



**Langat v Republic (Criminal Appeal 308 of 2019)  
[2025] KECA 1446 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KECA 1446 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL 308 OF 2019  
MSA MAKHANDIA, HA OMONDI & LA ACHODE, JJA  
JULY 31, 2025**

**BETWEEN**

**HILLARY LANGAT ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the Judgment of the High court of Kenya at Kisii, (Majanja, J) dated 22nd May, 2019 in HCCRC No. 5 Of 2019)*

**JUDGMENT**

1. The tragedy of a young life taken too soon, is one that lingers painfully in the hearts of those left behind, and in particular, the parents and siblings. On the morning of 28<sup>th</sup> February, 2018, in the quiet neighbourhood of Milimani area in Kilgoris township, a 14-year- old Brian Kibet, (“the deceased”), lost his life in a brutal act of violence. What began as an ordinary day for him, resting in his mother’s house a safe haven, one would but only imagine, ended in unimaginable horror and tragedy when he was attacked therein. His screams pierced the morning air, and moments later, Hillary Langat, (“the appellant”), was seen fleeing the house but was unsuccessfully pursued. Despite efforts to save him, the deceased succumbed to his injuries, leaving his loved ones, particularly his mother, Roselyn, devastated.
2. Following investigations, the appellant was subsequently arrested and charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He pleaded not guilty to the information, but was subsequently tried, convicted and sentenced to thirty-five years imprisonment. The appellant has contested both the conviction and the sentence in this appeal.
3. Because of the requirement that as the first appellate court, we must subject the evidence tendered in the trial court to thorough and exhaustive review, so as to reach our own independent conclusions in terms of *Okeno v Republic* [1973] EA 32, it behooves us therefore to set out the evidence tendered before the trial court albeit in brief. Here we go!



4. On 28<sup>th</sup> February, 2018, at approximately 10:00am, Brian Kimutai, PW1, was seated outside his house in Milimani area of Kilgoris town, enjoying the sunshine, when a man who later turned out to be the appellant approached him and asked whether Roselyn's house was open. Roselyne was a neighbour and an employee of the Kenya Power and Lighting Company Ltd, where apparently the appellant also worked. PW1 confirmed to him that it was open, and that he could access it through the kitchen door which was also open. The appellant entered the house, and moments later, PW1 heard the deceased screaming. PW1 immediately rushed to the house but saw the appellant emerge therefrom and run away. He pursued him albeit unsuccessfully. When he returned into the house, he found a crowd gathered and was informed that the deceased had been stabbed.
5. Valentine Chepkemoi Bwogo, PW2, lived in the same compound as Roselyn and PW1. She was inside her bedroom when she saw the appellant approach the kitchen door of Roselyn's house. She recognized him, as he had frequently visited the house to either drop or pick Roselyn or have her sign the work ticket as an employee of Kenya Power and Lighting Company Ltd. Earlier on, she had also seen PW1 outside his house engaged in a brief conversation with the appellant before the appellant entered Roselyn's house. Shortly thereafter, she heard a loud and prolonged screams emanating from Roselyn's house. She then saw the appellant run out of the house, with PW1 in hot pursuit. As she screamed for help, her house help, Sharon Chepkurui, PW3, heard her and entered Roselyn's house.  
  
Moments later PW3 emerged therefrom and informed her that the deceased had been stabbed in the stomach. PW2 managed to flag down a passing vehicle, and the deceased was rushed to Kilgoris Sub-County Hospital from where he succumbed to the injuries sustained.
6. PW3 further recounted that whilst in the PW2's house, she heard her exclaim, "What has he done?" She quickly left for Roselyn's house, where she found the deceased on his knees, when she asked him what had happened, he responded that he had been stabbed. At that moment, she noticed he was holding a knife with a green handle embedded in his abdomen. She rushed out to alert PW2, and when she returned, she found that the deceased had pulled the knife out of his abdomen and collapsed. A vehicle arrived shortly thereafter, and she assisted in taking him to Kilgoris Sub-County Hospital.
7. The investigating officer, PC Gregory Malakwen, PW4, based at Kilgoris Police Station received information that a young boy had been stabbed in Milimani area of Kilgoris Township. Upon arriving at the scene, he was informed that the deceased had been taken to the hospital. He nonetheless recovered a blood-stained knife and proceeded to Kilgoris Sub-County Hospital, where the deceased had been admitted in the ICU in critical condition. His investigation revealed that the appellant, was living in Kilgoris town. When he visited the appellant's residence with other police officers, his wife informed them that the appellant had left for Bomet that morning.
8. Following failed attempts to locate the appellant in Bomet, the investigating team broadcasted his name and image nationwide to other police stations. Soon afterwards, they received information that he had been spotted in Kuresoi in Nakuru County, where he was hiding. He was then traced and arrested and subsequently charged. PW4 also learned that the appellant had been dismissed from his employment with Kenya Power and Lighting Company Ltd on 28<sup>th</sup> February, 2018, allegedly due to illegal electrical power connections, and that his former supervisor was Roselyn, the mother of the deceased.
9. In his unsworn statement of defence, the appellant denied knowing Roselyn or working for Kenya Power and Lighting Company Ltd. He claimed that he was a farmer in Kuresoi and also owned a hotel thereat. On February 28, 2018, he was arrested by police officers while at the hotel and transferred to Kilgoris Police Station. There, he was interrogated regarding a murder case, which he denied. He maintained that he was unfamiliar with the deceased and had never been to Kilgoris prior to his arrest.



10. He called his employee, Haron Kiprono Kirui, DW2, as his witness. He stated that he had worked in the appellant's hotel in Kuresoi from 2015 until February 2018 when he left. He maintained that the appellant never mentioned to him that he ever worked in Kilgoris town. He stated that he was away from work for a week in February 2018 and, upon his return, found that the appellant was no longer at the hotel.
11. In determining the case, the High Court found that PW2 had positively identified the appellant at the scene of crime having seen him enter Roselyn's house moments before the deceased was found stabbed. Additionally, the appellant fled the scene immediately after the incident and avoided arrest for over a year whilst hiding in Kuresoi. The court determined that the murder was intentional, evidenced by the fact that the appellant came with the knife to Roselyn's house and targeted the deceased in the abdomen. His motive appeared to be revenge against Roselyn, following his dismissal from his employment with Kenya Power and Lighting Company Ltd. Ultimately, and as already stated, the trial court convicted the appellant for the offence of murder of the deceased and sentenced him to thirty-five years in prison.
12. The appellant, dissatisfied with the trial court's findings, appears to be challenging the conviction only in this Court on the basis that: it was erroneously grounded on identification evidence by PW1 and PW2, his guilt was not proved beyond reasonable doubt; the trial court improperly disregarded his defence; and unduly favoured the prosecution's witnesses. He therefore prayed for the appeal to be allowed in its entirety.
13. During the hearing of the appeal Mr. Ouru, learned counsel appeared holding brief for Ms. Bilha Erykah, learned counsel for the appellant whilst learned counsel, Ms. Kitoto appeared for the respondent. Both parties opted to rely solely on their respective written submissions that they had filed.
14. Mr. Ouru submitted that the trial court failed to properly scrutinize the identification evidence adduced by PW1 and PW2, which formed the basis of the appellant's conviction. He argued that the trial court did not warn itself of the inherent dangers of relying on such evidence, particularly given the circumstances obtaining at the scene of crime. On proof beyond reasonable doubt, Counsel cited the case of *Miller v Ministry of Pensions* [1947] 2 All ER 372, where Lord Denning stated that proof beyond reasonable doubt must carry a high degree of probability and should not admit fanciful possibilities that deflect the course of justice. He further relied on the case of *Philip Nzaka Watu v Republic* [2006] eKLR, in which it was held that a trial court must be satisfied that the accused's guilt is beyond reasonable doubt before convicting. The appellant asserted that in the circumstances of this case, the prosecution failed to meet this threshold, rendering his conviction unsafe.
15. It was submitted that the trial court misdirected itself by failing to critically analyze the testimonies of the prosecution witnesses and disregarded material contradictions. He argued that the trial court framed extraneous issues and answered irrelevant questions, thereby occasioning a miscarriage of justice. He relied on *Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others* [2016] eKLR, where the Court of Appeal held that a trial court must properly evaluate pleadings and evidence on record and take into account critical aspects before arriving at a determination. Counsel contended that the trial court failed to do so, leading to an erroneous conviction.
16. Counsel also faulted the trial court for putting undue credence to prosecution evidence that placed him at the scene of crime. He also complained that crucial witnesses such as the deceased's mother, Roselyn whose testimony would have been material to the case was not called to testify. He cited the case of *Nganga v Republic* [1981] KLR 483, to reinforce the point that where the prosecution fails to call a material witness, it does so at its own risk. Additionally, he relied on the case of *Bukenya & Others v Uganda* (1972) EA 549 where the Court held that the prosecution has a duty to call all witnesses



necessary to establish the truth, and failure to do so entitles the court to draw adverse inference that such evidence would have been unfavourable to the prosecution case and perhaps in favour of the accused. Counsel submitted that the omission to call those key witnesses weakened the prosecution's case and should have led to an acquittal of the appellant

17. In light of these arguments, counsel prayed that the appeal be allowed as prayed.
18. In response, Ms. Kitoto submitted that the prosecution successfully discharged its burden of proving its case against the appellant beyond reasonable doubt as required in law. Counsel argued that the fact and cause of death were undisputed, based on the postmortem report produced by PW4. The report confirmed that the deceased succumbed to massive intra-abdominal hemorrhage from a single penetrating injury to the abdomen. That although no witness saw the appellant inflict the fatal injuries, the evidence of PW1 and PW2 placed him at the scene of crime. Counsel contended that the identification evidence was sufficient and reliable. On malice aforethought counsel cited the case of *Republic v Tubere S/O Ochen* [1945] 12 EACA 63, where the court outlined factors for determining malice aforethought, being the nature of the weapon used, the body part targeted, and the conduct of the accused before and after the incident.
19. Counsel submitted that the trial court properly framed the issues for determination and did not misdirect itself on any aspect contrary to the submissions of the appellant.
20. On the appellant's contention regarding failure to call crucial or vital witnesses, counsel submitted that it was unfounded, as PW1 and PW2 sufficiently identified the appellant at the scene of crime. Relying on the case of *Nganga v Republic* [1981] KLR 483, counsel submitted that the prosecution was not obligated to call every possible witness, provided that the evidence presented was sufficient to sustain a conviction. In the circumstances of this case, the witnesses marshalled by the prosecution were sufficient.
21. Ultimately counsel urged us to find the appeal devoid of merit and dismiss it.

As already stated, this is a first appellate court. Its duty is to re-evaluate, re-analyze, and reconsider the evidence presented before the trial court and reach its own independent conclusions. This principle was well articulated in the case of *Okeno v Republic* (supra), thus:

An appellant on a first appeal is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision. The first appellate court has a duty to reconsider the evidence, evaluate it itself, and draw its own conclusions while bearing in mind that it has neither seen nor heard the witnesses."

22. Having carefully considered the grounds of appeal, the submissions by both parties, and the applicable law and our above mandate, the following issues fall for our determination whether: the prosecution proved its case against the appellant beyond reasonable doubt; the trial court framed the correct issues for determination and properly evaluated the evidence; and whether the trial court misapplied the law, particularly in relation to identification and malice aforethought.
23. On the first issue, the appellant was convicted for murder under Section 203 of the [Penal Code](#), which defines the offence as follows:

“Any person who, with malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder.”
24. For a conviction for murder to stand therefore, the prosecution must prove beyond reasonable doubt that the deceased died, establish the cause of death, demonstrate that the accused person committed



the unlawful act leading to the death, and show that the accused in so doing acted with malice aforethought. These elements must be sufficiently supported by evidence to eliminate any reasonable doubt concerning the accused's culpability.

25. In this appeal, the fact and cause of death are undisputed. PW1 and PW2 testified to this fact. The postmortem report produced by PW4 confirmed that the deceased succumbed to massive intra-abdominal hemorrhage from a single penetrating injury to the abdomen, leading to aortic laceration and exsanguination. The trial court was therefore right in holding that the death of the deceased and the cause thereof was proved to the required standard.
26. The next issue is whether the appellant was responsible for the deceased's death. The prosecution relied on the evidence of PW1 and PW2, who placed the appellant at the scene. PW1 testified that the appellant approached him whilst he was sitting outside his house basking in the mid morning sun and inquired about accessing Roselyn's house. Roselyn was a neighbour. He directed him to the kitchen door of the house which was open and saw him enter. Shortly thereafter he heard the deceased's screams. Moments later, he saw the appellant flee the house, prompting him to unsuccessfully pursue him. All these happened in broad daylight thereby eliminating the possibility that this witness would have mistaken him for someone else. Similarly, PW2 was inside her house when she noticed the appellant approaching the kitchen door of Roselyn's house. She recognized him, as she had frequently seen him drop and pick Roselyn or have her sign his work ticket as both worked for Kenya Power and Lighting Company Ltd. Shortly thereafter, she heard a loud and prolonged screams emanating from Roselyn's house. She then saw the appellant run out of the house, with PW1 in hot pursuit.
27. Although no witness saw the appellant inflict the fatal injuries, the circumstantial evidence presented was compelling. The principle established in *Republic v Kipkering Arap Koske & Another* [1949] 16 EACA 135 is directly applicable to the present case. In that decision, the court held that for circumstantial evidence to find a conviction, it must form a complete chain that leaves no reasonable doubt as to the accused's guilt. Similarly, in this case, although no witness saw the appellant inflict the fatal injuries on the deceased, the circumstantial evidence presented was overwhelming and pointed exclusively to his culpability. There was no evidence that there was any other person in the house who could have inflicted those fatal injuries to the deceased.
28. The appellant's flight from the scene immediately after the incident further strengthens the inference of his guilt. In the case of *Malowa v Republic* [1980] KLR 110, this Court held that:

The conduct of an accused person immediately after the commission of an offence may provide strong circumstantial evidence of guilt."
29. Obviously the flight of the appellant from the scene of crime was not an innocent act. Coupled with the appellant's prior association with the deceased's mother and his dismissal from employment on the same day, provided a strong motive for the crime. Not that motive is a necessary ingredient in the commission of an offence, but comes in handy in matters of circumstantial evidence.
30. In a nutshell, the appellant's presence at the scene, his abrupt departure after screams had been heard from the house he had just entered, the deceased being found fatally stabbed immediately, the nature of the weapon used, the motive and his flight, form such a complete chain that was incompatible with the appellant's innocence. There were no co-existing circumstances that weakened or destroyed the inference that the appellant committed the offence.
31. On malice aforethought, Section 206 of the *Penal Code* gives various scenarios that amount to malice aforethought. For purposes of this appeal, however the scenarios best suited are: an intention to cause



death or grievous harm; knowledge that the act would probably result in death or grievous harm; or an intent to commit a felony.

32. In *Republic v Tubere S/O Ochen (supra) 1945) 12 EACA 63*, the court outlined several factors essential in determining malice aforethought, including the nature of the weapon used, the manner in which it was applied, the specific body part targeted, and the conduct of the accused before and after the incident. In the present case, the appellant wielded a knife, a dangerous weapon, and deliberately inflicted a single penetrating injury to the abdomen, of the deceased, a critical part of the body containing vital organs. The circumstances indicate that the act was neither accidental nor impulsive but rather intentional and premeditated. The matter was not even helped by the appellant's immediate flight from the scene, demonstrating an awareness of the gravity of his actions.
33. The appellant argued that the trial court failed to frame the correct issues for determination and did not properly evaluate the evidence, leading to a miscarriage of justice. He further contended that the trial court overlooked material contradictions in the prosecution's case, particularly in relation to identification evidence, the alleged motive, and the circumstantial nature of the evidence relied upon. He maintained that the trial court misapplied the applicable legal standards and failed to properly weigh the defence testimony.
34. Having carefully considered the record we are satisfied that the trial court framed the correct issues for determination and properly evaluated the evidence, ensuring that justice was served. Other than making generalized statements, the appellant did not point out any of the irrelevant issues that the trial court framed for determination. While the appellant argues that material contradictions in the prosecution's case were overlooked, we are satisfied just like the trial court that the discrepancies in the testimonies of PW1 and PW2 regarding his presence at the scene were minor and did not introduce reasonable doubt sufficient to displace the prosecution's case. The identification evidence, although requiring caution, was sufficiently reliable given that PW2 recognized the appellant from previous encounters, and PW1 placed him at the scene moments before the deceased's screams were heard. The trial court properly considered the conditions under which the identification and or recognition of the appellant was made and found that the evidence met the threshold for reliability.
35. On the appellant's alibi defence, we are satisfied that the trial court rightfully dismissed it as it was displaced by the strong prosecution's evidence. The law requires that the prosecution disprove an alibi beyond reasonable doubt, but where an alibi is weak and unsupported, a court may reject it. The trial court was not obligated to accept the alibi if the circumstantial evidence was strong enough to displace it, which was the case here. See *Bosco Ndungu Kinyanjui v Republic [2015] KECA 189 (KLR)*
36. Lastly, the appellant contends that extraneous issues were emphasized, particularly his alleged motive and past association with the deceased's mother. However, we find that motive, while not a necessary ingredient of murder, as already stated is relevant in piecing together circumstantial evidence - See *Musili Tulo v Republic [2014] eKLR*. The trial court considered these factors appropriately without allowing them to overshadow the core legal questions of appellant's identification, presence at the scene, and his flight from the scene of crime.
37. The omission of a key witness does not automatically weaken the prosecution's case if the available evidence is strong enough to sustain a conviction. As stated in the case of *Nganga v Republic [supra]*, the prosecution is not obligated to call every possible witness, provided that the evidence presented is sufficient to sustain a conviction. In this case the appellant complains that the deceased's mother was a crucial witness who ought to have been availed to testify. However, we do not think that Roselyn was a crucial witness. The events leading to the deceased's death occurred in her absence. The fact that she



was the mother of the deceased was never in dispute. We do not see how her evidence then would have strengthened the prosecution case. At best her evidence would have been hearsay.

38. Having carefully considered the record, in the ultimate, we are satisfied that the appeal lacks merit and is accordingly dismissed in its entirety.

**DATED AND DELIVERED AT KISUMU THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**ASIKE MAKHANDIA**

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**JUDGE OF APPEAL**

**H.A. OMONDI**

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**JUDGE OF APPEAL**

**L. ACHODE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**

