



REPUBLIC OF KENYA



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**Mutua v Republic (Criminal Appeal 76 of 2019)
[2026] KECA 266 (KLR) (13 February 2026) (Judgment)**

Neutral citation: [2026] KECA 266 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPEAL 76 OF 2019
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA
FEBRUARY 13, 2026**

BETWEEN

PATRICK BAKARI MUTUA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the judgment of the High Court of Kenya at Meru (Ong'injo, J.) delivered on 9th May 2019 in Background Criminal Case No. 95 of 2014)

JUDGMENT

1. The appellant was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge were that on 24th December 2014 at Makandune Sub-location, Makandune Location in Imenti Central District within Meru County, he murdered his wife, Amina Gakii (the Deceased).
2. The prosecution called eight (8) witnesses in support of its case. Mercy Gacungiri, (PW1), the Deceased's sister, told the court that she received a phone call from their mother (PW2) informing her that Amina Gakii had been killed. She testified that the appellant and the Deceased lived together in Kariobangi South, Nairobi, and that their relationship was rocky. She recalled frequent quarrels, threats, and even physical assaults. It was her testimony that on one occasion, the appellant threatened to throw their infant child from the balcony of their apartment. PW1 also stated that the appellant had declared that if the marriage collapsed, the Deceased would never marry another man. She further testified that these problems drove the Deceased to leave Nairobi and return to her mother's home in Makandune with the child she bore with the appellant. She further testified that she was among those who accompanied the police to Kariobangi South where the appellant was arrested after fleeing from Makandune.



3. Grace Karimi, (PW2), the mother of the Deceased, testified that on 24th December 2014 she woke up to find the appellant at her home seated outside. She served him tea and later left for a meeting, leaving in the compound the appellant, the Deceased, their son, and PW4, a young relative of the Deceased. Before leaving, she noted that the appellant wanted to reconcile with her daughter but she informed him that she would not manage to resolve the dispute between him and the Deceased. Later, when she returned home after her meeting, she found her daughter, the Deceased, dead in the house.
4. Obadiah Mutwiri, (PW3), the Deceased's brother, corroborated the account by PW2. He testified that he woke up to find the appellant at their homestead, seated on a bench near the kitchen. PW3 spent the morning at home and around lunchtime, he and his sister, Lilian left for the market, leaving behind the appellant, the Deceased, and the two children. On their return in the evening, he heard screams and rushed to the house. Inside, he found his sister lying dead on the floor. He was among those who reported the matter to the police. He also confirmed that the Deceased had confided in him about her desire to separate from the appellant and had previously told him about threats the appellant made against her.
5. James Mutuma, (PW4), a six-year-old relative of the Deceased, testified that on the material day, he was at home with the Deceased, the appellant and their son. He saw the Deceased go to take a bath in a bathroom outside the house and then she returned to the house. It was his testimony that the appellant followed the Deceased into the house, but before doing so, PW4 saw him remove a binding wire from the roof gutter. Once inside, the appellant locked the door. PW4 testified that he heard the two struggling, and being frightened, he ran to a neighbour's house to seek help. When he later returned from the neighbour's house, the house was locked from the outside, the appellant had disappeared with his son. He waited outside the house until his grandmother (PW2) returned from her meeting and that is the time the Deceased was discovered dead in the house.
6. Jackline Karwitha, (PW5), a cousin of the Deceased, confirmed that she was on her way to visit the Deceased at her parent's home in Makandune after learning that she was at home. She stated that she met with PW4 along the way and proceeded home together, but on arrival and upon entering the house, she discovered the body of the Deceased lying lifeless on the floor.
7. Dr. Simon Mwangi Munyoki (PW6), produced the postmortem report prepared by Dr. Mohammed Noor. The autopsy revealed cyanosis of the face and extremities, scratch marks around the neck, and a binding wire coiled tightly with a knot at the back of the neck. The cause of death was certified as asphyxia due to ligature strangulation.
8. Chief Inspector Wilfred Mwangi, (PW7), who was the OCS Gaitu Police Station at the time, testified that he received a report of the murder and proceeded to the scene with other officers. He found the body lying on its back inside the house, with a wire tightly coiled around the neck. He observed signs of a struggle, with blankets and bed sheets scattered on the floor. Family members at the scene informed him that the suspect was the Deceased's husband, the appellant. He confirmed that both the Deceased and the appellant had arrived at the homestead shortly before the incident.
9. Police Constable Abraham Mbatha (PW8), was the duty officer at Kiamuri Police Patrol Base when the murder was reported. He booked the report and accompanied colleagues to the scene. He described finding the Deceased lying on the floor with a wire tightly wound around her neck and bruising below the knee. He noted signs of a violent struggle in the house, with household items displaced. He later joined other officers in retrieving the appellant after his arrest by administration police in Kariobangi South, Nairobi.



10. In his sworn defence, the appellant admitted that he and his wife often quarreled, but denied killing her. He told the court that he had gone to his wife's rural home at Makandune on 24th December 2014 in order to reconcile with her. He stated that a quarrel arose between them over custody of their son. He claimed that during this confrontation the Deceased bit him, and in the struggle, he strangled her and pushed her to the ground while trying to get hold of the child. He further admitted that after the incident he locked the Deceased in the house and left for Nairobi with the child, where he was later arrested.
11. The trial court found that the prosecution had proved the offence of murder against the appellant beyond reasonable doubt. It held that the death of the Deceased was not in dispute, the postmortem having confirmed the cause as asphyxia due to ligature strangulation. In addition, the appellant was confirmed to have followed the Deceased to her mother's home on the material day. Witnesses, including PW2 and PW3, saw him there early in the morning, and PW4, the minor, directly observed him remove a binding wire from the roof gutter, follow the Deceased into the house, and strangle her after locking the door.
12. The trial court rejected the appellant's suggestion that he acted in self-defence, noting that the binding wire was tightly coiled around the Deceased's neck and was only removed during postmortem. It also held that the claim that the Deceased bit him was unsupported by medical evidence as no bite marks were observed. The trial court found that the appellant lay in wait until only the Deceased and two vulnerable children were present and then attacked her with intent to kill. The evidence, both direct and circumstantial, pointed accurately to the appellant as the perpetrator.
13. According to the trial court, all the elements of the offence of murder were proved, including malice aforethought, as the appellant deliberately strangled his wife with a binding wire and locked the house to ensure she could not escape. The defence was found to be unconvincing. Consequently, the trial court convicted the appellant of murder and accordingly sentenced him to death.
14. The appellant, being dissatisfied with the conviction and sentence, filed the instant appeal. The appellant contends that his conviction was based on contradictory and inconsistent evidence; that the trial court erred by failing to note that there was no eye witness who saw him commit the offence; that the prosecution had failed to prove its case beyond reasonable doubt; and that his defence was wrongly disregarded. He further argued that section 204 of the Penal Code which prescribes a mandatory death sentence was unconstitutional in light of *Francis Karioko Muruatetu & Another v Republic* (2017) eKLR, and that the sentence was harsh.

Submissions by Counsel

15. When the appeal came up, Ms. Nelima, learned counsel for the appellant, relied on the written submissions that she had filed. In the submissions, counsel contended that the prosecution failed to prove the offence of murder beyond reasonable doubt, particularly the element of malice aforethought. It was contended that the evidence showed the appellant and the Deceased had a rocky marriage marked by frequent quarrels and fights, and that on the day in question, another fight broke out, prompting PW4 to run for help. According to counsel, the appellant's conduct of travelling to his wife's rural home was evidence of an intention to reconcile and not to kill. Counsel submitted that the trial court failed to consider this context and that the evidence before court, if anything, supported a conviction for manslaughter rather than murder.
16. On sentence, it was submitted that the death penalty imposed was harsh and excessive given the circumstances. Relying on the principles in *Francis Karioko Muruatetu v Republic* (supra), counsel urged this Court to find that the mandatory death sentence was unconstitutional and inappropriate in



his case. It was emphasized that the appellant was a first offender, he was remorseful, and had a young family of two children who depended on him. Counsel further urged the Court to consider the period already served in custody and to substitute the death penalty with a reduced custodial sentence.

17. Ms. Nandwa, learned counsel for the respondent, on her part, maintained that the prosecution had proved all the ingredients of murder beyond reasonable doubt. The death of the Deceased was undisputed and confirmed by the postmortem which showed death was due to ligature strangulation. The appellant was directly implicated by PW4, who testified that he saw him remove binding wire from the gutter which he used to strangle the Deceased. Counsel contended that although PW4 was the sole eyewitness, the trial court properly warned itself and found his testimony credible, consistent with the rule in *Maitanyi v Republic* [1986] KLR 198. Further, the appellant was well known to PW4 and was seen in broad daylight, eliminating the possibility of mistaken identity. According to counsel, the prosecution also relied on the doctrine of last seen, pointing out that PW2 and PW3 had left the appellant with the Deceased shortly before she was found dead and the appellant failed to offer any credible explanation. It was also submitted that the circumstantial evidence on record showed the appellant as the person who killed the Deceased and that the trial court properly analyzed and applied that evidence. It was submitted that the circumstantial evidence before the trial court met the test set out by this Court in *Musili Tulo v Republic* [2014] eKLR.
18. Counsel further submitted that malice aforethought was clearly established as the appellant deliberately coiled the wire tightly around the Deceased's neck and locked the door to ensure she could not escape. Evidence of struggle at the scene and the medical findings supported this conclusion.
19. On the inconsistencies in the prosecution's evidence, counsel relied on the decision of this Court in *Richard Munene v Republic* [2018] KECA 186 (KLR) in support of the proposition that the said inconsistencies were minor and did not go to the root of the case.
20. On sentence, counsel contended that the death penalty was proper given the calculated and cold-blooded nature of the crime where the appellant followed the Deceased to Meru, killed her, and fled with their child. The respondent therefore prayed that both the conviction and sentence of the trial be upheld.

Determination

21. We have considered the record, the rival submissions and the law. This being a first appeal, the duty of this Court is to re-analyze the entire evidence and reach its own conclusions, while bearing in mind that it did not see or hear the witnesses testify. See *Okeno v Republic* [1972] EA 32 and *David Njuguna Wairimu v Republic* [2010] eKLR.
22. The issues that commend themselves for determination in this appeal are whether the prosecution proved the charge of murder beyond reasonable doubt; whether malice aforethought was established; whether the contradictions in the prosecution's case were material; and whether the sentence imposed was lawful and appropriate.
23. As regards the issue whether the prosecution proved its case beyond a reasonable doubt, it is our view that the evidence presented at trial left little doubt that the appellant was responsible for the Deceased's death. For starters, the death of the Deceased was established by medical evidence with the postmortem confirming death by asphyxia due to ligature strangulation. Secondly, the appellant was not only placed at the scene by multiple witnesses but was also the last person seen with the Deceased alive. PW2 and PW3 found him at the homestead early in the morning while PW4 directly observed him following the Deceased into the house with a binding wire and shortly thereafter, the Deceased was discovered dead while the appellant had vanished with their child. It is our view that PW4, despite his tender age, gave a



consistent and detailed account. His testimony was supported by the discovery of the Deceased's body with the wire still coiled around her neck, the scattered state of the room consistent with a struggle, and the fact that the appellant fled with the child.

24. The above chain of evidence, both direct and circumstantial, in our view, met the threshold set in *Sawe v Republic* [2003] KECA 182 (KLR) wherein this Court held that in order for circumstantial evidence to support a conviction, it must point precisely to the accused and leave no room for other explanations. The facts herein, in our view, formed an unbroken chain leading solely to the appellant as the person who caused the Deceased's death. This ground of appeal is therefore without any merit.
25. As regards malice aforethought, the evidence led before the trial court showed that the appellant armed himself with a binding wire, waited until the Deceased was vulnerable, and strangled her by coiling the wire tightly around her neck. He then locked the house ensuring she could not escape or call for help and calmly left with the child. Section 206 of the Penal Code makes it clear that intent to cause death or grievous harm can be inferred from the nature of the weapon, the part of the body targeted, and the conduct of the accused before and after the act. Similarly, the Court in *Republic v Tubere s/o Ochen* [1945] 12 EACA 63 identified relevant factors in the establishment of malice aforethought such as the type of weapon used, the manner of its use, the part of the body targeted, and the conduct of the accused before and after the attack.
26. In the circumstances herein and applying the principles in *Republic v Tubere s/o Ochen* (supra), we are of the view that the appellant's conduct of strangling the Deceased with a wire, locking the house to prevent escape and leaving with the child demonstrates premeditation, resolve, and full awareness of the likely outcome. His contention that the killing occurred in the heat of a domestic quarrel does not, in our view, negate intent. Strangulation requires sustained and deliberate force directed at a vital part of the body and is inconsistent with a mere loss of temper or sudden provocation. The trial court therefore correctly concluded that the appellant's conduct was actuated by malice aforethought thereby establishing the requisite mental element of the offence of murder. This ground of appeal therefore has no merit.
27. As regards the alleged contradictions in the prosecution's case, the record shows that there were minor variations in the testimonies about who raised alarm or the exact sequence of events. This Court in *Richard Munene v Republic* (supra) stated thus:

“As they say, the prosecution must present a watertight case that meets the threshold of beyond reasonable doubt in order to obtain a conviction. Contradictions, discrepancies and inconsistencies in evidence of a witness go to discredit that witness as being unreliable. Where contradictions, discrepancies and inconsistencies are proved, they must be resolved in favour of the accused.

It is a settled principle of law however, that it is not every trifling contradiction or inconsistency in the evidence of the prosecution witness that will be fatal to its case. It is only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question and thus necessarily creates some doubt in the mind of the trial court that an accused person will be entitled to benefit from it.” (Emphasis supplied).
28. We are not persuaded that the variations alleged by the appellant touched on the substance of the case. The material facts remain that the appellant was present at the Deceased's home, that he armed himself with a wire, that he followed the Deceased into the house and that he was the last person seen with her alive. These circumstances were not displaced by the appellant in his defence. This ground of appeal is accordingly without merit.



- 29. The final issue in this appeal concerns sentence. The appellant was sentenced to death as prescribed under section 204 of the Penal Code. However, in Francis Karioko Muruatetu & another v Republic (supra), the Supreme Court declared the mandatory nature of the death penalty unconstitutional on the basis that it deprives courts of discretion to consider mitigating factors. Therefore, while the death penalty itself remains lawful, it cannot be imposed mandatorily. In addition, we have perused the record and it indicates that although the appellant tendered mitigation prior to sentencing, there is no indication that the trial judge gave it any consideration. Instead, the record reflects that the court relied exclusively on the Victim Impact Statement Report in arriving at the sentence. Whereas sentencing is a discretionary exercise, mitigation is an integral part of fair trial guaranteed under Article 50 of *the Constitution*.
- 30. In light of the aggravating and mitigating factors, we are satisfied that a custodial term of thirty (30) years' imprisonment is appropriate. While the offence was grave and committed in a deliberate and violent manner, the appellant is a first offender, who tendered mitigation which the trial court did not consider and has already spent considerable time in custody.
- 31. In the end, the appeal succeeds only on sentence. The death penalty imposed by the trial court on the appellant is set aside, and in its place, we substitute a sentence of thirty (30) years' imprisonment to run from the date of conviction by the trial court.

DATED AND DELIVERED AT NYERI THIS 13TH DAY OF FEBRUARY, 2026.

W. KARANJA

..... **JUDGE OF APPEAL**

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

A. O. MUCHELULE

..... **JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

