



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 30 OF 2018

REPUBLIC/STATE

.....**PROSECUTOR**

VERSUS

LILIAN SYOKAU MULWA
ACCUSED

RULING

1. The accused person is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**, the particulars being that on 6th October 2018 at Kivani village, Kathekakai location in Athi River Sub-County within Machakos County, she murdered **Samuel Kilonzo Mutiso**.
2. The accused pleaded not guilty to the charge and in order to prove its case the prosecution called thirteen (13) witnesses and also produced a Pathologist's Report as proof of the cause of death.

3. Briefly, the facts of the case are that the accused and the deceased were living together as wife and husband. On the fateful day after a night of merry making, they were dropped home by a boda boda rider (Peter Njenga - Pw10) together with Benjamin Kimeu Mwau (Pw12) who then left them and proceeded on their way. These two witnesses testified that upon being dropped the accused and the deceased had a back and forth on who was to pay the fare but as they could not agree Pw12 volunteered to take the fare to Pw10 the next day only to learn the next morning that the deceased had died. Those close to the accused person by virtue of either being her neighbours or kin (Pw1, Pw2, Pw3, Pw5, Pw6, Pw7 and Pw8) testified that they received calls from her informing them that the deceased was ill and needed to be taken to hospital. They went there and found the deceased lying on the floor. Save for Pw7 (Phillip Namasaka, the others did not see any injuries on the body of the deceased. They however, testified that the deceased was in a comatose condition and was pronounced dead upon arrival at the Machakos Level 5 Hospital. Pw7 recalled seeing a mark on the deceased's neck.

4. The expert witness Dr. Njenga Waithera (Pw13) a pathologist at the Machakos Level 5 Hospital testified that she performed a post mortem on the body of the deceased on 9th October, 2018. She testified at length on her general observations of the body of the deceased including patternless abrasions on the right

anterior wrist, left posterior elbow, face and lower back and patterned right and left lateral cervical neck abrasions (approximately 4 cm each). She also stated that upon dissecting the neck there were contusions on the left deep neck muscle, fractured thyroid with surrounding haematoma and subluxation of the thyroid cartilage. She then concluded that the cause of death was asphyxia secondary to manual strangulation in a known alcoholic.

5. The Prosecution's case closed without calling the investigating officer who did not attend despite a last adjournment to the prosecution, in view of the age of the case and the many adjournments granted. The prosecution and the defence then made their arguments on whether the accused had a case to answer, by way of written submissions. I need not reproduce the submissions here but suffice it to say that the prosecution argues that it has established a prima facie case sufficiently to warrant this court to call upon the accused to defend herself. Learned Counsel for the accused, on the other hand argues that the accused has no case to answer and ought to be acquitted at this stage.

6. I have carefully considered the evidence, the submissions, case cited and the law. Firstly, there is direct evidence that the accused person was the last person to be seen with the deceased - refer to the evidence of Pw10 and Pw12. There is also evidence that there was an altercation or argument between

them at the point where Pw12 and Pw10 dropped them off at their gate. Both of them were drunk and according to Pw10 the two engaged in a quarrel which culminated into a fight. They separated the two before leaving. There was also evidence that the deceased was alive when the two of them (accused and deceased) got to their house. This was the testimony of their son, Kelvin Kimondi (Pw9) who stated that it was he who opened the door to let them in before leaving them alone and going back to sleep.

7. It is my finding, and this is corroborated by the evidence of the Pathologist (Pw13), that the pushing and fighting could not have resulted in the death of the deceased. However, there is evidence that the deceased had strangulation marks on the neck and that indeed the cause of death was asphyxia secondary to strangulation. The Pathologist was emphatic that a fall could not have caused the injuries observed on the neck of the deceased. It is as a result of the above findings that I come to the conclusion that the accused has a case to answer and call upon her to enter her defence as provided in **Section 306 (2) of the Criminal Procedure Code.**

It is so ordered.

Ruling signed, dated and delivered virtually on this 19th day of March 2026.

E. N. Maina
Judge

In the presence of:

Mr. Nabende for accused

Mr. Shikanda for On sundwa for victim's family

Mr. Motende for Accused person

Accused person

Mary - Court Assistant/Interpreter

ORIGINAL