



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Mwanzia (Criminal Case E001 of 2023)  
[2026] KEHC 5934 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5934 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL CASE E001 OF 2023**

**EN MAINA, J**

**APRIL 30, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CONSOLATA MUENI MWANZIA ..... 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.
2. The particulars of the charge are that on 15<sup>th</sup> December 2022 at Katithi village, Kibau Sub-County Mwala location, in Mwala Sub-County within Machakos County, jointly with others not before court, they murdered Teddy Martin Kithuka.
3. The accused pleaded not guilty to the charge and in order to prove its case the prosecution called six (6) witnesses. Briefly the sum total of their evidence is that on the material day the accused's son, one Kioko, was seen walking with the deceased at their local trading center known as Kibandani market. It appeared as if the said Kioko was forcing the deceased to go home because at one point Kioko assaulted the deceased and on two occasions the deceased deliberately fell to the ground in an attempt to resist going with Kioko. According to Henry Nzioki Ngui (PW1), a night guard at the market, one person even remarked to Kioko that beating the deceased was not the means to have him agree to go home. Evidence was led that the next morning the accused called a neighbour, Elijah Munuve Mutua (PW2), to go help her take her sick child to hospital. When PW2 went to their homestead he found the deceased in Kioko's house and discerned there was something wrong. He advised the accused to inform the village manager who coincidentally was PW1, but when PW1 went to the house and saw the deceased, he advised her to seek assistance at the police station. She therefore went to Mwala Police Station and made a report. Police officers went to her home. They confirmed that Teddy was dead. Kioko was nowhere



to be found. They processed the scene, took photographs and removed the body and took it to the mortuary.

4. Corporal Bethwel Kipkemboi Lagat (PW6), the investigating officer, testified that they found three blood soaked jackets outside the house of the accused's son. Inside the house there was blood on the cushion of the sofa and they also took a lesso which had blood. They also collected some soil which had blood at the roadside. They took the items to the Government Chemist for forensic examination. Among the items were a blouse belonging to the accused and a cap. Upon analysis, all the items save for the blouse, seat cover and carrier bag were found to be stained with blood. The bloodstains on the jacket, the jumper, coat and cap generated a DNA profile that matched that of the deceased.
5. On 27<sup>th</sup> December 2022, a post mortem was conducted on the body of the deceased by Dr. Michieka, a Pathologist. The same revealed that the cause of the deceased's death was head and chest injuries due to blunt force trauma. The post mortem form indicated several injuries on the body of the deceased among them facial oedema, bruises on the right side of the face, head and scalp; bruises on the left forehead, occipital region and anterior chest wall, left and right sides; defence injuries; multiple fractured ribs, left and right side. On the head there was an injury on the forehead.
6. PW6 testified that the accused could not prove her innocence – his exact words were that the accused could not explain what happened or why she did not take the deceased to Mwala hospital yet it was very near. They therefore arrested her and charged her with this offence.
7. After the close of the prosecution's case Ms Makena Kaburu learned Prosecution Counsel, ad Mr. Nagwere, learned Counsel for the accused made their arguments by way of written submissions. Ms Kaburu submitted that the prosecution had proved its case against the accused person beyond all reasonable doubt; that all the elements of the offence of murder had been proved and the accused should be put on her defence.
8. On his part, Mr. Nagwere submitted that the prosecution had not established a prima facie case against the accused person, let alone prove their case beyond reasonable doubt and urged this court to acquit the accused at this stage.

### **Analysis and determination**

9. Section 306 (1) of the Criminal Procedure Code enjoins this court to put the accused person on their defence only if there is evidence they committed the offence and to enter a finding of not guilty and acquit the accused if there is no evidence.
10. The elements of the offence of murder are; the death of the deceased, that the death was by an unlawful act of the accused and that there was malice aforethought.
11. The death of the deceased and the cause of it have been proved beyond reasonable doubt. I can confidently state so as there are witnesses who attest to that death. The post mortem form also confirms that the deceased's death was due to an assault. The bruises on the body, the oedema and the fractures on his ribs all attest to that. The testimony of the night guard cum village manager, the blood in the soil collected at the road, the blood on the clothes around the house where the deceased's body was recovered, the government analyst's report and the pathologist's opinion are testament that this was not a natural death but a death caused by an unlawful act.
12. One can also deduce malice aforethought from the extent of the injuries inflicted on the deceased. The injuries speak of a person who was intent on either killing the deceased or causing him grievous harm. The only element that is for determination therefore, is whether the perpetrator of this crime was the accused now before this court.



13. There is no direct evidence linking the accused to the death of the deceased. The only evidence is circumstantial and it is that the death occurred in her home, to be specific in her son's house where the police found several articles which had blood that when examined forensically generated DNA of the deceased. It is trite that circumstantial evidence can at times be the best evidence but in this case it is my finding that the evidence do not point to the guilt of the accused. This is because it is evident that the inculpatory factors can be explained on other hypothesis other than her guilt. Indeed the inculpatory factors points to her son Kioko as the culprit. It is he who was seen assaulting the deceased who was resisting to go home with him; it was also in his house that the body of the deceased was found meaning that it is there that he met his death, there was blood not only in that house but also on the jackets found outside that house. There is no iota of evidence that implicated the accused person. The fact that she could not explain why she kept the deceased in the house rather than taking him to the nearby Mwala Hospital and the verdict by the investigating officer (PW6) that she could not explain her innocence goes against the tenets of criminal law which dictate that the burden of proof lies with the prosecution throughout the trial. It is only in special circumstances that the evidential burden of proof shifts to an accused person and this is not one such case. The tenets of fair trial require that an accused person be presumed innocent until proved guilty – See Article 50(2) of *the Constitution*. My finding gets support from the case of Republic v Lifchus [1997] 3SCR where the court held:

“The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the crown has on evidence put before it, satisfied beyond reasonable doubt that the accused is guilty. ....”

14. The proximity of the relationship between the accused person and the suspect in this case, who in any event the police did not give any explanation for not bringing him to book, is not sufficient reason to find her guilty. This case is similar to the case of Republic v Kariuki & Another [2024] KEHC 8535 (KLR) where the court dismissed charges against an accused person who had been implicated because of his relationship with the principal offender. I agree fully with the finding of that court that criminal responsibility must be based on personal acts or omissions but not mere association or proximity to the offender.

15. I think I have said enough to demonstrate that the prosecution has not established a prima facie case against the accused person as would warrant this court to call upon her to defend herself. Accordingly this court enters a finding of not guilty for the offence of murder and acquits her as provided in Section 306(1) of the Criminal Procedure Code. She shall be released forthwith unless otherwise lawfully held.

It is so ordered.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Mr. Nagwere Advocate for the accused

Accused person

Mary - Court Assistant/Interpreter

