



REPUBLIC OF KENYA



**Republic v Masila (Criminal Case E009 of 2024)
[2025] KEHC 9687 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9687 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E009 OF 2024**

**TM MATHEKA, J
JUNE 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JULIUS MUNYWOKI MASILA ACCUSED

RULING

1. The accused person Julius Munywoki Masila was charged with murder Contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. It was alleged that on 19/9/2017 at Boma 4 in Kiu Sublocation, Makindu Subcounty within Makueni County he murdered Violet Wausi Kilingi.
3. Plea was taken on 7/5/2024 and the accused pleaded not guilty.
4. The prosecution called 7 witnesses, and closed their case.
5. The case for the prosecution was that the deceased Violet Wausi Kilingi was a resident of Boma 4 Village, the treasurer of the village water project, and also a shop keeper.
6. On 19/9/2017, PW1her neighbour within the village, went to her house to take some receipts to her in connection with the water project. Upon arrival she called out, but Wausi did not respond. This was unusual. She went to the village elder's house and informed her – and the village elder rang Wausi's phone, there was no response. A child was sent to check on Wausi's shop to see whether she could have gone to her shop. The child reported back that the shop was not open.
7. The women decided to go to Wausi's house - the door was open. Then one Beatrice PW2 decided to enter the house only to come out running. Asked what she had seen, she could not speak. The village elder rang the Assistant Chief.



8. When the Assistant Chief came in, they entered the house- and Wausi was found lying on her bed, covered, there was blood near the door, no one else was present.
9. PW2 told the court how she had gone to buy tea leaves, and noticed that Wausi's chickens had not come out of the house, which was abnormal. She went to the village elder and he advised her to call other people to go with her to check in case Wausi had fallen sick. She told the court how she entered the house only to meet blood at the entrance and ran out in shock, and collapsed outside.
10. PW3 also testified that she was there together with PW1 & PW2 at Wausi's house. That she had seen the body of Wausi lying dead on her bed.
11. PW5 was also her neighbour. She was there with PW1, 2, & 3 when they went to Wausi's house and found her dead.
12. PW1, 2, 3 & 5 testified that they each knew the accused person. Each said that she knew the accused as having been living together with the deceased either as husband and wife, or as friends. PW1 said they lived together in peace, and never even once heard then quarrel. PW2 said she knew both Wausi & Accused and had never seen them fight. PW3 said she knew that the two had quarrels, verbal quarrels. She knew they were living as husband and wife. She testified that there was one time Wausi had taken refuge in her house – and that accused had thrown the cover of a bucket at them. She said the matter was not reported to the police.
13. PW1, 2, 3 & 5 did not see the accused that day or at the scene.
14. PW4 No. 237424 IP Oliver Mwanandonyi testified that on 15/4/2024, he was requested to conduct an Identity Parade with respect to the accused person. He said the Identifying witness was one Phoebe Caleb Edward (PW1). He told the court that the ID Parade was conducted 7 years later because upon committing the offence the accused had disappeared – that the accused had disappeared at the time he was about to be charged. He said he would not have known that Phoebe had recorded her statement on 21/9/2017. He said the accused had thumb printed the ID parade form, but he could not state how the court would know that the thumb print was that of the accused person.
15. PW6 NO. 85384 CPL Festus Gakotha was at Makindu Police Station in 2017 when a report was made by one Antony Kathioli a brother in law of Wausi that she had died in her house. The police officer, in the company of other officers proceeded to the scene – whereby found Wausi lying dead in her bed, covered with a blanket. There was a lot of blood coming from the back of her head seeping through the mattress to the floor. He testified that he collected information from members of the public who told him that they had seen Wausi in the company of her “Mpenzi” (lover) – the accused person – that they left the shop, together and went to the house of Wausi. He testified further that they did not trace the accused at that time. He said they removed the body, and recovered a hammer from under the bed which had blood and hair. It was suspected to be the murder weapon. They took the body to Makindu Mortuary. He produced the hammer as evidence.
16. On cross-examination he told the court that the women (PW1, 2, 3 & 5) told him they saw the accused and Wausi leave her shop and enter her house with the deceased. He told the court that he did not know whether the blood and hair that he saw on the hammer belonged to the deceased.
17. He said that the hammer was handed to DCI, and he could not tell whether DCI had taken it to the Government Analyst. He also said he did not know whether Antony – the reportee had testified in court.
18. He testified further that he had no evidence that the accused was living in the home of Wausi – he had no evidence of anything of Masila that was found in the house of Wausi to show that he was living



- with her. He said that he received information from witnesses that they had seen the accused and the deceased that day.
19. PW7 Dr. Emmanuel Laiposha produced the Post Mortem report on behalf of Dr. James Mbiu who had conducted the post mortem examination. She had an open fracture of the occipital bone with protruding brain substance blood was oozing from mouth, nose, ears, and her hand were also blood stained. He concluded that the cause of death was cardio pulmonary arrest due to severe head injury. The postmortem report was signed on 22/9/2017. He said there was no evidence of any DNA samples taken from the scene. He said that death could have happened with 24 – 48 hrs.
 20. Upon the closure of the case for the prosecution the issue for determination is whether the prosecution has established a prima facie case to warrant the accused being placed on his defence.
 21. Section 306 of the [Criminal Procedure Code](#) gives the court 2 opinions at the close of the case for the prosecution
 306. Close of case for prosecution
 - (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
 - (2) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.
 22. I have carefully considered the evidence on record.
 23. It is not in doubt that the prosecution has established that Wausi was dead – and that she died – not from natural causes but from injury at the back of the head that was inflicted by something that fractured her skull leaving her bleeding profusely and her brain matter exposed.
 24. The post mortem confirmed that the deceased died from unnatural causes.
 25. The other ingredient is who did it?
 26. It is alleged that it is the accused person who did it in 2017 and disappeared. The prosecution did not lead any evidence on how he was arrested, where was he arrested, why was he arrested – what happened between 2017 and 2024 when he was charged.
 27. The only evidence attaching the accused to the said murder is assertion by the investigating officer that he was living with the deceased as husband and wife and was seen with her the evening before her body was found by her colleagues, leaving the shop and going to her home.



28. However, while the witnesses stated that the accused and the deceased lived together as husband and wife, this testimony by the investigating officer that the accused was seen with the deceased on the evening before her death was not corroborated by PW1, 2, 3 & 5 who were the deceased's friends and neighbours. Each of them told the court that they did not see the accused that day. None of these witnesses told the court they had seen the accused person in the company of the deceased that evening either at her shop, leaving her shop or entering her house. Each of these witnesses told the court that the deceased and accused lived as husband and wife – and that is it.
29. Further, even the evidence of alleged quarrels between the accused and the deceased was not connected to the murder – there was nothing stated by the witnesses to show that the accused and deceased had a relationship that was so sour that it could lead to the accused killing the deceased.
30. There was an alleged murder weapon at the scene – a hammer which the investigating officer collected. However, this was never subjected to the necessary forensic examination – as to whether it was actually the murder weapon. The investigating officer said it had blood and hair- but no evidence was placed before court to show that it was the hammer, the blood and the hair were connected to the murder.
31. The investigating officer did not conduct any investigation. He did not find out whether or not there was evidence to support that the accused was living in the deceased's house. Whether there was any evidence to support the allegation that he lived with deceased as husband and wife – or that he was in the house at the material time. Without that evidence there was nothing to place the accused at the scene of the murder.
32. What we have here is the suspicion that the accused may have killed the deceased – but authorities are galore no suspicion however great can amount to proof of an offence - the standard of proof is that of beyond a reasonable doubt. See *Sawe v Republic* [2003] KECA 182 (KLR) where it was held

Suspicion, however strong, could not provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.

33. And that brings us to the question as to whether there was evidence of malice aforethought. There is no evidence to support the allegation that the accused killed the deceased. Hence the issue of malice aforethought does not arise.
34. I have set out the evidence, I have set out the ingredients of murder, and from the foregoing, it is evident that the prosecution has not established the ingredients of murder that attaches the accused to this murder.
35. Clearly there is a whole gap in the police investigations - and which the prosecution ought to have noted before exercising the decision to charge.
36. Being aware of the threshold of proof in criminal case – I find it appropriate to cite *Bhatt v Republic* [1957] E.A. 332

“It is trite law that the onus is always on the prosecution to prove its case beyond reasonable doubt, and a prima facie case is not made out if at the close of the prosecution the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.”

“A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It may not be easy to define what is meant by a prima facie case, but



at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence.”

37. In the circumstances, while acknowledging that a person, a woman, a mother, lost her life in the most brutal way, I find that the prosecution failed to establish a case against the accused to warrant his being put to the defence. Section 306(1) of the [Criminal Procedure Code](#) applies to this accused person and I record a finding of not guilty and acquit him accordingly.

38. He is to be set at liberty unless otherwise legally held,

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH JUNE 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

Accused –Present at Makueni Prison

Ms. Kamau for the accused present – I pray I be discharged of my duty as pro bono advocate.

Court: Order as prayed

Mr. Kazungu for state

