

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CRIMINAL CASE NO. E009 OF 2024**

**REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS**

**VERSUS**

**ROBERT MAUA.....ACCUSED**

**JUDGMENT**

1. The accused person herein, Robert Maua, faces a charge of murder. It is alleged that he murdered Dolphina Achola Imbayi, on 23<sup>rd</sup> September 2024, at Mukane Village, Bwaliro Sub-Location, Elukulu Location, in Butula Sub-County, within Busia County, contrary to sections 203 and 204 of the Penal Code, Cap 63, Laws of Kenya. He denied the charge, and a trial was conducted. The prosecution presented 10 witnesses.
2. PW1, Praxedes Sheunda Ouma, was an in-law of the deceased, and she had spoken to the deceased the night previous to her death. The next morning, she was informed by children that the door to the house of the deceased was locked from outside, and that she had not been seen that day. At lunchtime she was informed of the same thing. The accused had been seen climbing an avocado tree, and peering into the house of the deceased. She reported to the area *liguru*. Thereafter, she went to the house of the deceased, to secure it. She opened it, and saw that household items and clothing were scattered all over. She went into the bedroom, and noted that the deceased was lying there, dead. She raised alarm. Youths came, with a torch, and it was established that the head of the deceased was tied with a *kikoi*, and smothered. She identified the accused as a step-grandson of the deceased, with whom they did not get on

well. She mentioned a land dispute between the parents of the accused and the deceased.

3. PW2, Lazarus Nyongesa Imbayi, was a son of the deceased, working in Nairobi. He stated that the deceased had issues with a stepson and the accused, and at one time, she had called him to inform him that the stepson had told her to call him, to ask him to take her out of her house while she was still alive. He reported to a *liguru*, but the deceased was still fearful for her safety. He was to travel home to meet her, over that issue, and while on the way, he was informed that she had been killed. When he got home, he found that her body had been moved to the mortuary. He was present at postmortem. It transpired that she had been raped, and strangled to death. He stated that the deceased used to accuse the accused of stealing her property.
4. PW3, Nelson Masenya Okumu, was a village elder. He had previously received a report from PW1, about theft of items from the house of the deceased. It was to him that PW1 reported that the deceased had been sleeping the whole day, and she was not sure if she was alive or dead. He went to the home, and saw the body of the deceased, and confirmed that she had died. The matter was thereafter escalated to higher authorities.
5. PW4, Christopher Oduor, was part of the local community policing. He identified the deceased as his grandmother. He was telephoned, on the material day, and informed that she had died. He rushed home, and confirmed so. He said that she had been raped, and strangled. The police were informed, and the body was removed to the mortuary. He said that he was informed, by Patrick Ambugu Libaya, that it was the accused who had perpetrated that act. He stated that some items, stolen from the house of the deceased, were recovered from the house of the grandfather of the accused, after the burial of the remains of the deceased.

6. PW5, Dr. Teddy Timon Tura, was the medical officer who performed postmortem on the body of the deceased. On external examination, he saw swellings and blood. The face and chest were puffy. There were bruises on the neck, and dried blood on the chest. There were bruises on the shoulder and the clavicle, and dried blood on the right ear. There were numerous bruises on the left arm, the abdomen and the perineal area. There was an imprinted mark on the neck created by the rosary. Internally, the lungs were high, the neck bone broken, and the tracheal bones collapsed. There were bruises on the perineal area, and a vaginal swab was taken. He opined that the cause of death was asphyxia, due to manual strangulation, with suspected rape. Samples were taken, for further analysis, being a rectal swab, right kidney, part of the liver and the vaginal swab.
7. PW6, Wilson Wafula Imbai, was a son of the deceased. On the material day, he heard screams from the home of his mother, the deceased. He rushed there and found that she had died. The police came, and the body was removed to the mortuary. He said that he did not live in the same compound with the deceased, and the nature of his work did not allow him to see her often.
8. PW7, Hendrika Atieno, was a daughter of the deceased. She passed by the homestead of the accused and the deceased, on the material day, and met one of the relatives of the accused, from whom she enquired about the deceased, and she was told that the deceased had been around, but had left. She went her way. She later heard screams from the direction of that homestead. She ran to that home, and found a crowd. She said that she did not know the accused.
9. PW8, No. 109818 Police Constable Kenneth Muthuri, was informed of the murder incident at about 21.00 Hours. He and other officers rushed to the scene. They documented the

scene, and interrogated members of the public. He saw the body, which he described as half-naked. The police removed the body to the mortuary for preservation, pending postmortem. He revisited the scene the next day, for more interrogations. Later the same day, members of the public escorted the accused, and 2 others, to the police station, and he rearrested them, and placed them in custody. He obtained custodial orders on 25<sup>th</sup> September 2024, to facilitate completion of investigations. He went on to give details of all the steps that he took in the course of investigations, inclusive of the photographs taken at the scene.

10. PW9, No. 97110, Police Corporal Moses Maina Muraguri, was from the scenes of crime. He received a CD from PW8, of the photographs that the latter had taken, which he processed, and produced as exhibits.
11. PW10 was Edna Nyaloti Ameyo, the Busia Chief Magistrate, who recorded a confession from the accused, on 7<sup>th</sup> October 2024. She testified that the accused had informed her that on the material day, he went to the house of the deceased, at about 3.00 PM, and had sex with her, after which he strangled her. He said that he did not know what made him have sex with her, and kill her, for he had not disagreed with her. He stated that he did not disclose that he was responsible for her death, even after people started to gather, to mourn her. Members of the public subsequently arrested him, and took him to the police. The witness stated that she had complied with the rules relating to recording of confession statements, and that it appeared that the accused had not been tortured. She produced the confession statement as an exhibit.
12. On 19<sup>th</sup> December 2025, I delivered a ruling, where I found and held that a *prima facie* case had been established against the accused person, to warrant his being required to present a defence. A defence hearing was conducted. The

accused person made a sworn statement, but he did not call witnesses.

13. The accused, Robert Maua, testified as DW1. He identified the deceased as his grandmother. He stated that, on that material day, he was at school, playing football, when he heard screams from his home, and rushed there. He found the deceased had died, and he saw the body. He stated that his father, Fredrick Maua, had asked him to admit the charge. He said his father used to break in to the house of the deceased, and steal from there, and then people would blame him, that is the accused. He said that the following day, the family of the deceased took him to the police. He mentioned that there was a land dispute between the deceased and his father. He said that his father once threatened to kill the deceased, over the land. He conceded that he had been taken before PW10, where he told PW10 that he was the one who had killed the deceased, with his own hands. He said he did not know what had happened, adding that he guessed that it was a lie to say that he killed the deceased.

14. At the close of the oral hearings, the accused person, through his Advocate, Ms. Wasswani, filed written submissions, which I have read, and noted the arguments made.

15. The offence of murder has 4 elements: proof of the death, the cause of it, the role of the accused in the causation, and malice aforethought. A conviction should be founded upon these elements being positively proved.

16. On proof of the death, PW1, PW3, PW4 and PW6 saw the body at the scene, while PW2 saw it at the mortuary, and identified it to PW5, for postmortem purposes. PW8, the investigating officer, was among the police officers who removed the body from the scene. PW5, the medical officer,

performed postmortem on the body. Proof of the death was overwhelming.

17. On the cause of the death, PW5 did an autopsy on the body, and noted multiple injuries on various parts of the body, some of which included broken and collapsed bones of the neck and chest. The conclusion was that death happened because of manual strangulation.
18. On the role of the accused, in the causation, there were witnesses, presented by the prosecution. None of them were eyewitnesses to the assault on the deceased, which caused her death. PW2 testified to seeing the accused suspiciously around the scene, at about the material time the death was suspected to have occurred. The most crucial evidence, however, on the role of the accused in the causation of the death, was the confession statement that PW10 recorded from him. In the confession statement, the accused conceded to be the one who raped and killed the deceased. The accused was represented at the trial, by an Advocate, Ms. Wasswani. No objection was raised, at the trial, to production of the confession statement, made by the accused, and recorded by PW10, and the same became part of the evidence against the accused.
19. When he was put on his defence, the accused denied having caused the death. He admitted to having attended before PW10, when the confession statement was recorded, and he confirmed that it was him who informed PW10 that he was responsible for the death. He blamed his father for advising him to confess, and accused him, the father, of threatening him. He said that it was a lie to say that he killed the deceased. In the written submissions, it is argued that the confession had been repudiated or retracted.
20. What should be made of the defence statement, which denied the charge, and the submission that the confession

was retracted? When the confession statement was being produced by PW10, no objection was raised by the defence. A confession statement can only be retracted or repudiated upon a trial being conducted on it, by way of a trial-within-a-trial. A trial-within-a-trial is only conducted where an objection is raised, to production of the confession statement. No objection was raised when PW10 testified. No trial-within-a-trial was conducted, on the confession statement. Consequently, the legality and genuineness of that confession statement was not called to question.

21. A purported repudiation or retraction, of the confession statement, at defence hearing, cannot be of any consequence, so long as the production of the confession statement was not objected to, which would have triggered a trial-within-a-trial, and afforded an opportunity to the accused person to retract or repudiate the confession statement. It would come too late, to raise it at defence hearing, for the defence would have lost the chance to have the said confession statement tried, before the same was produced as an exhibit. To the extent that no objection was raised, during the prosecution case, and a trial-within-a-trial was not conducted on the said confession statement, the issue of the said confession being retracted cannot arise. It could not arise at defence hearing, for it was water under the bridge. By that statement, the accused person confessed to have been the person who raped and killed the deceased.

22. On malice aforethought, the same is defined in section 206 of the Penal Code. It is about intention to kill, and knowledge that certain acts could cause death, yet the perpetrator engages in them, regardless. The intention could be direct, where the perpetrator voices or utters or expresses that he was going to kill. It could be indirect, to be implied from the conduct of the perpetrator, which causes or leads to the death.

23. The deceased herein was killed by the accused, going by the confession statement that he made to PW10, and which was put in evidence as an exhibit for the prosecution, without any opposition. In that confession statement, he stated that he killed the deceased, by strangling her. The postmortem evidence confirmed that. The manual strangulation, going by that evidence, was gruesome. The head of the deceased was wrapped in or tightly covered with a scarf or *lesso*. Her lungs were hyperinflated. The bones of the neck were broken or fractured, with partial collapse of the tracheal rings. The face and neck veins were engorged.
24. Overall, the forensic evidence established malice aforethought, on the part of the accused, in the causation of the death of the deceased, from the sort or kind of force employed in the strangulation, which was clearly intended to ensure that death happened.
25. The written submissions raise the issue of the case being founded solely on circumstantial evidence. That is true, but the accused person recorded a confession statement before PW10, which he did not contest when the same was being produced as an exhibit. There is also the argument about elimination of other possible perpetrators. There was no necessity for that, in view of the uncontested confession statement. There is also the issue of the forensic evidence, on the samples taken at postmortem, not being produced. Again, there is an uncontested confession, and the court can quite properly convict without such evidence. There is also the argument about a doubt being raised, that the accused was playing football, at about the time the offence was committed. That defence could not possibly raise any doubt, when the confession that he had recorded before PW10 had not been retracted or repudiated, at the time the same was produced as an exhibit.

26. In view of everything said above, I do hereby find and hold that the prosecution has established, beyond reasonable doubt, that the accused person herein, Robert Maua, is guilty of unlawfully causing the death of the deceased, Dolphina Achola Imbayi, on 23<sup>rd</sup> September 2024, contrary to sections 203 and 204 of the Penal Code. I, accordingly, convict him, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya.
27. For the purpose of sentencing, I do hereby direct the Busia County Director of Probation and Aftercare Services to look into the antecedents of the accused, and get the views of the community and the family of the victim, and thereafter file a pre-sentence report, within 14 days. There shall be a sentencing hearing, on 6<sup>th</sup> May 2026. Orders accordingly.

**DELIVERED, VIA MICROSOFT TEAMS, DATED AND  
SIGNED, AT MILIMANI, NAIROBI, ON THIS 17<sup>TH</sup> DAY OF  
APRIL 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. Wasswani, instructed by Lawi WI & Company, Advocates for the accused person.**

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