



REPUBLIC OF KENYA



**Republic v Lukalu (Criminal Case 11 of 2023)  
[2025] KEHC 7489 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7489 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 11 OF 2023**

**JN KAMAU, J**

**MAY 28, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**RICHARD GIRAKWA LUKALU ..... ACCUSED**

**JUDGMENT**

**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](#) Cap 63 (Laws of Kenya). The particulars of the Charge were that:-  
  
“On the 19<sup>th</sup> day of March 2019 at around 2030hours at Solongo Village, West Maragoli Location in Sabatia Sub-County within Vihiga County murdered Benard Misango Saba”
2. The Prosecution’s case was heard on diverse dates between 6<sup>th</sup> October 2022 and 25<sup>th</sup> July 2024 when it closed its case. On 30<sup>th</sup> July 2024, this court found that the Prosecution had established a prima facie case against the Accused person and thereby put him on his defence. The defence case was heard on 24<sup>th</sup> October 2024.
3. This matter was partly heard by Musyoka J. He took the evidence of Wycliffe Ambihile (hereinafter referred to as “PW 1”), No 685936 Sgt William Kapkama (hereinafter referred to as “PW 2”) and Haruni Anaganga (hereinafter referred to as “PW 3”).
4. This court became seized of this matter on 24<sup>th</sup> July 2023 on which day the Accused person and the State indicated that they wished to proceed with the matter from where it had reached. This court therefore took the evidence of Polycarp Lutta Kweyu (hereinafter referred to as “PW 4”), Dr Masika Collins Were (hereinafter referred to as “PW 5”), No 81316 Corporal Stephen Malele (hereinafter referred to as “PW 6”) and the Accused person who testified as “DW 1”.



5. The Prosecution's Written Submissions were dated 25<sup>th</sup> November 2024 and filed on 2<sup>nd</sup> December 2024 while those of the Accused person were dated 20<sup>th</sup> January 2025 and filed on 21<sup>st</sup> January 2025.
6. The Judgment herein is based on the said Written Submissions which the parties relied upon in their entirety.

### **Legal Analysis**

7. The issues that were put before this court for consideration were as follows:-
  - a. Whether or not Benard Misango Saba (hereinafter referred to as the "deceased") died?
  - b. If so, was his death caused by an unlawful action(s) and/or omissions?
  - c. If so, who caused the unlawful action(s) and/or omissions?
  - d. Was there malice aforethought in the causation of the deceased's death?
8. This court therefore found it prudent to deal with the said issues under the following distinct and separate headings.

#### **I. Proof Of Death Of The Deceased**

9. The Accused person did not submit on this issue. On its part, the Prosecution submitted that there was no doubt as to whether the deceased died. It pointed out that PW 2 and PW 6 stated in their evidence that they viewed the body of the deceased at the morgue.
10. As both the Prosecution and Defence witnesses alluded to the deceased's death, it was not necessary to seek further proof. This court found and held that the deceased's death was proved without an iota of doubt.

#### **II. Proof Of Cause Of The Deceased's Death**

11. The Accused person did not submit on the question of proof of the deceased's death. On its part, the Prosecution submitted that the deceased's death was proved by the autopsy report produced by PW 5 as exhibit in court.
12. The cause of the deceased's death was a pertinent issue. PW 5 tendered a Post-mortem Report dated 1<sup>st</sup> April 2019 in respect of the deceased herein as an exhibit in this matter. He testified that the postmortem examination was conducted by one Dr Ali who had since resigned and who formed an opinion that the cause of death was severe head injury secondary to trauma mostly caused by a blunt object.
13. It was therefore clear from his evidence that the deceased's death was not as a result of natural causes. Rather, it was due to having been assaulted. It was therefore crucial to establish how the deceased sustained the injuries that caused his death.

#### **III. Identification Of Perpetrator(s) Of Deceased's Death**

14. The Accused person denied beating the deceased and causing his death.
15. It was his case that none of the members of the public that allegedly escorted him to the Police Station as PW 2 told the court or recorded their testimony or testified in court to confirm the allegations. He added that there was no evidence indicating the presence of his blood on any of the exhibits that were forwarded to the government analyst for examination and /or analysis.



16. He contended that the clothes with the deceased's blood were not recovered from his house and that there was no evidence by PW 2 and PW 6 establishing the ownership of the recovered motorcycle which he denied belonged to him. He was emphatic that there was no eye witness who saw him commit the offence.
17. He was categorical that the kind of weapon used in the offence could not be clearly established as PW 5 testified that either a fall on the slab or a blunt object could have caused the death of the deceased. He added that the scene crime having been an open workshop along a busy road and having allegedly been secured by an officer at unknown time as testified by PW 6 and having been processed approximately more than twelve (12) hours later could have been tampered with.
18. He placed reliance on the case of Republic vs Abdikadir Ahmed Mohammed [2013]eKLR where it was held that the prosecution must prove that the deceased died, his death was caused by the accused person before court and that he caused the death of the deceased unlawfully and with malice aforethought. He was emphatic that the Prosecution had not proven that it was him who caused the death of the deceased as there was no eye witness who testified to that effect. He added that no direct nor indirect evidence was adduced beyond any reasonable doubt that he was the one that killed the deceased but that the Prosecution relied on both circumstantial evidence and suspicion to argue its case.
19. To buttress his point, he relied on the case of Sawe vs Republic[2003]eKLR where it was held that where a case rests entirely on circumstantial evidence, such evidence must satisfy three (3) tests as follows, that the circumstances from which an inference was drawn had to be cogent and firmly established, those circumstances had to be of a definite tendency unerringly pointing towards the guilt of the accused and the circumstances taken cumulatively should form a chain so complete that there was no escape from the conclusion that within all human probability the crime was committed by the accused and none else.
20. It was his contention that within all human probability, in the present case where the offence occurred at night with no single eye witness and no sufficient linkage of the offence to him, the crime could have been committed by any other person. He argued that however strong a suspicion was, it could not be a ground to sustain conviction as it could not provide basis for inference of guilt as was held in the case of Mary Wanjiku Gichira vs Republic Criminal Appeal No 17 of 1998 as quoted in Republic vs Leshan Ole Supor[2006]eKLR.
21. He asserted that the case against him did not warrant his conviction as the Prosecution had failed to prove its case to the required standard of beyond reasonable doubt. He urged the court to acquit him.
22. On its part, the Prosecution submitted that although there was no eye witness who testified as to having witnessed the events that led to the death of the deceased when the Accused person was arrested, blood-stained clothes were recovered from his house and upon analysis the said blood was found to match the DNA profile of the deceased therefore connected him to the assault which led to the death of the deceased.
23. It pointed out that it relied on circumstantial evidence which clearly pointed at the Accused person as the person who assaulted the deceased. To buttress its point, it also relied on the case of Sawe vs Republic (Supra). It was emphatic that the chain of events herein was cumulative and that the Accused person was the perpetrator.
24. The Accused person testified that on the material date of 19<sup>th</sup> March 2019, he was at home. He stated that on 20<sup>th</sup> March 2019, he woke up to go about his normal duties when police officers knocked on his door and asked him to accompany them to Matete Police Station where he was questioned about the incident herein. Although he admitted knowing the deceased, he denied having killed him. He averred



that he did not know where the blood-stained clothes were recovered from as they were not recovered from his house. He said that he was arrested together with other people who bribed the police and were released.

25. Notably, PW 1 testified that on the material date of 19<sup>th</sup> March 2019, at around 2030 hours, he saw a group of people near the junction at Eregi, along Chavakali-Kakamega road. When he went to see what was happening, he found the deceased who was a mechanic lying down and bleeding profusely. He then took the deceased to Vihiga Referral Hospital with the help of one Gitau. He reported the matter at Chavakali Patrol Base and later heard that the deceased passed on. He further stated that when the police visited the scene, they collected a tool box which was produced as exhibit in this court.
26. PW 2 testified that on 20<sup>th</sup> March 2019, while at the Police Patrol Base, PW 1 reported that he had helped the deceased get to hospital and together with other officers, they proceeded to Vihiga Referral Hospital where they were informed that the deceased had passed on. He said that when he went back to the station, he found members of the public escorting the Accused person saying he was the one that assaulted the deceased.
27. PW 3 testified that he went to the police station together with his brother Jared Mbariri to seek police escort to the mortuary at Vihiga County Referral Hospital where they identified the body of their deceased brother.
28. PW 4 was the Government Analyst at Kisumu. He testified that on 11<sup>th</sup> April 2019, PW 6 gave him samples for DNA profiling to ascertain whether the blood stains on the samples was blood and if so, was human blood. He pointed out that there were four (4) samples, soil marked as “A”, blue jeans trousers marked as “B1”, a long-sleeved navy blue shirt marked as “B2” and blood sample from the deceased marked as “C”. After his analysis, he formed an opinion that the blood stain on the blue jeans trousers and on the long-sleeved navy blue shirt was human blood and matched together with the blood on the soil and were similar to the blood of the deceased. He produced his Report and the exhibit memo as exhibits in this case.
29. PW 6 was the investigating officer. His evidence corroborated that of PW 1, PW 2, PW 3, PW 4 and PW 5. He stated that PW 2 told him that together with the Accused person and other police officers, they had visited the Accused person’s house and recovered blood-stained clothes being a blue jeans and blue shirt. PW 2 also showed PW 6 together with other police officers a tool box which had been recovered from the deceased’s place of work and a motor cycle that belonged to the Accused person.
30. He further testified that after receiving the exhibits, they proceeded to the mortuary to confirm if the deceased was indeed dead. When they got back to the Station, they interrogated the Accused person and his version was that he had left his motor cycle at the deceased’s workshop for repair on the material day of 19<sup>th</sup> March 2019 at around 4.00p.m and when he went back to pick it at around 7.30p.m, the deceased had not repaired it, a fight ensued and he hit the deceased on the head with the tool box.
31. It was his testimony that the findings of the Government Chemist Analysis showed that the blood on the blood-stained blue jeans, blue shirt and soil matched that of the deceased thus placed him on the scene of crime.
32. After carefully analysing the evidence that was adduced by the Prosecution witnesses, it was evident that there was no eye-witness to prove that indeed the Accused person assaulted the deceased causing his death.
33. However, the evidence of PW 4 in corroboration of the rest of the Prosecution’s witnesses’ evidence placed him at the scene of crime. The Accused person’s assertion that the stained clothes were not recovered from his house were a mere denial and was therefore rendered moot.



34. Weighed against the evidence that was adduced by the Prosecution witnesses, this court did not find the evidence of the Accused person to have been watertight enough to have weakened the inference of guilt on his part. The circumstantial chain of events herein was so complete that there was no doubt that the inference of guilt pointed at the Accused person.
35. Consequently, it was this court's finding that the Accused person's defence was mere denial and did not displace and/or dislodge the consistent and cogent evidence that was adduced by PW 1, PW 2, PW 3, PW 4, PW 5 and PW 6.

#### **IV. Malice Aforethought**

36. Having found and held that the Accused person's defence was not sustainable as he was identified as the perpetrator of the deceased's death, the next pertinent question that arose was whether or not he had malice aforethought in causing his death.
37. The Accused person did not submit on this issue. On its part, the Prosecution invoked Section 206 of the *Penal Code* and placed reliance on the case of Republic vs Tubere s/o Ochen [1945] 12 EACA 63 where it was held that malice aforethought could be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack.
38. It asserted that it had adduced evidence showing that the aim of the Accused person was to cause grievous harm on the part of the deceased. It pointed out that that was established by the nature of injuries he inflicted on the deceased which was a skull fracture on the torso region, scalp injuries and brain contusion. It added that the attack on the deceased's head by a metallic tool was an attack on his life. It was emphatic that the nature of injuries and the weapon that was used spoke malice aforethought.
39. This court had due regard to the case of Morris Aluoch vs Republic [1997] eKLR which cited the case of Rex vs Tubere s/o Ochen [1945] 12 EACA 63 where the East Africa Court of Appeal held that malice aforethought could be presumed where repeated blows were inflicted.
40. Hitting the deceased on the head with the tool box could only have been intended to kill him. The seriousness of the injuries the deceased sustained was confirmed by PW 5. He observed that the deceased had suffered fracture of the skull and haematoma. The extensive injuries were evident that he suffered greatly before he died. The Accused person's action could not have been said to have been bereft of malice aforethought.
41. Having analysed the evidence that was adduced by both the Prosecution and the Accused person and their respective Written Submissions, this court came to the firm conclusion that the Prosecution established to the required standard, which in criminal cases, was proof beyond reasonable doubt that the act of unlawful killing of the deceased herein was by the Accused person herein and that the same was with malice aforethought the ingredients that had been set out in Section 203 of the *Penal Code* as having been:-
  - a. Proof of the deceased's death;
  - b. Proof that the deceased's death was a result of unlawful actions and/or omissions; and
  - c. Proof of malice aforethought in the unlawful actions and/or omissions.



## **Disposition**

42. For the foregoing reasons, the upshot of this court's decision was that the Accused person herein be and is hereby convicted of the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* Cap 63 (Laws of Kenya) under Section 215 of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).

43. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 28<sup>TH</sup> DAY OF MAY 2025**

**J. KAMAU**

**JUDGE**

