house with the deceased. He said he did not know who killed the deceased.
  
3. PW2, Charles Simon Mutokaa, was a land agent, and an acquaintance of the accused. On the material day, 14<sup>th</sup> April 2023, he was to meet up with the accused, over some piece of land that was on sale. The accused, who appeared confused, or anxious, asked him to escort him to his uncle. When they got to the gate, PW2 asked the accused to tell him what he wanted him, PW2, to tell his uncle. He told him he had

done something bad, for which he was regretting, and he began to cry. He said his mother had sold his land, leaving him without a home. He said that when he confronted her over the matter, she produced a knife and wanted to stab him, but he wrestled it from her, and he ended up stabbing her on the neck, and she fell, where upon he fled. He asked PW2 for advice, who advised that PW2 should hand him over to the police. PW2 escorted him to the police station, at Nambale, where he was arrested.

4. PW3, Belinda Akinyi Ndubi, was a daughter of the deceased. On the material date, a neighbour telephoned her, asking her to go home, to see her mother. She rushed home, and found a crowd there. She entered the kitchen, and found the deceased lying there, in a pool of blood, dead. The blood covered the neck and chest. The police arrived, processed the scene and removed the body. The next day, 15<sup>th</sup> April 2023, the police retrieved a t-shirt from a pit latrine, within the family compound. She said she could not tell how the deceased related with the accused.
5. PW4, Boniface Otenyi Wako, was the area Assistant Chief. He was telephoned by the police, on the material day, and was informed that a man had been brought to the station, with claims that he had killed his mother, and that he, PW4, was required at the police station to confirm the death. PW4 went to the home of the deceased, and found her body lying in the kitchen, with injuries to the neck. He telephoned the police, and confirmed the incident, and was advised to wait for them at the scene. He was later told that the accused had killed the deceased. He said he had not known the accused person prior, and he only learnt that he was a son of the deceased after the incident. He said he knew the deceased prior to the incident.
6. PW5, No. 109245, Police Constable Shem Deya Othoo, did the forensic investigations at the scene, and produced a series of photographs. He was part of the party that retrieved clothes from a pit latrine at the home.

7. PW6, Dr. Dancun Nabuya, was the medical officer who conducted postmortem on the body of the deceased. He noted lacerations on the neck, chest and cheek, inflicted by a sharp object. There was also a laceration of the ceratoid artery, which supplied blood to the brain. His opinion was that the death was caused by haemorrhagic shock, due to acute blood loss.
8. PW7, No. 232737 Chief Inspector of Police Odhiambo Osoo, recorded a confession from the accused, on 17<sup>th</sup> April 2023, in the presence of PW2. That confession was objected to, and a trial-within-a-trial was conducted. In the end, a ruling was delivered, on 24<sup>th</sup> January 2025, rejecting the confession recorded by PW7, on grounds that its recording had been bungled or mishandled by the investigation team.
9. PW8, Seraphine Cheruto Katukoi, was an analyst from the Government Chemist. She had done the forensics on the clothes retrieved from the pit latrine, and other materials. The materials, on the referenced clothes, did not match the deoxyribonucleic acid (DNA) particulars of the samples taken from the accused.
10. PW9, No. 88450, Police Corporal Denisio Njeru, investigated the matter, and detailed, to the court, the steps that he took in the course of his investigations.
11. On 31<sup>st</sup> January 2025, I delivered a ruling, where I placed the accused on his defence, on the basis that I had seen and heard all the witnesses who had been presented by the prosecution, and I was persuaded that the prosecution had established a *prima facie* case against him, and, therefore, he had a case to answer.
12. The defence hearing happened on 9<sup>th</sup> October 2025. The accused was the sole witness for the defence. He denied killing the deceased. He testified that he lived in rented premises, with his family, and that he left those premises, on 14<sup>th</sup> April 2023, and went to work. At about 10.50 AM, he decided to pass by the home of the deceased. He found her lying dead on her kitchen floor, covered in blood. He rushed to report at the Nambale Police Station. While on

the way there, PW2 telephoned him over a piece of land. He informed him that he had an issue at the police station, and he offered to accompany him there. They met up, before heading to the station, and he explained to PW2 what had happened. When they got to the station, PW2 was called, and spoke to an officer there, after which the accused was locked up in the cells. He was subsequently transferred to Busia Police Station.

13. At the close of the oral hearings, the accused filed written submissions, through his Advocate, which I have read, and noted the arguments made.
14. The elements of murder, which the prosecution is required to establish, to obtain a conviction, are 4. These are proof of the death, the cause of it, the role of the accused person in the causation and malice aforethought.
15. On the proof of the death, there was the evidence of PW1, PW3 and the accused, who were children of the deceased, that they all did see the body of the deceased, at the scene on the material day, and she was dead. PW4, the area Assistant Chief, and PW5, the police scenes of crime personnel officer, also saw the lifeless body. PW6, the medical officer, performed postmortem on it. There is overwhelming evidence, that the deceased died.
16. On the cause of death, the testimony of PW6, is critical. He conducted autopsy on the body. There were deep lacerations on the body, which caused massive blood loss, leading to haemorrhagic shock, causing death.
17. On the role of the accused in the causation of the death, there was no direct evidence. No one saw him do anything to the deceased, which could have caused the injuries that would have led to her death. There was no circumstantial evidence, which placed the accused, at the scene, or in the close proximity to it, in a manner which would point to his complicity in the death. The only evidence, that would have linked him to the death, was the confession that he

allegedly made to PW2, which led PW2 to escort him to the police, who then recorded the same. The confession or admission, allegedly made by the accused to PW2, was inadmissible, by virtue of section 25A (1) of the Evidence Act, Cap 80, Laws of Kenya, for a confession is valid only if made to a police officer, of a rank of Inspector and above, or in court, or to a third party of the accused's choice. PW2 would have fitted the bill of a third party, but the accused has contested making a confession to him, and, therefore, he cannot be deemed to be a confessant of choice.

18. The confession made to or recorded by PW7 would have been admissible, as it would have fitted the bill of what is required by section 25A (1) of the Evidence Act. However, the officers, involved in the process, bungled it, for the reasons detailed in the ruling that I delivered on 24<sup>th</sup> January 2025. There were alterations, in the confession document, yet a confession statement with alterations that are unexplained or unauthorized, ought to be rejected. That confession statement was rejected on that account. Without that confession statement, there would be no material to link the accused to the offence. The prosecution was to fall, not necessarily for lack of evidence, but because of bungling or mishandling of the most critical evidence, by those who were gathering it.
19. There were forensics, collected by PW5 and PW9, and analysed by PW8. Unfortunately, that material was not useful. The blood on the clothes, retrieved from the pit latrine, was not traceable to the accused, hence it did not link him to the offence.
20. Overall, as to the role of the accused person, in the causation of the death, the prosecution did not adduce adequate evidence, and the only evidence which would have helped it, was bungled, during collection, by the detectives.
21. On malice aforethought, it would be worth pointing out that the same, which is really the *mens rea* for the offence of murder, should only arise where the accused is found to have had a role in the causation of the death. In such a case, as this, where the cause of

death is not linked to the accused, there would be no point of trying to establish whether the death of the deceased was caused with malice aforethought. Of course, the circumstances of the death of the deceased herein, point to unlawfulness, hence suggesting malice aforethought. However, without evidential linkage of the accused to the death, it would mean it would be irrelevant to determine whether the accused had malice aforethought.

22. Overall, I have come to the finding and holding that the prosecution has not established a case, beyond reasonable doubt, that the accused herein, Dennis Protus Wafula, unlawfully caused the death of Pamela Ndindi Ndubi, contrary to sections 203 and 204 of the Penal Code, and I, accordingly, acquit him, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya. The accused shall be set free, from remand custody, unless he is otherwise lawfully held. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS  
2<sup>ND</sup> DAY OF FEBRUARY 2026.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

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

**Ms. Nabulindo, Advocate for the accused person.**