



REPUBLIC OF KENYA



KENYA LAW

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**Katumo v Republic (Criminal Case 02 of 2017)
[2025] KEHC 9782 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9782 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 02 OF 2017**

TM MATHEKA, J

JUNE 30, 2025

BETWEEN

RAPHAEL MUTIE KATUMO ACCUSED

AND

REPUBLIC PROSECUTION

JUDGMENT

1. The accused person Raphael Mutie Katumo is charged with 2 counts of murder contrary to section 203 as read with section 203 as read with section 204 of the *Penal Code*.
2. The particulars are that on 20/11/2016 at Mulala Village Iteta Sublocation Mulala Division, Nzau subcounty within Makeni County he murdered Angelina Mwikali Katumo and Peter Maundu.
3. He took Plea on 20/2/2017 and pleaded not guilty before Hon. (Kariuki – J)
4. The matter proceeded for hearing before Hon. Lady Justice Ongudi- who heard 8 witnesses.
5. Upon her transfer the hon. Justice Dulu J. took over heard three witnesses and prosecutor closed its case. He determined that the accused had a case to answer.
6. When I took over I heard the defence where the accused made a sworn statement, and did not call any witnesses.
7. The accused was represented by Mr. Mutune, and later Mr. Hassan.
8. The case for the prosecution was that the accused was the son of Angeline Mwikali Mwau and uncle to Peter Maundu. At the material time there was a dispute over a plot of land which his mother had given the grandson- Peter to plough.



9. On the material day the land was being ploughed with cattle. The accused began by threatening to cut the cattle, saying that the said parcel of land would not be ploughed - was heard saying if the land was ploughed he would kill 2 people. The quarrel had started on about 14th /15th November, 2016.
10. On 20/11/2016 between 6.30 pm and 6.45 pm - PW1 was at his home when the wife of the accused one Wavinya came running, panting – and asking her PW1’s wife – he told he she around, because of her state – he followed her and when they found PW1’s wife – she said that Raphael had shot mother and Peter.
11. He demanded to know where they were and she said it was on the road – they all rushed there at approx. 320 to 400 m away. There was a group of people. Mother (Angeline) had an arrow lodged in her stomach, while Maundu had an arrow lodged in his ribs. Both were groaning in pain and bleeding.
12. They were both rushed to Kilome Hospital but mother was pronounced dead on arrival. Maundu was treated there referred to Makindu Hospital, to Makueni Referral, later to Machakos Referral where he was admitted but died on 21/11/2016. Post mortems were conducted on 21/11/2016 on 22/11/2016 and burials on 1/12/2016.
13. The matter was reported at Emali Police Station on 20/11/2016.
14. The accused was nowhere to be seen and was arrested on 3/2/2017 at samba Cement along Mombasa Road.
15. PW2 Area Assistant Chief was also informed of the shooting and was aware of a land dispute within the family which Angeline had sorted out – He had dealt with the issue at some point. Angeline had allowed the deceased grandson to till the land.
16. PW4 the daughter to the deceased Angeline, and sister to accused had visited the mother on the materials day very early in the morning and spent time with her. She testified that her mother had told her that her life was in danger from the own son Raphael. The said her mother had reported the matter to police. She left in the after from her home but later was rang by Maundu telling her that Raphael was walking up and down at a place called Kamonos while armed with bows and arrows. He told her he had reported to authorities but there was no response later, she received a call from Maundu telling her that mother and he had been shot by Raphael with arrows – and he was asking her to come and help. She rushed to Makindu with her sister and found Maundu being treated but he was not talking. She learnt that mother had died earlier, and Maundu later died and Machakos Hospital. She confirmed that Raphael was disagreeing with mother over land at home which belonged to their parents.
17. PW5 received a call about the shooting from PW1 and went to the scene.
18. PW7 testified about the incident of 14/11/2016 when the accused told the mother he would cut the cattle that were ploughing the parcel of land that was in dispute.
19. The threat was serious that the assistant chief whose office was nearby fled, the owner of the cattle took off with his cattle. The witness said she and her husband, who was brother to accused, had been tilling the land – and the accused had also threatened her.

On 20/11/2016 she heard of the shooting while at the market and was scared because of the threats to her life. She said she had reported the threats to the police, and the police had come to check and left.
20. PW7, a neighbour to the family of accused and his mother heard noises in the neighbours place on 14/11/201. She moved there and found that there were oxen tilling the land – the accused was there his mother and him were quarrelling with and saying he would kill 2 people. He learnt that the issue had been reported at Mulala AP Camp.



21. On 20/11/2016, while at home, some children came running into the bedroom and told her that Angeline and Maundu had been shot. He rushed to the scene which was near his house. He found the two of them, each with an arrow lodged in their body – he said Mwaitu(Angeline) shouted to him saying “take me to the hospital. It is Raphael my son who has shot me “It is then that PW1 arrived – and they rushed the two to hospital. He said he was the first one at the scene and that Mwaitu died soon after talking.
22. PW9 and PW12 were the Pathologist who produced the postmortem reports. PW10 was the arresting officer, and PW11 was the Investigating officer.
23. The accused person in his sworn statement of defence told the court that it was not true that he had killed his mother and his nephew. He told the court that he was at material time marking at Simba Cement and went home 8/10/2016 to visit wife and children and to assist with family chores of planting.

On 4/11/2016 - returned to his place of work and did not have a mobile phone and left his wife with the phone number of his farm manager where he was working.

That on 28/11/2016 the farm manager told him he was being looked for on phone by his brother one Joseph Makau Katumo. He said it was Joseph who told him what had happened at home and told him he needed to go home. He said he got home on 30/11/2016 and found funeral arrangements going on, burial was on 1/12/2016, & he left for work on 3/12/2016.

On 6/2/2017, his wife visited him - and while they were talking police knocked on the door, entered and arrested him, took him to Emali Police Station, where he says he was tortured and forced to sign some papers and did so to save his life.

He stated that when the alleged incident happened he was not at home -

At the end of the hearing the only issue for determination is whether the prosecution has proved its case beyond a reasonable doubt to warrant a conviction.

24. In Anthony Ndegwa Ngari V RE [2014] KECA 424 KLR the ingredients for murder were set out to be;
 - i. Death and cause of death of the deceased
 - ii. That the accused person committed the unlawful act which caused the death of the deceased.
 - iii. That the accused person had malice afore thought.

25. From the evidence on record it is not in doubt that the 2 persons died – this was established by the post mortem reports.

PW12 Dr. Steven Musembi produced the postmortem on behalf of DR. Waithera for Peter Maundu. The body had a stitched wound on the left side of the chest – that was the input for a drain in the chest cavity fracture of the 7th rib and blood in the chest cavity, lungs poorly aerated, blood in abdominal cavity, swelling in the brain. Cause of death was complications due to penetrative chest injury.

He also told the court that there was no indication that anything had been retrieved from the chest.

26. It is not in doubt that the deceased did not die from natural causes. He died from a penetrative chest injury. The witnesses who arrived at the scene after the shooting saw an arrow in his chest, and even when he was taken to hospital.

PW1 said that Maundu had an arrow lodged in his left ribs.



PW8 Peter Wambua Ndeleva also testified that he saw the said Peter Maundu with an arrow lodged in his chest - hence cause of death was established.

It is true that there was no indication in the postmortem that anything was retrieved from the chest - but by the time of death, that had been removed during treatment.

Eye witnesses confirmed that the deceased had lodged in his chest, an arrow before he was taken to hospital and that goes together with the finding of the penetrative injury.

27. PW9 Dr. David Kasenga produced the report on behalf of DR. Josephine Muthengi. She conducted the postmortem on 22/11/2016 at Kilome Nursing Hospital. The body of Angelina Mwikali. The body had pale extremities and penetrating wounds.
28. – Deep wound on the head penetrating into brain tissue – 4 cm deep. Deep wound on the lateral region of the occiput – penetrating 5 cm into brain tissue. Laceration, left temporal region. Deep wound through the left hypochondria the arrow stick was found there and the Pathologist could not reach the base of the wound. Wound over the middle phalanx of the middle “finger bone exposed, no fracture measuring 4x2 cm; Liver and intestines and stomach, completely pale, spleen completely severed arrow head lodged into the right pelvic bone cause of death: - Cardiopulmonary arrest secondary to severe head injury and severe internal bleeding.
29. PW1 said he saw an arrow lodged in his mother’s stomach. PW8 said he saw that she had an arrow on the right side of the chest and on the head. Evidently the cause of death was not by natural causes - and the penetrate injuries were caused by the arrows.
30. Did the accused person shoot his mother and nephew?
31. It is important to lay out here that accused’s wife came to court twice to testify - as PW4 and PW7 - but each time she took the stand but upon being sworn told the court that she was the wife of the accused and did not wish to testify. She was treated as a witness who cannot be compelled to testify and let to go.
32. It is evident that the prosecution took her to be their eye witnesses as she was the person who reported the shooting to PW1.
33. Without her evidence the court is left with circumstantial evidence of pieces of evidence which tied together - if they point solely to the accused person – then they can be considered sufficient to draw the conclusion that he was the one.
34. Evidence on record shows that there was a dispute over a piece of land where the issue was - who was going to use it.
35. In the absence of the father of the accused and his siblings – it fell upon the mother to make that determination – the decision she made was unpopular with the accused person and he was heard quarrelling his mother about it. PW1 said that the mother had reported the incident on 15/11/2016 and that there was a warrant of arrest from the accused person. PW2 said he was aware of the dispute. PW3 said her mother had told her she feared that her life was in danger from the accused person because of the shamba issue. PW6 actually heard the accused person threatening to cut into pieces the oxen that were ploughing the land, and to kill 2 people, that she and her husband were also threatened by the accused over the same piece of land and the matter was reported to the police. PW8 heard the quarrel between accused and his mother and even went to the shamba where they were, and heard the accused utter the threats to kill.



36. From all the foregoing there is sufficient evidence that the accused person, unhappy with the decision the mother had made over the parcel of land - was angry, and threatened to harm the cattle that were ploughing – causing the owner to leave with his cattle, and to harm his mother and the nephew.
37. In addition, PW8 told the court that the accused's mother stated that it was her son Raphael who had shot her.
38. It is evidence that this statement by the 1st deceased amounted to a dying declaration.
39. Dying declarations are statements made by person, facing imminent death that go to identifying their killer.
40. Their admission is provided for under section 33(a) of the Evidence Act Cap 80 Laws of Kenya which provides;

Statement by deceased person, etc., when. Statements, written or oral or electronically recorded, of admissible facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured, or whose attendance cannot be procured, without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves admissible in the following cases—

- (a) relating to cause of death when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question;

41. I also found guidance in the Court of Appeal case of Philip Nzaka Watu v R 2016 KECA 696(KLR) where it states;

“Decisions of this Court abound on admission and reliance on a dying declaration. Suffice to mention only two, Choge v Republic [1985] Klr1, Kihara v Republic [1986] KLR473 And Nelson Julius Karanja Irunguv REPUBLIC, CR. APP. NO. 24 of 2008. Under section 33(a) of the Evidence Act, a dying declaration is admissible in evidence as an exception to the rule against admissibility of hearsay evidence. Under that provision, statements of admissible facts, oral or written, made by a person who is dead are admissible where the cause of his death is in question and those statements were made by him as to the cause of his death, or as to any of the circumstances of the transaction leading to his death. Such statements are admissible whether the person who made them was or was not expecting death when he made the statements. Clearly by reason of section 33 (a), there is no substance in the claim that a dying declaration constitutes inadmissible hearsay evidence”

42. The court further stated

“This Court expressed itself as follows in Choge v Republic(supra): “The general principle on which a dying declaration is admitted in evidence is that it is a declaration made in extremity when the maker is at a point of death and the mind is induced by the most powerful considerations to tell the truth. In Kenya, however the admissibility of dying declaration



need not depend upon the declarant being, at the time of making it, in a hopeless expectation of imminent death. There need not be corroboration in order for a dying declaration to support a conviction but the exercise of caution is necessary in reception into evidence of such declaration as it is generally unsafe to base a conviction solely on the dying declaration of a deceased person."

43. The evidence of PW8 is that the 1st deceased on seeing him shouted

"Take me to the hospital. It's Raphael my son who has shot me."

44. Earlier in the day the accused had been seen walking around with bows and arrows by the 2nd deceased who told the PW3 – his aunt about it – and she told him to report the issue. All the foregoing evidence goes to corroborate the 1st deceased's dying declaration that it was her son Raphael who had shot her.

45. The postmortem report indicated that arrow heads were recovered from the body of the 1st deceased and the 2nd deceased – by the time of postmortem the same had been removed. Those recovered from the 1st deceased were produced in court as Exhibits. It is true that they were not subjected to forensics – but the doctor who conducted the post mortem found them and removed them. The investigating officer produced them as evidence.

Hence, even without the evidence of the eye witnesses the circumstantial evidence and the dying declaration overwhelmingly point the 'kidole cha lawama' at the accused person.

46. The accused person gave his statement of defence. He told the court that all this time he was away. However, the evidence of PW1 is that it was his wife who 1st stated that he had shot the deceased. On 14th November, he was in the homestead, and at the farm raising a fracas and threatening to kill the plough oxen, and his mother if the land was ploughed - so, he was not at his place of work as alleged as a number of witnesses saw him at home that day of 14th November 2016.

47. It is my considered view that the accused person was at home on 14/4/2016, he left home, and came back to carry out the attack on his mother and his nephew.

48. Was there malice aforethought? S. 206 of the [Penal Code](#) states ;

"206. Malice aforethought

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (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.

49. The accused person shot at his mother on the head and the abdomen and his nephew in the chest. There was clear intention to cause harm, and considering the weapon of choice, grievous harm.
50. He was not at any risk of harm or threat himself and cannot say he acted at the spur of the moment., His actions show that he had clear intentions of causing grievous harm, even death., because an arrow to the head /abdomen can be fatal by all means.
51. In the circumstances I am persuaded that the prosecution did establish the ingredients of murder and the accused's person's statement of defence legs are pulled from under it by the credible evidence that he was home on the date the basis of the offence was laid and the dying declaration of his mother that placed him at the scene and as the person who pulled the trigger so to speak.
52. In the circumstances I find the accused person guilty of each of the two counts of murder and convict him accordingly on each count.

DATED, SIGNED AND DELIVERED THIS 30TH JUNE 2025.

MUMBUA T MATHEKA

JUDGE

CA Chrispol

Accused Present

Mr. Kazungu for state

Mr. Hassan for accused

