



**Republic v Muhindi (Criminal Case 4 of 2022)
[2025] KEHC 7196 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE 4 OF 2022**

**JN KAMAU, J
MAY 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH LIVAMBULA MUHINDI ACCUSED

JUDGMENT

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 10th day of September 2016 at around 2000hrs at Kapinjar Village Kipchekwen Sub-location in Hamisi Sub-county within Vihiga County murdered Sanny Ambalwa”
2. The Prosecution’s case was heard on diverse dates between 6th November 2018 and 6th March 2024 when it closed its case. On 26th June 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 23rd October 2024.
3. This matter was partly heard by Njagi J. He took the evidence of Kelvin Anyuka (hereinafter referred to as “PW 1”) and Josephine Vihenda (hereinafter referred to as “PW 2”).
4. This court became seized of this matter on 7th April 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 Dr Collins Were Masika (hereinafter referred to as “PW 3”), Fredrick Musilwa Livambula (hereinafter referred to as “PW 4”), No 78796 Corporal Benard Ng’eno (hereinafter referred to as “PW 5”), and the Accused person.
5. On 26th June 2024, this court found that a prima facie case had been established against the Accused person herein and put him on his defence. His defence case was heard on 23rd October 2024.



6. The Prosecution's Written Submissions were dated 15th November 2024 and filed on 18th November 2024 while those of the Accused person were dated 29th January 2025. They did not bear a court stamp. However, in view of the fact that documents were being filed through the e-filing platform, this court admitted the same as there was a likelihood that the Registry may have omitted to stamp the same. 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 Sanny Ambalwa (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 dispute as to whether the deceased died.
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 3 as exhibit in court.
12. The cause of the deceased's death was a pertinent issue. PW 4 was the deceased's brother. His evidence was that he identified the deceased's body at the mortuary and witnessed the post-mortem being done.
13. PW 3 tendered a Post-mortem Report dated 18th September 2016 in respect of the deceased herein as an exhibit in this matter. After conducting the postmortem examination, he formed an opinion that the cause of the deceased's death was cardiorespiratory decomposition secondary to fourth degree burns.
14. 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 burned. It was therefore crucial to establish how the deceased sustained the injuries that caused his death.

III. Identification of Perpetrator of Deceased's Death

15. The Accused person denied having murdered the deceased, who was his son. He submitted that the Prosecution failed to prove its case beyond reasonable doubt and that he was merely charged and prosecuted on suspicion and circumstantial evidence. He asserted that PW 1 and PW 2 testified that they did not see who killed the deceased. He added that PW 3 relied on the Post-mortem Report that



was filled by his colleague, therefore, his evidence was mere hearsay. He urged this court not to admit the said evidence as the maker was not called as a key witness.

16. He further contended that PW 4 was not the Investigating Officer and his evidence did not shed light on what exactly happened. He also termed his evidence as hearsay. He further argued that PW 4 could not inform the court why the alleged spears and arrows were not taken for forensic audit and that he did not produce photographs of the deceased body for the court to ascertain the kind of injuries, if any, suffered by the deceased. He was emphatic that there was no corroborating evidence that linked him to the offence before court.
17. He placed reliance on the case of *Isaac Maina Ngunia v Republic*[2017]eKLR where it was held that in order to justify the inference of guilt, the inculpatory facts had to be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. He pointed out that circumstantial evidence had to satisfy three(3) tests which were that the circumstances from which an inference of guilt was sought to be drawn had to be cogently established, those circumstances were to be of a definite tendency unerringly pointing towards guilt of the accused and the circumstances taken cumulatively formed a chain so complete that there was no escaping from the conclusion that within all human probability the crime was committed by the accused and none else as was held in the cases of *David Munyui Chiragu & Another v Republic* Court of Appeal Criminal Appeal No 104 of 2018 (eKLR citation not given) and *Sawe v Republic*[2003]KLR 364.
18. He was categorical that he was arrested, charged and prosecuted purely on suspicion and was merely suspected to have committed the offence yet there was no one who saw him commit the offence. He added that suspicion, however strong, could not provide the basis of inferring guilt which had to be proved by evidence beyond reasonable doubt as was held in the case of *Republic v Philip Osingo* [2015] (eKLR citation not given).
19. He invoked Section 206 of the *Penal Code* and submitted that for a person to be convicted of the offence of murder, it had to be proved beyond any reasonable doubt that he caused the death of the deceased with malice aforethought which was deemed to be established by evidence as provided for under the said section.
20. He urged the court to acquit him under Section 306(1) of the *Criminal Procedure Code* as the Prosecution had failed to prove its case beyond reasonable doubt.
21. On its part, the Prosecution submitted that the evidence of the Prosecution witnesses was clear that it was the Accused person who inflicted the injuries on the deceased which led to his death. It pointed out that the evidence of PW 1 was that of fact as he was an eye witness.
22. It was emphatic that it proved its case satisfactorily and relied on both direct evidence and circumstantial evidence. It asserted that it was fact that nobody saw who burnt the deceased but that PW 1 saw the Accused person assault the deceased and he left to seek help only to return and find the deceased's body burning. It added that the Accused person was the last person to be seen with the deceased by PW 1.
23. It further pointed out that the deceased body was found within the homestead where PW 1 had left him with the Accused person after the Accused person injured him. It was categorical that that showed that the Accused person was responsible for the deceased's death and there were no other existing circumstances weakening the chain of circumstances relied upon by the Prosecution. It added that the circumstances it relied on were incapable of any other explanation other than the guilt of the Accused person.



24. It was emphatic that the Accused person's defence was not tangible and did not dislodge the Prosecution's case. It asserted that he was guilty as charged and should be convicted and sentenced accordingly.
25. The Accused person testified that the deceased was his beloved child and that on the material day of 10th September 2016, he was at home at around 7.00p.m when people came to his house shouting, "thief" "thief". He stated that he could not see the said people but could hear their voices and hooting from their motor cycles. He left the house through the back door and went to the Police Station at Serem to report about the attack. As he was speaking to the Police Officer at the reception, other police officers from patrol came and arrested him on allegations that someone had died in his compound and that houses were being burnt and they needed to do investigations.
26. He informed the court that he was not told who had died, who had killed the deceased or who burnt the houses. He denied killing the deceased or knowing the person that killed him. He stated that he did not know whether or not the people were coming to attack him or the deceased because they lived in the same compound. He stated that he did not know whether the deceased had arrived as they stayed independently. He denied killing the deceased with the spear that was produced in court. He also denied pouring paraffin on the deceased. He pointed out that the deceased was in fact his advisor and he could never kill him.
27. He admitted knowing PW 1 and stated that PW 1 was at his home during the day of the material day but he could not tell if he was present at home during the night. Their houses were ten (10) feet apart. He denied knowing PW 2.
28. Notably, PW 1 who was the deceased's son testified that on the material day of 10th September 2016 at 9.00a.m, he had gone to the shamba (sic) to weed with his mother, PW 2 when the Accused person appeared and said that he was a small child to weed and he should step aside. He stepped aside and left PW 2 weeding. At 1.00 pm they returned home. At 5.00pm, he was in the deceased's house together with Purity, daughter to the deceased and the deceased was in the sitting room. He went to the kitchen and while there, he heard the deceased asking the Accused person why he had refused him to weed.
29. He said that they started quarrelling as the deceased was at the window of the Accused person's house. He stated that the Accused person started to throw stones at the deceased, took an arrow aimed at the deceased, shot many arrows at the deceased and on the last arrow it caught the deceased on the throat and came out at the back of the neck.
30. He further testified that the deceased called out at him, "Anyuka" and went towards his house, holding his abdomen and fell down and died. He reported to the Pastor who told him to report to the village elder who came and confirmed. On coming back, they found the deceased's body burning with a burning motor cycle on him. Many people with motorcycles and the police came but they did not find the Accused person at home who people said he had gone to the police.
31. He said that when the Accused person was shooting at the deceased, he was telling him to stop disturbing him and to go back to his house. He stated that PW 2 ran away with her children for fear of being killed and that the boda boda (sic) riders wanted to burn the house of the Accused person.
32. PW 2's evidence partly corroborated that of PW 1. She admitted that on the material day, she was working at the shamba (sic) together with PW 1 when her father-in-law, the Accused person, became violent and told her to let the children go home which she did. She pointed out that later she went to sit at her neighbour because she feared going home as the Accused person was angry and sat on rocks alone.



33. She further stated that at 5.00pm, her husband the deceased brought vegetables and she started preparing supper. He left and came back at 7pm. He asked the children how their day was and PW 1 told him that there was a misunderstanding between him and the Accused person. She said that she told the deceased to leave it but he did not listen. He went out and started quarrelling with the Accused person. She said that she picked her children and left for her home and did not know how the deceased was killed.
34. PW 5 testified that on the material day of 10th September 2016, he was on duty at Serem Police Station when the Accused person came to report that he had killed and burnt his son. He stated that the Accused person said that the deceased came home drunk and caused a commotion, went to the rear door and hit it down and then to the front door and entered into the house. He stated that he further reported that he hit the deceased with a stone on the face and he went outside and started peeping through his window and he hit him again. The deceased fell down and he put mattress, cushions, saw dust and his motor cycle on him and set him on fire.
35. He further stated that he took over the case from the Investigating Officer who retired one Corporal Joel Sigilai. He produced the spear and the arrow as exhibits in this case. His evidence corroborated that of PW 1, PW 2, PW 3 and PW 4.
36. After carefully analysing the evidence that was adduced by the Prosecution witnesses, it was evident that PW 1 saw the Accused person stone the deceased on the material date. He was also able to see the Accused person shoot several arrows at the deceased whereby one got stuck in his throat and came out at the back of his neck. He also saw the deceased call out his name while holding his abdomen and fell down. He was also able to see the crude weapons of spear and arrows the Accused person used at the material time. He found the deceased's body burnt when he returned after calling for help.
37. This court was thus persuaded to find and hold that the Accused person was positively identified by PW 1 as aforesaid. PW 1 and PW 2 both placed the Accused person at the scene of crime. They were related and neighbours. This could not have been a case of mistaken identity.
38. The Accused person did not demonstrate that there was any motive for PW 1 to have framed him as the person who unlawfully caused the deceased's death on that material date. It was immaterial whether or not anyone saw him burn the deceased as PW 1 testified that the deceased died from the shooting of the arrow.
39. 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. His assertions that the Prosecution relied on circumstantial evidence which was not cogent was rendered moot as the eye witness that the Prosecution availed was sufficient to have proven its case.
40. 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 and PW 5.

IV. Malice Aforethought

41. Having found and held that the Accused person's defence was not sustainable as he was positively 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.
42. He invoked Section 206 of the *Penal Code* and submitted that for a person to be convicted of the offence of murder, it must be proved beyond any reasonable doubt that he caused the death of the



deceased with malice aforethought which was deemed to be established by evidence as provided for under the said section.

43. On its part, the Prosecution relied on the case of *Nzuki v Republic* (1993) KLR 171 where it was held that malice aforethought was where there was intention to cause harm, intention to cause grievous bodily harm, where the accused knew that there was a risk that death or grievous harm would ensue from his acts and committed the acts without lawful excuse with an intention to commit a felony.
44. It was its contention therefore, that the Accused person assaulted and caused grievous harm on the deceased and that he was determined to injure him and the said injuries resulted to his death. It was emphatic that the actions of the Accused person were therefore propelled by extreme malice aforethought.
45. It further contended that PW 3 testified that Post-mortem Report showed that the deceased had ninety nine (99%) per cent body burns which showed that the intention of the Accused person was to cause harm.
46. This court had due regard to the case of *Morris Aluoch v Republic* [1997] eKLR which cited the case of *Rex v 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.
47. The seriousness of the injuries the deceased sustained was confirmed by PW 3. He observed that the body had fourth(4th) degree burns. There was amputation of the right leg, exposure of abdominal contents on the right, 99% percent body burns, internally burnt ribs and lungs, burnt and collapsed digestive system, burnt genitalia and burns on the head.
48. The extensive injuries all over the deceased's body were evident that he suffered greatly before he died. They could not be said to have been bereft of malice aforethought on his part.
49. 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

50. 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).
51. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 28TH DAY OF MAY 2025.

J. KAMAU

JUDGE

