



**Republic v Ruwa (Criminal Case E011 of 2024)  
[2026] KEHC 2892 (KLR) (6 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2892 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARSEN  
CRIMINAL CASE E011 OF 2024**

**JN NJAGI, J**

**MARCH 6, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**KADI RUWA ..... ACCUSED**

**JUDGMENT**

1. The accused herein is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 17<sup>th</sup> November 2024 about 0300 hours at Tangeni area Senderike sub location Witu Sub-County within Lamu County he murdered Mwenda Katana Ndoro (herein referred to as the deceased).

**Prosecution case**

2. The prosecution called 6 witnesses in the case. It was the evidence of MP PW1 that the deceased herein was her aunt. That she was at the material time aged 11 years. That after schools closed in November 2024 the deceased requested her mother for her, PW1, to go and stay with her. She went to stay with the deceased at her home at Tangeni.
3. That on the evening of 16/11/2024, she and the deceased were at the home of the deceased. They ate supper and went to sleep at 8pm. They were sleeping on different beds in the same room. That while asleep at 2am she heard her aunt asking as to who had opened the door. She saw a person with a torch at the door. The person entered into the house and closed the door behind him. He went towards her aunt. By that time her aunt had lit up a torch. She saw her pick a panga from under the bed and wanted to cut the person. The person went out of the house. They followed him outside and searched for him behind the house but they did not get him. They returned to the house.
4. It was the evidence of M that upon them returning to the house, she sat on her aunt's bed. Her aunt had a painful toothache and she removed medicine from her bag and put it on the painful tooth. That



- as her aunt returned the medicine to the bag she saw a person leaning on the door inside the house and alerted her aunt who was at the time standing next to the bed. The person reached her aunt and pushed her. Her aunt fell on some timber that were placed near the door. The person then removed a knife from his waist and stabbed the deceased on the side of the neck. She, PW1 ran out of the house. She went to the home of the village elder called Kahindi and reported the incident. The village elder took her to her parents' home which was not far. She told her parents what had happened. She went to the scene with the village elder and her parents. Her parents entered into the house and reported that the deceased was dead. Her mother screamed and other villagers went to the place. A police vehicle went there and picked the body.
5. It was the evidence of PW1 that the person who killed her aunt used to live in a house belonging to a neighbour of her aunt. She did not know the name of the person. That the person was arrested and she identified him in an identification parade at the police station. That the person was the appellant.
  6. The village elder PW2 testified that he was on the material night sleeping in his house when at 4am he was woken up by PW1 who told him that her aunt had been stabbed with a knife by mganga called Matano. He went with her to her parents. He went with them to the house. They found the door to the lady's house locked from outside. Inside the house, they found the deceased lying dead on the floor of her house. She had an injury on the side of the neck. Later policemen went to the house and picked the body.
  7. IP Onesmus Baya Mwaro PW3 testified that he conducted an identification parade on the Accused on 6/12/2024. That there were 8 people in the parade and the Accused was identified by M PW1 by touching him with her hand. That the Accused said that he was satisfied with the way the parade was conducted and he signed the parade form.
  8. A post mortem of the body was conducted at Mpeketoni sub county hospital mortuary by Dr. Marion Muli PW5 who found the body with a right and left hand lacerations between left and middle finger; deep laceration on the neck measuring 5cm by 2cm with torn and rough edges that had cut through the vessels of the right side; abrasions on the left buttock and back and vaginal bleeding with lacerations of 0.5 cm in the posterior forms. The doctor formed the opinion that the cause of death was due to excessive bleeding as a result of deep cut wound to the neck.
  9. The case was investigated by Cpl Peter Mwaniki PW 6 of DCI Mpeketoni. It was his evidence that he visited the scene with other police officers on 17/11/2024 after 7.30 am. They found the body of the deceased lying on the floor of her house with an injury on the left side of the neck. They took the body to Mpeketoni Hospital mortuary.
  10. That on the same day the accused and two others were arrested. PW6 recorded a statement from MP, PW1. Samples were taken from the accused and the deceased and taken to the government analyst. The results were negative. The Appellant was charged with the offence. During the hearing of the case in court the doctor PW5 produced the post mortem report as exhibit, P.Exh.1.

### **Defence case**

11. The accused when placed to his defence stated that he was at the material time living at Tangeni village in Lamu county. That the deceased was his neighbour. That on 16/11/2024 at 3 am he was at his house when he heard screams in the village. He went to the home of a neighbour who told him where the screams were coming from. They went to the place and found the screams were coming from the home of the deceased. They found many people there. The chief and the police went there. The police took away the body. He denied that he was involved with death of the deceased. He said that he did not know her and only used to see her in the village. He said that he was living with a woman called Tabu.



That M PW1 knew him very well and he also knew her well. That she used to attend the same school with the children of Tabu and she used to go to the home of Jabu to see her children.

12. The accused did not call any witness in the case.

### **Submissions**

13. Counsel for the Accused submitted that the offence was committed at night. That it was not clear the kind of lighting that was used for PW1 to positively identify the accused person. This raises doubt whether the perpetrator was the appellant.
14. It was submitted that the identification parade was not properly conducted as the officer who conducted the parade did not ensure that the people who took part in the parade were of similar age and appearance.
15. It was submitted that the murder weapon was not produced.
16. As to whether the Accused had malice aforethought to kill the deceased it was submitted that no evidence was adduced that there was any animosity between the deceased and the accused. Therefore, that malice aforethought was not proved.

### **Analysis and determination**

17. This being a criminal case, the standard of proof is that of beyond reasonable doubt. Lord Denning in *Miller vs. Ministry of Pensions*, [1947] 2 ALL ER 372 stated this degree to be as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

18. In *Elizabeth Waithiegeni Gatimu vs. Republic* [2015] eKLR, Mativo J. (as he then was) expressed himself as hereunder on the issue:

“To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant’s guilt beyond reasonable doubt is basic to our law. It is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty...Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favorite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which,



after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.”

19. The accused is facing a charge of murder contrary to section 203 of the Penal Code. The section defines murder in the following terms:

“Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”

20. The elements of the offence of murder were stated in the case of Republic Versus Andrew Omwenga 2009 eKLR where the court held:

“It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission – there are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are:

- (a) The death of the deceased and the cause of the death,
- (b) That the accused committed the unlawful act which caused the death of the deceased and
- (c) That the accused had the malice aforethought”.

21. This court has therefore to analyze the evidence in light of these essential elements required to be proved by the state against the accused person. I will deal with the ingredients of the charge as hereunder.

22. As pertains to the death of the deceased, a post mortem was conducted on the body of the deceased by a doctor, PW5 who found it with deep cut wounds on the neck and left buttock. The doctor formed the opinion that the cause of death was due to excessive bleeding as a result of deep cut wounds. This evidence was not challenged. I therefore find that the cause of death was as opined by the doctor.

23. On whether the Accused is the one who occasioned the death of the deceased, the prosecution relied on the evidence of M, PW1, an 11 year old girl whose testimony was that she witnessed the killing of the deceased and that the accused is the one who killed the deceased.

24. It was the evidence of PW1 that she identified the perpetrator when the person pushed the deceased and fell her down. That at the time that the deceased was stabbed she was holding a torch. That she saw the person by aid of the light coming from the torch that the deceased was holding. That she ran out of the house after the deceased was stabbed. That she knew the person as he was living in a house belonging to a neighbour of the deceased. That he did not know him by name but by physical appearance. That she identified him in an identification parade.

25. However, the witness PW1 gave contradictory evidence as who between her and the deceased was holding the torch at the time when the deceased was stabbed. She stated in her evidence-in-chief that it the deceased who was holding the torch at the time. When cross-examined by the court she stated that she is the one who had the torch when the deceased was stabbed and that the deceased was at that time using her phone light. That she directed the torch light at the person when he wanted to stab the deceased. That she flashed the torchlight before he stabbed the deceased. However, the witness changed this kind of narrative and said that she flashed the torch at the person when he was bending over the deceased and was trying to remove the knife from her neck. That she beamed the torch on his face at that time and identified him.



26. It is clear that PW1 did not give credible evidence on the identification of the deceased. She at first stated that she ran out of the room after the deceased was stabbed. There after she changed that narrative and said that she identified the accused when he was bending over the deceased as he tried to remove the knife from her neck. This in itself beats logic how an 11-year old would have remained there after the deceased was stabbed for her to see the accused removing the knife from the deceased's neck. How courageous would she have been? I do not believe her evidence that she identified the accused as the person who stabbed the deceased.
27. Besides that, the village elder PW2 told the court that PW1 told him at the time of reporting the incident to him that the deceased had been stabbed by a "mganga" called Matano. PW1 in her evidence in court never mentioned such a thing. A question then arises whether she knew the perpetrator or not. Is the accused the person called Matano? There was no such evidence.
28. The witness PW1 gave an unsworn evidence in court. She was a child of tender years and when the trial court conducted voire dire examination on her, it found that she did not understand the meaning of an oath taking and the court allowed her to give unsworn evidence in accordance with the provisions of section 19 of the *oaths and statutory Declarations Act*.
29. The law is that unsown evidence is not evidence and cannot be used to convict a person of an offence unless it is corroborated in material particulars. In the case of *May v The Republic* (1981) KLR129 where the Court of Appeal held that:
- That unsworn statement is not, strictly speaking evidence and the rules of evidence, cannot be applied to unsworn statement. It has no probative value, but it should be considered in relation to the whole of the evidence. Its potential is persuasive rather than evidential. For it to have value it must be supported by evidence recorded in the case.
30. The corroboration that is required is evidence proving not only that the crime was committed but also that the accused is the one who committed it. In *Mukungu vs. Republic* [2002] 2 EA 482, the Court of Appeal citing *Mutonyi vs. Republic* [1982] KLR 2003, held that:
- “An important element in the definition of corroboration is that it affects the accused by connecting him or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it: See *Republic vs. Manilal Ishwerlal Purohit* [1942] 9 EACA 58, 61.”
31. There was no evidence corroborating the evidence of PW1 in this case. Consequently, there was no evidence that the accused is the one who killed the deceased.
32. The upshot is that the prosecution did not prove the charge against the accused beyond reasonable doubt. I find him not guilty of the offence and acquit him accordingly.

**DELIVERED, DATED AND SIGNED AT GARSEN THIS 6<sup>TH</sup> DAY OF MARCH, 2026.**

**J. N. NJAGI**

**JUDGE**

In the presence of;

Miss Mwanja for accused

Mr. Oluoch for Republic

Court Assistant - Rahma

