



**Mukubali v Republic (Criminal Appeal E029 of 2021)
[2026] KECA 797 (KLR) (24 April 2026) (Judgment)**

Neutral citation: [2026] KECA 797 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL E029 OF 2021
MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA
APRIL 24, 2026**

BETWEEN

PHILIP WABOMBA MUKUBALI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal from the Judgment of the High Court of Kenya at Bungoma, (Riechi, J) dated 5th March, 2020) in HCCRC. No. 4 of 2017)

JUDGMENT

1. This is an appeal from the judgment of the High Court of Kenya at Bungoma delivered on 5th March 2020 by Riechi, J, wherein the appellant, Philip Wabomba Mukubali, was convicted of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) and sentenced to twenty-five (25) years imprisonment.
2. The facts resultant to this appeal are that on 18th February 2017 at Namarambi village in Bungoma East Sub-county, the appellant was alleged to have murdered one, Augustine Wanyama Murumbi “the deceased”. As expected, the appellant denied the information and thereafter his trial ensued.
3. The prosecution’s case was that PW1, Cypranus Soita Natembeya, was on the evening of 8th February 2017, walking home with the deceased, when they met the appellant who immediately stabbed the deceased on the left collar bone. He was able to recognize the appellant by moonlight. Besides he was his cousin and a retired teacher to both the deceased and himself. He raised alarm and fled the scene out of fear.
4. PW2, Wanjala Khaemba, the deceased’s uncle, heard screams and rushed to the scene only to find the deceased with a stab wound. He did not find the appellant at the scene though he later came to learn that it was the appellant who had stabbed the deceased.



5. PW3, Mukanda Wanjala Justus, similarly heard screams, rushed to the scene and found the deceased lying down injured. He also learned from the crowd that had gathered that the appellant was responsible for the injuries sustained by the deceased.
6. PW4, Joseph Wanyonyi Murumba, the deceased's father, confirmed that he found his son already dead with a chest injury, and heard people at the scene naming the appellant as the assailant.
7. PW5, Dr. Edward Milembwa, produced the post-mortem report prepared by Dr. Mitoro, which confirmed that the deceased died of shock due to excessive bleeding from a penetrating stab wound to the heart.
8. PW6, PC Charles Atte, the Investigating Officer of the case visited the scene, found the deceased's body with a stab wound, and later arrested the appellant after he surrendered at Webuye Police Station. He confirmed that there were eyewitnesses who implicated the appellant in the commission of the offence.
9. Upon being placed on his defence, the appellant gave a sworn statement denying the offence. He claimed that he was attacked by the deceased and PW1 while returning home after collecting rent from his rental premises, and that in the ensuing melee, the deceased was stabbed by PW1.
10. Upon a full evaluation of the evidence, the trial court determined that the prosecution had proved all the essential ingredients of the offence of murder to wit: the death of the deceased and its cause; the death was perpetrated by the appellant which was accompanied with malice aforethought.
11. Having reached these conclusions, the trial court convicted the appellant. In sentencing him to twenty-five (25) years imprisonment, the trial court acknowledged that the appellant was a first offender, had already spent three years in remand custody and was a family man of good conduct. Nonetheless, the court emphasized the seriousness of the offence noting that it resulted in the loss of life.
12. Aggrieved, the appellant challenges the said conviction and sentence on the grounds that: the trial court relied on insufficient and contradictory evidence of a single witness, motive was not proved, crucial exhibits were not tendered in evidence, the evidence was not exhaustively scrutinized, and that the sentence imposed did not take into account time spent in remand or mitigation.
13. When the appeal came up for plenary hearing, Mr. Ogenga, learned counsel appeared for the appellant while the respondent was represented by Mr. Otieno, learned Prosecution counsel. Both counsel opted to fully rely on their respective written submissions that they had filed and exchanged.
14. Counsel for the appellant submitted that the conviction was unsafe as it was founded on insufficient and contradictory evidence, primarily from a single witness, without corroboration or production of crucial exhibits such as the alleged murder weapon. He emphasized that the prosecution failed to establish motive or malice aforethought, thereby falling short of the threshold of proof of murder beyond reasonable doubt. In support thereof, counsel cited *Philip Nzaka Watu v Republic* [2006] eKLR and *Stephen Nguli Mulili v Republic* [2014] eKLR.
15. Counsel further relied on *Bukenya & Others v Uganda* [1972] EA 549, to posit that the prosecution must avail all necessary witnesses, and *John Mutua Musyoki v Republic* [2017], where convictions were quashed due to material inconsistencies in the prosecution's case. Counsel argued that contradictions between PW1 and PW3 should have been resolved in favor of the appellant. He also invoked *Kabaya v Republic* [1961] EACA 80 and *Republic v Andrew Mueche Omwenga* [2009] eKLR, on the need for clear proof of malice aforethought. He maintained that mens rea was not established, citing *Obuyi v Republic* [2023] KECA 682, where lack of motive undermined a murder conviction.



16. On sentencing, counsel submitted that the 25-years imprisonment imposed failed to take into account the three years spent in remand custody by the appellant as his trial was being processed and disregarded mitigation proffered by the appellant. In the ultimate, counsel urged this Court to allow the appeal, quash the conviction and set aside the sentence or in the alternative, review the sentence to take into account the time that the appellant spent in remand custody.
17. Counsel for the respondent in his submissions conceded the appeal on the grounds that the conviction of the appellant was unsafe as it was based solely on the uncorroborated evidence of PW1. He argued that the case essentially boiled down to the word of PW1 against that of the appellant, who maintained that he was attacked and robbed of Kshs. 700 being rent that he had just collected from his tenants by PW1 and the deceased. Counsel emphasized that the trial court failed to explain why it preferred PW1's version of events over the appellant's defence, which raised reasonable doubt. He relied on *Chiragu & another v Republic* [2021] KECA 342 (KLR), where this Court held that reliance on the evidence of a single witness, particularly a minor, without corroboration rendered the evidence of little probative value. He submitted that in the absence of corroboration, the prosecution's case was weakened, and the reasonable doubt raised by the appellant's defence ought to have been resolved in his favour. Accordingly, counsel urged the Court to allow the appeal, quash the conviction and set aside the sentence.
18. Much as the respondent has conceded to the appeal, that concession is not binding on this court. We are required and indeed duty-bound as a first appellate court to subject the evidence tendered in the trial court to a fresh and exhaustive examination and to our own decision on the evidence. We must weigh conflicting evidence and draw our own conclusions. In doing so, we should however, make allowance for the fact that the trial court had the distinct advantage of hearing and seeing the witnesses. See *Okeno v Republic* [1972] EA 32.
19. Having considered the record, the submissions of both counsel and the applicable law, this Court is satisfied that two broad issues arise for determination: whether the prosecution proved the charge of murder against the appellant beyond reasonable doubt, and whether the sentence imposed was lawful and appropriate in the circumstances. Section 203 of the *Penal Code* defines murder as the unlawful killing of another person with malice aforethought, while Section 206 outlines circumstances constituting malice aforethought.
20. The prosecution is therefore duty-bound to prove the death of the deceased and its cause. Thereafter the prosecution is expected to finger out the accused as the culprit and thereafter establish that the killing was premeditated. In other words, it was accompanied with malice aforethought.
21. In this appeal, the death of the deceased and its cause is not in dispute. Indeed, the appellant does not dispute this fact. Regarding the perpetrator, the appellant admits to his presence at the scene of crime and getting into a fracas which resulted in the death of the deceased.

According to him he was attacked by PW1 and the deceased in an attempt to rob him of Kshs. 700 that he had. From the record, the trial court opted to discount the appellant's narration of events and instead preferred that of PW1. The trial court however did not assign any reason(s) for the preference. In our view all the versions proffered by the appellant and the prosecution were plausible. We cannot therefore fault the appellant in lamenting that his defence was given short shrift yet it created reasonable doubt in the prosecution's case from which he should have benefited. We reiterate that the appellant's defence was not adequately discounted and therefore raised a plausible alternative explanation.
22. We however do not buy the appellant's story that it was PW1 who inflicted the fatal injury during the fracas. We say so because the appellant did not put the issue to the witnesses during his cross-



examination and only raised it in his defence. This goes to show that it was a mere afterthought calculated to shield him from culpability. From the evidence, we are satisfied that only three people were involved in the incident that culminated in the death of the deceased; the appellant, deceased and PW1.

23. On malice aforethought, while the injury sustained by the deceased was grave, the narratives of the events leading to the commission of the offence casts doubt on whether the appellant deliberately inflicted the fatal injuries or the motive of doing so. This Court in *Obuyi v Republic (supra)* underscored that lack of motive may weaken proof of malice aforethought. Further, there was no evidence of premeditation. This was simply an attempted robbery or altercation between the parties that went rapidly south. Malice aforethought was not accordingly established as required. In the absence of malice aforethought, it cannot be said that the offence murder was established. Nonetheless, it is not in doubt that the appellant was involved in the death of the deceased.
24. Given the circumstances and the evidence on record, the offence disclosed is one of manslaughter contrary to Section of 202 as read with Section 205 of the *Penal code*. In other words, upon our re-evaluation of the evidence, we are satisfied that the conviction of the appellant on the information of murder was unsafe. However, the evidence does establish that the deceased died from a stab wound inflicted by the appellant during a confrontation. In the circumstances, we are satisfied that the conviction should be reduced from murder to manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. Considering that the appellant has already served a custodial term of over nine years, and taking into account the three years spent in remand custody, we are satisfied that the appellant has been sufficiently punished
25. Accordingly, the appeal succeeds in part. The conviction for murder is quashed and substituted with a conviction for manslaughter. The sentence of twenty-five (25) years imprisonment is set aside and substituted with the sentence already served. The appellant shall in the circumstances be set at liberty forthwith unless otherwise lawfully held.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

ASIKE MAKHANDIA

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR

