



**Republic v Komba (Criminal Case E024 of 2023)  
[2026] KEHC 4850 (KLR) (15 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4850 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL CASE E024 OF 2023  
LN MUTENDE, J  
APRIL 15, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BENSON AMWAI KOMBA ..... ACCUSED**

**RULING**

1. Benson Amwai Komba, the Accused, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence being that on the night of 2<sup>nd</sup> and 3<sup>rd</sup> November, 2023, at Nyahururu Town, Nyahururu Sub-County within Laikipia County, murdered Monica Wanjiru Ngatia.
2. Facts of the case are that on 2<sup>nd</sup> November, 2023, the deceased rang PW2 Dorcas Muthoni Wangare, a room attendant at Cyrus Lodge and requested for a reservation of a room. At about 7.00pm, she went and collected the key to the room. In the morning of 3<sup>rd</sup> November, 2023, PW4 Elizabeth Wanjiru the receptionist, went round the rooms and on reaching Room No. 4 she found the deceased lying naked. She called out her name but she was not responding. She called PW1 Samuel Kipkurui Arap Kuto, the Manager, who went to the room and found a naked woman who was unresponsive. He observed a pool of blood and blood stains on the wall near the bed. He reported the matter to the police.
3. PW6 No. 93937 Corporal Edward Esanya a Crime Scene Investigation Officer visited the scene and took photographs and made a certificate thereof.
4. PW7 No. 2392288 Inspector Ngugi Mwangi conducted an identification parade in the course of investigations where the Accused was identified by PW8 Antony Kagwi Muiruri.
5. PW8 Antony stated that he purchased a cellphone make Guava black in colour with buttons which he left with John but inserted therein his sim card on 5<sup>th</sup> November, 2023. On 9<sup>th</sup> November, 2023,



- he was arrested on allegations that he had stolen the cellphone. He later identified the Accused as the person who sold to him the cellphone.
6. On cross – examination the Appellant stated that he had no document to establish he bought the cellphone from Benson. He stated that he splits timber with a panga for a living. He denied knowing if the deceased was cut with a panga but said that he came to learn that the deceased died at Cyrus Lodge. He stated that he was held in cells for two (2) weeks but denied having mentioned the Accused so as to be released. He admitted that his motorcycle was parked opposite Cyrus Hotel because he had gone to buy spare parts.
  7. PW9 No. 235561 CI Philip Ochieng stated that he recorded a statement under inquiry from Antony, a statement that the prosecution abandoned as it was argued that the defence had not been served.
  8. PW10 No. 58965 Corporal Samson Kipsang the Investigating Officer visited the scene. He established that the deceased was one of sex workers within Nyahururu who had booked a room on 2<sup>nd</sup> November, 2023. According to him the deceased seduced a male sex worker and they went to Cyrus Lodge. The following day she was found dead.
  9. That following intelligence gathered, PW8 Antony was arrested while in possession of a Guava cellphone which had a sim card registered in the name of Ann Wanjiku. That on 4<sup>th</sup> November, 2023, a number registered under the name Benson Mwangi was on the phone. Then on 5<sup>th</sup> November, 2023 a number 07XXXXXX61 in the name of Antony Kagwi was used on the phone. That one Corporal Mwanza tracked the phone which was traced to PW8 Antony. And, on interrogation he led the police to the arrest of Benson following allegations that he purchased the cellphone in the presence of John Kiongo Mwangi at Nyahururu Bus Stage location area behind Maralal Bus Stage. Antony identified Benson Amwai on the identification parade. Both were arraigned but later the case against Antony was withdrawn and he was treated as a prosecution witness.
  10. On cross – examination he stated that he had no evidence that the Accused inserted his sim card in the phone. Stating that he had the IMEI (International Mobile Equipment Identity). In his statement he denied having stated so in his evidence in court. He said that Ann Wanjiku holder of number 07XXXXXX7... was the first person to use the cellphone, but they did not track the person.
  11. That he did not find any evidence to place the Accused at the scene, who was not found with anything that belonged to the deceased. He failed to establish if the Accused knew the deceased and whether he had any motive; and, evidence that the phone belonged to the deceased was by Antony.
  12. At the close of the prosecution case, the defence through the firm of Muchangi Patrick & Co. Advocates filed written submissions. It is urged that the entire case hinges on the testimony of PW8 Antony Kagwi who alleged that he bought a phone from the Accused while in the company of John Mbogo who was not called as a witness, evidence that is unreliable and uncorroborated. That having been found in possession of the phone alleged to be for the Accused, his testimony conveniently transferred culpability to the Accused hence should be treated with utmost circumspection. That there was no proof of the alleged sale of the unidentified phone.
  13. On the question of ownership of the phone, it is urged that DCI Antony Mwanza who allegedly informed the Investigating Officer that the phone belonged to the deceased was not called as a witness hence the evidence was hearsay. That no family member, friend or a acquaintance identified the phone as belonging to the deceased, no mobile service provider data was availed to link the phone's IMEI to a number registered in the name of the deceased or to show how the deceased's sim was ever used, an omission that destroys the alleged nexus between the phone, the deceased and Accused.



14. That no evidence, forensic, electronic or testimonial evidence was tendered to place the Accused at the locus in quo, room 4 of Cyrus Lodge and Hotel booking records positively show that the Accused was not booked at Cyrus Lodge on the night in question which made the prosecution's theory speculation.
15. That what was proved was the fact of death only. And, as held in *Sawe v Republic* [2003] eKLR circumstantial evidence can only sustain a conviction if it irresistibly points to the Accused to the exclusion of all others, yet evidence fell short of that threshold.
16. I have considered evidence adduced and submissions tendered by the defence. The offence of murder is provided for in Section 203 of the Penal Code which stipulate as follows;

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

17. According to the law the elements of murder derived from the penal law are;
  - a. The fact of death
  - b. That death was caused by an unlawful act or omission committed by the Accused.
  - c. The unlawful act or omission was actuated by malice aforethought.

18. In *Republic v Omwenga* [2009] eKLR it was stated;

“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 that 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.”

19. The body of the deceased was identified to the doctor who performed the postmortem by PW3 Robert Mbugua Ngatia, the elder brother of the deceased. PW5 Dr. Wangari Wambugu, a pathologist confirmed death of the deceased and opined that the cause was bleeding from stab wounds to the neck due to sharp force trauma following an assault. This was proof of the fact of death beyond doubt.
20. From evidence adduced by the pathologist the deceased sustained external injuries. She had multiple bruises on the forehead. The neck had stab wounds which severed veins and there were extensive haematoma in tissues of the right side of the neck.
21. This would bring about the question as to whether malice aforethought was present. Section 206 of the Penal Code defines malice aforethought as;

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.

22. In *Nzuki v Republic* [1993] eKLR the Court of Appeal stated thus;

Before an act can be murder, it must be aimed at someone and in addition it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused:

- i. The intention to cause death;
- ii. The intention to cause grievous bodily harm;
- iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from these acts, and commits those acts deliberately and without lawful excuse the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not and in none of these cases does it matter that the act and the intention were aimed at a potential victim other than the one who succumbed.

Without an intention of one of these three types, the mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder....”

23. One of the stab wounds severed a major blood vessel. The forehead was not only bruised but the upper lip was cut. One of the fingers was also cut. The deceased was oozing blood from the nose while some blood stains splashed on the wall. The multiple stabbing and especially on the neck indicated there was a premeditated intent to cause grievous harm if not death. This was proof of malice aforethought.

24. There was no direct evidence as to who caused the death. The prosecution did rely on circumstantial evidence. The question to be answered is whether the chain of events pointed exclusively to the Accused as the perpetrator of the act.

25. The Prosecution bore a duty to prove the case. At this stage the State is obligated to establish a prima facie case requiring the Accused to be placed on his defence. A prima facie case was explained in the case of *Bhatt v Republic* (1957) EA 332 the court stated thus;

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court could not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case, nor can we argue that the question whether there is a case to answer depends only on whether there is “some evidence irrespective of its credibility or weight sufficient to put the accused on his defence.”

A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence... It may not be easy to define what is meant by prima facie case but at least it must mean one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”



26. In *Abanga alias Onyango v Republic* CA CR. Appeal NO. 32 of 1990 (UR);

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

27. The Investigating Officer stated that the Accused could not be placed at the scene. The act of murder was committed at a lodging but surprisingly none of the employees on duty heard what transpired.

28. The Accused was mentioned by PW8 Antony Kagwi Muiruri who was found in possession of a cellphone alleged to belong to the deceased. PW5 the brother of the deceased did not know the cellphone his sister was using. None of the witnesses other than Antony identified the cellphone which was found in his possession.

29. The Investigating Officer stated that Antony was tracked following tracking of the cellphone IMEI by Corporal Antony Mwanza, who was not called as a witness. And, no documentation was adduced in evidence to link the device to the deceased. It was alleged that there was a number 0748923762, a sim card registered in the name of Ann Wanjiku who was not availed as a witness. No data was availed to confirm the allegation. The allegation that the sim card owned by the Accused was used in the phone was also unsupported by data.

30. The stated Antony alleged that he bought the cellphone from the Accused in the presence of John who was not called to confirm the allegation. It was his word of mouth that he bought the cellphone. Following allegations by PW8, the Accused was arrested. But, was it sufficient evidence to require him to be placed on his defence?

31. In *Sawe v Republic* [2003] the Court of Appeal stated that;

“In order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden, which never shifts to the party accused.”

32. In this case the process of gathering evidence was wanting. The pathologist testified that samples were taken for DNA sampling, namely vaginal swabs and nails that would have assisted in identification of the perpetrator and whether tissues of the perpetrator could have been found in the deceased’s nails. The Investigating Officer did not act as no DNA analysis was done so as to confirm who the suspect was between the Accused and Antony or any other person.

33. An offence was committed, but, there was no proof that it was committed by the Accused due to insufficient evidence. For that reason, the prosecution has not established a prima facie case warranting the Accused to be put on his defence. Therefore, he is not guilty and is acquitted pursuant to the Section 306(1) of the Criminal Procedure Code.

34. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF APRIL, 2026.

.....

L.N. MUTENDE

JUDGE

