



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Yambeu (Criminal Case 6 of 2018)
[2025] KEHC 3997 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3997 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE 6 OF 2018**

**FR OLEL, J
MARCH 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

YAMBEU ACCUSED

JUDGMENT

A. Introduction

1. The accused person herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (Chapter 63 of the Law of Kenya). The particulars of the offence were that on the 7th day of December 2017 at Kwa-Kamba market, Kangundo Sub-County within Machakos County murdered Yvonne Mbuluku Munyao.
2. The Accused took plea and pleaded not guilty to the charge. The prosecution called a total of seven (7) witnesses in support of the case against the accused person before closing their case on 05.05.2022. The accused person, was placed on his defence and gave a sworn statement of defence denied the charge he faced.

B. Facts At Trial

Prosecution's case

3. PW1 Musembi Mwingi Nzuko testified that he was a peasant farmer and was his neighbour of the accused as they both resided within the accused grandfather's plot. He also affirmed that the deceased was the accused wife with whom they resided together in one of the rooms within the said plot. On 07.12.2017 he had gone back to his house to change clothes, when he found the deceased lying outside her door and was bleeding profusely but still was able to talk. He inquired from her what had transpired and the deceased told him that the accused had stabbed her with a knife.



4. It was his further evidence that in the company of other neighbours like Lucas Kivuva, they rushed the deceased to Kangundo District Hospital where the doctors removed her clothes and revealed a stab wound on the right leg. They left the doctors attending to the deceased and when they went to visit her the next day, they learnt that she had passed on. Finally, he also confirmed that he had no grudge against the accused person and had witnessed the couple having marital problems.
5. Under cross-examination, PW1 testified that they lived in the same compound with the accused and when he back came home at about 4:30 pm, he found the deceased already injured but he did not witness the incident nor was he aware if other neighbours had also witnessed the incident. He further affirmed that the deceased told them that it was the accused who had injured her. Lastly, he denied fabricating his evidence against the accused and stated that his role was only to assist and take the injured to the hospital.
6. PW2 Lucas Mulei Kithuva testified that he is a farmer and a village elder for Unguani Village and recalls that on 07.12.2017 he left home for the trading centre when he was informed/requested by PW1 to accompany him to a nearby plot belonging to the late Nzivo Ndaka, where a lady had been injured. On reaching the home, they found her on the verandah floor writhing in pain and bleeding profusely.
7. He alerted the area chief who directed him to rush her to hospital. He then requested for a 'leso' from a neighbour known as Kamene Ngao, which he used to cover the deceased and they then put her on a wheelbarrow and escorted her to Kangundo Level Four Hospital. At that point, the deceased was not talking but was wailing and had a whiff of alcohol smell. While being offered first aid, they saw the wound on her leg and they later received a report that she had passed on. He also confirmed that the accused was the deceased husband, but was not at the scene of the incident.
8. During cross-examination, PW2 confirmed that the deceased did not utter any words to him about who had injured her. On re-examination, he clarified that the deceased was wailing and he could not tell if she had mentioned anyone who had stabbed her.
9. PW3 Josphat Munyao testified that he is a farmer and knew the accused as he was married to his daughter, the deceased herein. On 27.12.2017, he visited the mortuary at Kangundo Hospital, where the doctor was to undertake a post-mortem examination on the body of the deceased and proceeded to identify the said body as that of her daughter.
10. PW4 Dr Joyce Kalekye Ndeto testified that she is a medical officer based at Kathiani Level Four Hospital and a graduate of Moi University with a Bachelor's degree in Medicine and surgery. On 27.12.2017 she performed the post-mortem on the deceased body. She was a female adult who had a deep penetrating injury on the upper thigh measuring about 3cm wide and 13 centimetres deep, a deep cut on the right scalp of the head and the body was pale due to the loss of blood.
11. The internal body had no abnormalities however there was subdural haematoma on the skull that had bleeding. She concluded that the cause of death was severe bleeding due to the penetrating injury to the left thigh and that the weapon used was either a sharp object or a blunt object. She also removed a sample of the deceased hair and blood for DNA matching. PW4 produced the post-mortem report as Exhibit 1.
12. Under cross-examination PW4 confirmed that the deceased died due to excessive loss of blood and also discovered a blood clot on the deceased skull, which in all likelihood was caused by a blunt force injury to the skull. She added that the deceased suffered several injuries, but the immediate cause of death was excessive loss of blood.



13. PW5 Isaac Mutie Nguluvai testified that he was a farmer and took care of his elder sister's farm. He also knew the accused person as they were neighbours at home, though he did not know his wife. He recalled that sometime in 2017 the accused went to his work place and they stayed together for some days. Later both of them were arrested, and while at the police station learnt that the accused was a suspect in an ongoing murder investigation.
14. PW6 Sergeant Fredrick Maina testified that he was currently attached to DCI Kagundo police station, performing investigation duties. On 27.12.2017 he was in the office when he was instructed by the DCIO to proceed to Kangundo Level Four Hospital mortuary to witness a post-mortem examination of the deceased herein. He filled out the post-mortem form and was accompanied by two relatives who identified the body to the doctor who carried out the examination.
15. Once done, the doctor, filled in the post-mortem form (Exhibit 1) and took out samples of the deceased hair and blood for DNA testing. He also recovered a torn t-shirt worn by the deceased that had her blood stains. On 10.02.2018, acting on a tip from an informant, he learnt that the accused herein was hiding in Malaa area of Matungulu sub-county. Accompanied by PC Kamau and PC Mullenche, they went to search for him and found him sleeping at PW5's house, where they proceeded to arrest him.
16. On 11.02.2018, accompanied by CPL Mwanthi and CPL Kosgei, they went with the suspect to his rental house at Kwa Kamba Market within Kangundo and on searching the said premises, recovered a jeans trouser that had bloodstains, and three knives. He later prepared an exhibit memo form which he forwarded to the government chemist for analysis. The samples to be examined were;
 - i. "A" - Hair sample of the deceased in a khaki envelop.
 - ii. "B" One torn red T-shirt with bloodstains in a Khaki Envelop
 - iii. "C" One blue jeans trouser in a Khaki Envelop
 - iv. "D1-D3" Three kitchen knives
 - v. "E1-E2" Blood samples from the Suspect.
17. Under cross-examination PW6 confirmed that when they escorted the accused to his rented premises, they did not inform his relatives and it was the accused who opened the door to the said premises as he had the keys thereto. No family member was present nor did they sign the inventory. PW6 affirmed that the jeans trouser recovered, belonged to the accused and they had failed to dust the three knives recovered at the accused rented house.
18. The investigations had established that the accused and the deceased had quarrelled and the deceased had told PW1 that it was the accused person, who had stabbed her. He therefore preferred the charge against the accused.
19. PW7 Susan Ngugi testified that she works at the government chemist in Nairobi and was specifically assigned to work at the forensic DNA laboratory, where she had been for nine (9) years. PW6 had forwarded an exhibit memo form with various items and desired them to determine the presence and origin of blood stains thereon
20. She undertook the said examination and did an analysis of the blood stains on the red t-shirt/vest and blue jeans and referenced the same with blood and hair samples extracted from the deceased and came up with the following conclusion;
 - a. The vest "B" and jeans trouser "c" were heavily stained with human blood, while the knives (D1, D2, & D3) did not contain any blood.



- b. The DNA profiles generated from the bloodstains on the vest “B” and pair of jeans “c” matched the DNA profile that was generated from the hair sample “A”
21. PW7 produced her Government Analysis report dated 01.04.2019 as Exhibit 7. Under cross-examination, she confirmed that the knives presented did not have bloodstains and that DNA profiles were very unique for each person and could not be equated with that of another person unless they were twins.

Defence Case.

22. The accused was placed on his defence and testified that the deceased was his wife of 9 years and they were blessed with 2 children aged 13 and 8 years. On 07.12.2017 he woke up in the morning and went to his place of work at a construction site but found that there was no work. He went to relax with his colleagues, drinking alcohol until about noon, when he went home and found the house locked from the inside.
23. He knocked on the door, and a man in a vest whom he did not know opened the door and came out. His wife at this point was inside the house in a bra. A scuffle ensued and at some point, the deceased was holding him while the man tried to get out. As the fight continued, the unknown man removed a knife, stabbed the deceased on the buttocks and stabbed him on the head. He fell unconscious and later when he regained consciousness, he saw the deceased lying beside him.
24. He had an amicable relationship with the deceased and buried her at his home. He further admitted that he did not intend to kill the deceased and it was just an accident.
25. Under cross-examination, the accused confirmed that he resided within a community plot which had nine (9) houses therein. On the material day, he went to work and since there was no work, proceeded to drink two and a half bottles of 250 ml spirits. He decided to go back home and found no neighbours around, but when he knocked on his door he found a man in his house.
26. A fight ensued and he was stabbed on his buttocks, while the deceased too was stabbed but he did not take her to the hospital. He had heard PW1’s evidence and also confirmed being told by his child at 6.30 pm that the deceased had fallen. On re-examination, the accused person confirmed that on the material day, there were three people in his house and it was he who had stabbed the deceased, who was later buried on 27.12.2017.

C. Submissions

27. The accused through his counsel submitted that it was the duty of the prosecution to prove their case beyond reasonable doubt as required by the law and as held in Republic v Stanley Muthike Tiire (2018) eKLR & Roba Galma Wario Vrs Republic. It was not in doubt that the deceased died and PW4, who conducted the post mortem had confirmed that that she died due to a penetrating injury to her left thigh.
28. There was no direct evidence presented to affirm that it was the accused who caused the death of the deceased as none of the prosecution witnesses saw the accused person assaulting the deceased herein. PW2’s evidence that the deceased had informed him that it was her husband who had stabbed her, could also not amount to a dying declaration as PW1 had not also witnessed the incident.
29. Further, the accused counsel, submitted that the accused did not sign the inventory for the recovered exhibits and that it created doubt on how the said exhibits were recovered especially given that the blue jeans did not have any unique mark on it. Additionally, the alleged murder weapon did not have any



blood stains and all this created doubt on the prosecution case. Reliance was placed in the case of Pius Arap Maina v Republic [2013] eKLR, where it was held that where there were evidential gaps in the prosecution's case, the same must be interpreted in favour of the accused.

30. Lastly, the accused counsel submitted that the accused had given a detailed explanation as to what transpired on the material day, and his evidence was truthful and remained uncontroverted. The prosecution's evidence could therefore not sustain a conviction of murder and he prayed that the accused be acquitted under Section 306 of the Criminal Procedure Code, Cap 75.
31. The ODPP did not file any submissions in this Matter.

D. Analysis & Determination

32. For the offence of murder to be proved, the prosecution is under the obligation to establish the following key ingredients:
 - a. The death of the deceased.
 - b. That it is the Accused who caused the death.
 - c. That the Accused had malice aforethought.
33. Section 203 of the Penal Code defines murder in the following terms:

“ Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.” Thus, the central ingredients of the offence of murder are a) malice aforethought; b) an unlawful act or omission on the part of the accused.”
34. The burden of proof rests on the prosecution (*Woolmington v DPP* [1935] AC 462), and the standard required is proof beyond a reasonable doubt (*Miller v Minister of Pensions* [1947] 2 All ER 372).

Fact and cause of death

35. On the first issue, in the instant case, there is no dispute over the deceased's death. This was confirmed by all the seven prosecution witnesses and the accused. PW4 (Dr Joyce Kalekye Ndeto), testified that the cause of death was the loss of blood caused by a deep penetrating injury to the upper thigh measuring 3cm by 13cm deep. The deceased had also suffered a subdural haematoma on the skull which had bleeding.
36. The first element was proved beyond reasonable doubt.
 - i. Whether it is the accused who caused the deceased death.
37. PW1 testified that on 07.12.2017 he had gone to his house for a change of clothes and found the deceased lying outside her door and was bleeding profusely. She was able to talk and told him that it was the deceased, who had stabbed her with a knife. They rushed her to hospital and she later succumbed to her injuries.
38. PW1's evidence amounts to it being a “dying declaration”. Under Section 33(a) of the Evidence Act, a dying declaration is admissible, provided that it is credible and corroborated by other evidence (*Pius Jasunga v Republic* [1954] EA 331). In this case, this declaration was aptly corroborated by the accused own evidence.



39. The accused in his evidence-in-chief he stated that “I did not intend to kill the deceased and it was just an accident”. Under cross-examination, he repeated that “I had no intention of stabbing” and finally in re-examination repeated his confession that, “we were three people. I stabbed her. I did not run away.”
40. From the foregoing, I find that the Prosecution has proved beyond reasonable doubt that the Accused committed the unlawful act which caused the death of the deceased.

Malice Aforethought.

41. Section 206 of the *Penal Code*, provides that:
- “(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.”
42. It is sufficient to say that the mental element required by section 206 of the *Penal Code* can be equated to broad guidelines set out in the case of *Tubere s/o Ochen vs. Republic* [1945] 12 EACA 63:
- “The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”
43. The Court of Appeal in the case of *Joseph Kimani Njau v R* (2014) eKLR, also held as follows:
- “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 subject;
- a. The intention to cause death.
 - b. The intention to cause grievous bodily harm.
 - c. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with 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 in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed.....”



- 44. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased.
- 45. The accused admitted to committing the murder, fled after the incident, and was arrested two months later. His evidence that he found his deceased wife in a compromising position with another man, is hollow for his evidence on that aspect was completely inconsistent. In one instance he alleged that the unknown man stabbed the wife in the buttocks and stabbed him on the head and he fell unconscious, yet in cross-examination he turned the story and alleged that he was the one stabbed on the buttocks and later spent the night within the same house, which averment was not true as he had fled immediately after the incident.
- 46. The accused thus gave contradictory and untruthful evidence, which makes the court doubt his version of events of the fateful day and makes it unsafe to accept his evidence.
- 47. The post-mortem examination revealed multiple injuries, suggesting an intention to cause harm. The injuries inflicted which were a deep penetrating stab wound on the upper thigh measuring 3cm wide and 13 cm, a deep cut on the head, and internal bleeding in the skull suggest a violent and sustained attack, which was not a single accidental blow.
- 48. From the above analysis, it is clear that the accused did not have any other intention but to inflict grievous harm upon the deceased by action. It is my finding that the accused person knew or ought to have known that his action would result in death, and it can be safely inferred not only from the choice of weapon used but also the nature of injuries inflicted on the deceased that the accused person's action was premeditated.
- 49. His flight from the scene is strong circumstantial evidence of guilt as stated in Republic v Kipkering Arap Koske & Another [1949] 16 EACA 135. The Supreme Court of Canada in R v Morabito (1949) SCR 172 also held that failure to act responsibly after a fatal incident may indicate guilty intent. The accused's actions demonstrate malice aforethought under Section 206(a) and (b) of the penal Code. The third ingredient is proven beyond reasonable doubt.
- 50. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, David Musyoka Kilonzo beyond reasonable doubt and convicted him accordingly under section 215 of the [Criminal Procedure Code](#).
- 51. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.
- 52. It is so Ordered.

JUDGMENT READ, SIGNED, AND DELIVERED VIRTUALLY IN COURT AT MARSABIT THIS 27TH DAY OF MARCH, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, VIA TEAMS THIS 27TH DAY OF MARCH, 2025.

In the presence of: -

.....Accused

.....For O.D.P.P



.....Court Assistant

