



**Republic v Alimaa (Criminal Case 4 of 2023)
[2026] KEHC 2890 (KLR) (4 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2890 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL CASE 4 OF 2023**

RPV WENDOH, J

MARCH 4, 2026

BETWEEN

REPUBLIC PROSECUTOR

AND

SALOME CHEBOR ALIMAA ACCUSED

JUDGMENT

1. By the information dated 2/8/2023, Salome Chebor Alimaa (the accused) 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 are that on 26/6/2023 at unknown time, at [particulars withheld] Village in West Pokot County Murdered Edy Esau Otipu.
2. The accused denied committing the offence and the case proceeded to full trial with the prosecution calling a total of six (6) witnesses. After close of the prosecution case, the Accused was called upon to defend herself. She testified on oath and called one other witness.

Prosecution Case:-

3. PW1 Tongokwang Poghisho, a village elder at [particulars withheld] recalled that on 26/6/2023, a Monday, he was woken up at about 6.00a.m. by JK (PW2), a neighbour, who informed him that there was a body at the door of his latrine and the person looked as if he was dead. He accompanied JK to his home and he observed the body and found it to be that of Edy Otipu, a neighbour of Kakuko: that Edy was the husband of the Accused; that from accused's house to that of Kakuko was about fifty (50) metres. PW1 observed that the deceased had cut wounds on the head, one hand had no finger. PW1 called the Assistant Chief John Tulim. They saw a trail of blood which led them to Edy's house and blood was spilled outside the said house; that the door had been pushed outwards and was bent. They noticed a phone outside the house and the light was on as somebody was calling, but they did not touch it, and that when police came, they took the phone; that on opening the door, found a blood-



stained panga. The police tied the panga in a Masai sheet and took it away together with the body; that on 18/7/2023, the Accused called him on phone No. 0784838213, introduced herself but hang up. PW1 who had accused's number called her on it 0784236443 and she informed PW1 that she wanted to plead for mercy from the deceased's relatives so that she could look after her children. He advised her to call the person who was taking care of her children; that accused called PW1 again and told him that she had been told to go to Chepareria so that the elders could deliberate on the matter. PW1 said that later accused again called and informed him that she was at a shop at Chepareria and the phone was disconnected at 5.00p.m. and he never heard from the Accused again. PW1 was aware that the Accused and the deceased had disagreed a month before the deceased's death and the matter had been reported to the Chief at [particulars withheld]; that the children had not been at their home that month. He said that the accused and Edy used to have frequent disagreements.

4. PW2 JK Lomangura of [particulars withheld] testified that on 26/6/2023, at about 6.00a.m., he woke up and went outside only to see blood at his door. He saw the body of a person in his home, about fifty (50) metres away from his house and he went to call Reuben, the village elder (PW1). They returned to the scene with Reuben, and they noticed that it was Edy's body, a neighbour and he was dead; that PW1 called people and they followed a trail of blood to Edy's home where they found a lot of blood in the house. They did not find anybody in the house. PW2 identified Accused as Edy's wife with whom they lived together in that home and he had last seen her on Saturday. PW2 had last seen Edy at 2.00p.m. while on his way to work at [particulars withheld] where he used to go daily; that Edy told him to look after his house so that Salome could not come to take away his property because they had quarrelled. PW2 was aware that Edy and Accused had quarreled two months earlier; that though they used to live with their two children, PW2 had not seen the children for two months.
5. PW3 Jacob Loria is a resident of Paraywa. He recalled that on 26/6/2023, a Sunday, he went to take alcohol across the river and spent the night there. He went back home on 27/6/2023 at 8.00a.m. and found his house locked from inside yet he had locked the door from outside with a latch, that a person called him from the house by his nickname, Apepe. He did not recognize the voice but asked the person to open. He found that it was Salome (accused) in his house and she said she had brought greetings from her father. She told him that she had disagreed with her husband the night before; that she had hit him and did not know whether he was still alive or not. PW3 left the accused in his house he went to do casual job and accused asked him to go and check if the husband was still alive. He met a neighbour Micah at the place he had gone to work who informed him that the person who had been injured the day before had died. He went back home running and called accused from a distance and told her that the husband had died and she should go away; that the Accused left his house and he went back to work. He knew accused and deceased as husband and wife. Later, police came to look for him.
6. PW4 JO, a twin brother of the deceased recalled the 26/6/2023 at about 8.00a.m. while at work at Chepareria, his sister Fanice called to inform him that his twin brother Edy had died following an assault. He proceeded to Edy's house and found a crowd of people and the body was in the neighbour's land, forty (40) metres away, near a latrine and that there was a trail of blood from Edy's home to where the body was. PW4 said that Edy used to live with his wife Salome (accused) and children; that Salome had left about a week earlier and the children were with his sister Fanice; that Accused and Edy had had a dispute in March which was resolved but they disagreed again and separated in April but that accused attended his father's funeral together with Edy in May 2023; that he had last spoken to Accused three (3) days before the incident when she asked him for the solar light which she could not trace, but he did not ask where she was.
7. PW4 was present when post mortem was done on 29/6/2023 and he noted that the deceased had cuts on both sides of the head and wrist.



8. PW5 Dr. Luke Chite Ambuka of Kapenguria Referral Hospital performed post mortem on the deceased after he was identified. He observed that the body had lost a lot of blood and had many deep cut wounds on both hands, and the head; right hand all fingers with bones exposed; left hand had cuts with fractured ulna and radius; scalp had many cut wounds which involved the skull, 15cms long, 6cms long 9 and 6cms; Occiput had deep cut wound that involved the face and ear; the injuries were inflicted by a sharp object. He formed the opinion that cause of death was head injury with intra Cerebral Haemorrhage .
9. PW6 PC Thomas Chumakemer of DCI Kabichbich recalled the 27/6/2023, he was at home when the DCIO informed him of a murder at Laposirmoru in [particulars withheld] which he was assigned to investigate. He proceeded to the scene of crime on 28/6/2023 which was about two (2) Kilometres from where he lived and was shown a house which had been burnt. The wife of deceased was nowhere to be found; that the police had recovered a panga and removed the body; that the body had been found in the land of a neighbour, Kakuko (PW2). He recorded witness statements who included JK, Jacob Loria. PW6 attended the post mortem. On 17/7/2023, the DCIO called to inform him that Accused had been arrested at Chepareria and was at the police station and he went and collected her. He had known accused as wife to the deceased. He produced the panga found in deceased's house as P.Exh.2. The recovered panga was not taken for forensic examination because the Investigating Officer had no vehicle.

Defence Case: -

10. When placed on her defence, the accused testified on oath as DW1; that the deceased used to be her boyfriend and they got two children with him. She denied that Edy had ever met her parents or siblings. She denied knowing about Edy's death because on 26/6/2023 she was at Ortum; that she had lived with him till December, 2022 when they disagreed and she left him at [particulars withheld]; that he was a drunkard and from December 2022 to May 2023, she was staying with her sister Serah Cheruto at Ortum; that she left the deceased living with his sister at [particulars withheld] Centre; that since he was irresponsible, she left him with the children; that she was arrested at Chepareria after she met Edy's relative who had told her that her child was at his home and she wanted to talk to the child. After the person gave her tea, Edy's brother appeared and alleged that she killed Edy; that police officers arrived and arrested her.
11. DW2 Sarah Cheruto is Accused's younger sister who lives at Ortum. She testified that in December, 2022 her family went to visit her because she was unwell. The Accused remained with her to care for her. She knew Edy as her brother-in-law who lived with Accused as husband and wife and they had two children; that accused did not go back to Edy's home in December 2022. In September 2023, accused left to go and visit her children but did not return. She later learnt that Accused had been arrested for the murder of Edy.

Submissions: -

12. Mr. Ndinyo, the defence Counsel filed written Submissions in which he argued submitted that there is neither direct nor circumstantial evidence against accused save for suspicion. He relied on the case of Sawe v Republic Criminal Appeal No. 2/2002 where the court held that suspicion however strong cannot be a basis for a conviction; that accused's defence stood unchallenged and accused should be acquitted.



Determination :-

13. The accused is charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code. Being a criminal offence, the prosecution bears the burden to prove its case beyond reasonable doubt.

14. The celebrated case of *Woolmington v Republic* (1935) UKHL 1 discussed what the standard of proof in Criminal Cases is, when it was held,

“Throughout the web of the English Law, one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner’s guilt..... if, at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given by either the prosecution or the prisoner, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained”

In *Miller v Minister of Pensions* [1947] 2 ALL ER 372 the court while discussing what “reasonable doubt means”, had this to say: -

“The degree is 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 defeat 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”.

15. In this case therefore, the prosecution has to prove beyond reasonable doubt the following ingredients

1. Death of the deceased;
2. That the accused caused the unlawful act or omission that caused the death;
3. That the accused possessed malice aforethought.

Death of the Deceased;

16. The death of the deceased is not in dispute, PW1 and 2 were the first persons to see the deceased’s body lying next to PW2’s latrine at PW2’s home. PW4 arrived at the scene later and saw his twin brother’s dead body lying next to a neighbour’s latrine. PW4 was present when the Doctor, PW5, performed the post mortem. The deceased was found to have sustained deep cut wounds on the head and both hands and the body was pale for lack of blood. The Doctor (PW5) was of the opinion that the cause of death was severe head injury with intra cerebral haemorrhage compounded by exsanguination (bleeding) secondary to assault with a sharp object. The deceased did not therefore die of natural causes but from injuries inflicted on him by another.

Whether Accused caused the death:

17. As correctly submitted by the defence Counsel, nobody witnessed the murder and there is therefore no direct evidence against the accused. The question is therefore whether there is circumstantial evidence that links accused to the offence. The courts have set down the test to be satisfied before circumstantial



evidence can be relied upon to found a conviction. The said tests were set out in the case of *Abang'a alias Onyango v Republic* CRA 32/1990. The same principles were applied in *Sawe v Republic* (2003) eKLR . In *Abang'a's* case, the Court of Appeal said "It is settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests;

- i. The circumstances from which an inference of guilt is sought to be drawn; must be cogently established;
 - ii. These circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
 - iii. The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all his human probability the crime was committed by the accused and no one else."
18. In addition, the prosecution must establish that there are no other co-existing circumstances which would weaken or destroy the inference of guilt. In *Teper v Republic* (1952 ALL ER 480, the court said "For our part, we think that if there be other co-existing circumstances which would weaken or destroy the inference of guilt, then the case has not been proved beyond reasonable doubt and an accused is entitled to an acquittal" See also *Musoke v Republic* (1958) EA 715.
19. It has also been held that circumstantial evidence is very often the best evidence.
20. In *R.V Taylor Weaver Donovan* (1928) CR App. 21, the Court observed as follows. "It has been said that the evidence against the applicant is circumstantial. So it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which by undersigned coincidence, as capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial". The above position still holds even today.
21. Although the accused denies having been married to the deceased because no dowry or marriage rights had been conducted, PW1,2,3,4 and even the Investigating Officer knew accused as the wife of the deceased. Even DW2, the Accused's own sister recognized the deceased as the husband of the accused. There is no doubt that they cohabited as husband and wife and had two children together. None of the witnesses could tell whether at the time of the offence the accused was living with the deceased because it seems there had been an disagreement between them and the children were said to be living with deceased's sister. This was confirmed by PW4. PW2 said that he had seen accused on Saturday two days before the murder.
22. The accused raised an alibi defence, that she was staying with her sister in Ortum since December 2022 and was not in [particulars withheld] in June 2023 when the murder was committed. The question is therefore whether this alibi has raised sufficient doubt in the prosecution evidence as to dislodge it. The onus always lies on the prosecution to prove the falsity, if any, of the alibi defence. At no time has the burden of proof ever shift to the accused.
23. In *Victor Mwendwa Mulinge v Republic* (2014) eKLR, the Court of Appeal had this to say,
24. It is trite law that the burden of proving the falsity, if at all, of an accused's defence of alibi lies on the prosecution; see *KARANJA V R*, [1983] KLR 501 ... this Court held that in a proper case, a trial court may, in testing a defence of alibi and in weighing it with all the other evidence to see if the accused's guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence of alibi at an early stage in the case so that it can be tested by those responsible for investigation and thereby prevent any suggestion that the defence was an afterthought."



25. In the case of *Erick Otieno Meda v Republic* (2019) KEHC 4959, the Court of Appeal after considering other cases on alibi defence from other jurisdictions held as follows at paragraph “23 . The comparative decisions cited above are persuasive and espouse good law which we adopt herein. In considering an alibi, we observe that:
- (a) An alibi needs to be corroborated by the other witnesses, and not just a mere regurgitation of the events from the accused’s point of view;
 - (b) An alibi defence needs to be introduced at an early stage so as to allow it to be tested, especially during cross-examination of the trial;
 - (c) The alibi defence or evidence may often rest on the credibility of the accused and the reliability of the evidence that he or she has presented in court;
 - (d) The accused does not need to prove the alibi, but the prosecution must have presented its case that the accused is guilty beyond a reasonable doubt so as to allow the alibi to fail. (See *Mhlungu - v - S* (AR 300/13) [2014] ZAKZPHC 27 (16 May 2014).
26. Accused’s testimony is that on 26/6/2023 she was living with the sister PW2 at Ortum. According to the accused, she had left Edy because he was a drunkard and irresponsible. To the contrary, DW2 told the court that Accused went to her home in December, 2022 to assist her because she was ill and stayed on till early or mid June 2023 when she left to go and see her children. I found several inconsistencies in the testimonies of DW1 and 2. Whereas the accused (DW1) denied having been married to Edy or knowing any of her siblings or parents, DW1 recognized Edy as a brother-in-law DW2 had visited Accused while living with Edy and that Edy with accused had visited her twice in Ortum. She added that her parents knew that Accused was married to Edy. Lastly, contrary to Accused’s testimony that accused and deceased had frequent quarrels with deceased over his drunkenness, DW2 was not aware of any quarrel between them. These contradictions go to discredit the Accused’s testimony. Most importantly, DW2 told the court that Accused left her home at beginning or mid June, 2023 never to return. This is in sharp contradiction of Accused’s testimony that she left DW2’s house and went to Chepareria in a bid to see her children when she was arrested and this was on 18/7/2022. DW2 having stated that accused left her home in early or mid June, 2023, DW2 could not tell where Accused was as of 26/6/2023 when the murder occurred.
27. PW3’s testimony has not so far been dislodged, that he found the Accused had locked up herself. In his house on the morning of 27/6/2023. The accused also admitted that PW3 is her relative and there is no known reason why he could have given false testimony against her. The accused also admitted that PW3’s home is near deceased’s house in [particulars withheld] with a valley separating the two. According to PW3, accused claimed to have fought with the deceased the previous night and PW3 went to find out deceased’s condition only to find that he died. This court is satisfied that the accused was in [particulars withheld] on 26th and 27th June, 2023 and the testimony of PW3 placed her at the scene of crime. Accused was not in Ortum on 26th and 27th June, 2023.
28. The accused did not raise her alibi early enough for the prosecution to test it in cross examination or by calling other witnesses. The above notwithstanding, I find her defence was riddled with inconsistencies and it was but an afterthought and it is dismissed as such. PW3’s testimony placed Accused at the scene and this court finds that though it is unknown when accused came back to deceased’s house. PW2 saw Accused at deceased’s home on Saturday. Accused was at deceased’s home between 26th and 27th June, 2023 when the death occurred and I find that the circumstantial evidence unerringly points at Accused as the culprit.

Proof of Malice aforethought: -



Section 206 of the PC defines circumstantial Malice aforethought as follows:-

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

29. In the case of *Chesakit v Uganda* CR App No. 95/2004, the Court of Appeal of Uganda stated that in determining a charge of Murder, whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the accused and the subsequent conduct of the accused person. Earlier *Rex v Tubere c/o Ochen* (1945) 12 EACA 63 the Court of Appeal of Eastern Africa stated thus on the issue “It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick...”
30. In the instant case, a blood-stained panga was found in the deceased’s house which seemed to be the scene of crime because a lot of blood was found there. The injuries inflicted on the deceased spoke loudly. The Doctor found several deep cut wounds on the head exposing the skull, several deep cut wounds on both hands exposing the bones and the body was pale due to excessive bleeding. The injuries are evidence that the intention was to kill deceased. The accused in a bid to conceal the body, dragged it to PW2’s latrine may be with the intention of disposing of it in the latrine but did not manage to do so. Accused then fled. All these actions are evidence that Accused wanted the deceased dead and are proof of Malice aforethought.
31. I find that the prosecution has proved that the accused, with Malice aforethought, caused the death of the deceased. Accused is found guilty of Murder under section 203 of the Penal Code and is convicted accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAPENGURIA THIS 4TH DAY OF MARCH, 2026.

R. WENDOH

JUDGE

In the Presence of:-

Accused in person present

Counsel for Accused – Mr. Ndinyo

Ms. Koech - Prosecution Counsel



Juma/ Hellen Court Assistants

