



**Republic v Asitiba alias Sidi (Criminal Case 6 of 2022)  
[2025] KEHC 9113 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9113 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 6 OF 2022**

**JN KAMAU, J**

**JUNE 25, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH OMWANGA ASITIBA ALIAS SIDI ..... 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 27<sup>th</sup> day of July 2019 at Ebwikabula Village, Ebuyangu Sub-location, Ebuyangu Location in Emuhaya Sub-County within Vihiga County, murdered one Beatrice Maua Osea”
2. The Prosecution’s case was heard on diverse dates between 17<sup>th</sup> April 2023 and 26<sup>th</sup> October 2023 when it closed its case. On 28<sup>th</sup> February 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 29<sup>th</sup> October 2024.
3. This matter was partly handled by Musyoka and P. J. Otieno JJ. This court became seized of this matter on 17<sup>th</sup> April 2023.
4. The Prosecution’s Written Submissions were dated 29<sup>th</sup> November 2024 and filed on 2<sup>nd</sup> December 2024. Despite the court directing that the Accused person file his Written Submissions by 26<sup>th</sup> February 2025 and ensure the same were placed in the court file, the same were missing as per the date of writing this Judgment. The Judgment herein was therefore based on the evidence on record and the Prosecution’s Written Submissions only.



## **Legal Analysis**

5. The issues that were put before this court for consideration were as follows:-
  - a. Whether or not Beatrice Maua Osea” ” (hereinafter referred to as the “deceased”) died?
  - b. If so, was her 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?
6. 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**

7. The Prosecution submitted that there was no doubt as to whether the deceased died.
8. 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**

9. The cause of the deceased’s death was a pertinent issue. The Prosecution submitted that the deceased’s death was proved by the autopsy report produced by Dr Dixon Mchana Mwaludindi (hereinafter referred to as “PW 2”) as exhibit in court.
10. PW 2 tendered a Post-mortem Report dated 5<sup>th</sup> August 2019 in respect of the deceased herein. He testified that after conducting the post mortem examination, he formed an opinion that the cause of the deceased’s death was asphyxia due to manual strangulation.
11. It was, therefore, clear from his evidence that the deceased’s death was not as a result of natural causes. It was therefore crucial to establish how the deceased sustained the injuries that caused her death.

### **III. Identification Of Perpetrator Of Deceased’s Death**

12. The Accused person denied having murdered the deceased. He narrated to court of how he was arrested on the material date of 27<sup>th</sup> July 2019 but did not state anything concerning the events that led to the deceased’s death. He urged the court to acquit him.
13. On its part, the Prosecution submitted that its witnesses had linked him to the deceased’s murder. It asserted that whereas there was no witness that testified to have witnessed the incident that led to the death of the deceased, Richard Siku Mabina (hereinafter referred to as “PW 1”) saw the Accused person running away from the scene of crime without shoes which were found next to the deceased’s body. It added that PW 1’s evidence was corroborated by that of Chrispo Owiso Atieli (hereinafter referred to as “PW 5”) who stated that the shoes and cap found at the scene were that of the Accused person who was his neighbour and friend.
14. It contended that from the evidence that was adduced by the witnesses, the Accused person was placed at the scene of crime and he was the one who inflicted the injuries on the deceased that caused her death. It was categorical that it relied on circumstantial evidence which clearly pointed to the Accused person as the person who assaulted the deceased leading to his death.



15. In this regard, it placed reliance on the case of *Abanga Alias Onyango vs Republic Criminal Appeal No 32 of 1990* (eKLR citation was not given) where it was held that it was settled law that even when a case rested entirely on circumstantial evidence, such evidence had to satisfy three (3) to wit, that the circumstances which an inference was drawn had to be cogent and firmly established, the circumstances were to be of a definite tendency unerringly pointing towards the guilt of the accused and that the circumstances taken cumulatively had to form a chain so complete that there was no escape from the cogent evidence.
16. It also relied on the case of *Sawe vs Republic [2003]eKLR* where it was held that the prosecution must establish that there were no existing circumstances which could weaken or destroy the inference of guilt. It was its contention that the chain of events in this case was cumulative and showed that the Accused person was the perpetrator.
17. Notably, PW 1 testified that she knew the deceased as she was a business person at a market next to where she stayed. He said that he knew the Accused person as he was from his neighbourhood. He further testified that on the material night of 27<sup>th</sup> July 2019 at around 9.00pm, he heard screams coming from behind their house. When he followed the path where the scream was coming from, he met a young man called Sidi, the Accused person herein, running. He flashed the torch and confirmed that it was him running. He asked him where the screams were coming from and the Accused person who was panting told him that he was not coming from where the screams were coming from.
18. It was his further evidence that when he reached the scene of the screams, he found a woman who was naked . She was dead as she was not breathing. He said that her neck had nail scratches. He was categorical that he could see all that from the light from his torch. He said that he knew the deceased as they had nicknamed her Spatpati. He testified that he called the police who came and collected the body of the deceased.
19. He added that they found a hat and shoes at the scene and when he looked at them keenly, he realised that they belonged to the Accused person who had worn them the whole day. He added that when the Accused person heard that he was being looked for, he went to the Police Station.
20. Phenius Atieli Okwayo (hereinafter referred to as “PW 4”) testified that he knew the deceased as his neighbour and business person. He stated that on the material night of 27<sup>th</sup> July 2019, he was coming from work at Ebuyangu Junction using a torch when he sensed danger. At a corner near his place, he saw a shoe belonging to a woman and another shoe belonging to a man. There was also a hat jungle in colour like that of the military. When he shone his torch around the area, there were a woman’s clothes and a man’s trouser.
21. It was his further evidence that there was a small trench where the clothes were. He suspected that something was amiss because he knew the clothes belonged to a person he knew and who he was with during the day. He pointed out that the said person had come to his shop on that day to buy sugar with the same clothes. He added that there was a sweater and a white flowered dress which recognised.
22. He further told the court that he then saw a body that had no clothes on. When he moved closer to touch the body, the legs were cold. He recognised the body as that of the deceased and rushed to her home. He corroborated PW 1’s evidence that they used to call her Esipatipati. He called her but she did not respond.
23. He informed the court that the deceased’s home was about three hundred (300) to four hundred (400) metres away. He stated that he went to her house and he found the deceased’s son’s wife, one Sherry, and asked her if the deceased had come home. She told him that she did not know if he had done so



- and so sent a child to the deceased's house to check if she was there. The child found the deceased's house locked.
24. He then told Sherry that someone who looked like of that home was lying in a thicket down the road. When they went to check, Sherry confirmed that it was her mother after seeing her clothes and a shoe and jungle hat that she identified as having belonged to the Accused person. She screamed to alert people of the occurrence of the incident. Members of public and the Village Elder came whereupon the Local Administration was notified. The police came after being called and took the body of the deceased to the mortuary.
  25. PW 5's evidence corroborated the evidence of PW 4 and added that when he was coming from work at 5.00pm, he saw the Accused person who was wearing the clothes that he had recognised at the scene. He stated that he saw the Accused person eating chips and looking at the deceased, his mother, while she folded clothes and that he did not know what his intentions were so he just passed and went home. He confirmed that that was the same day his mother died. He identified the trouser, shoes and hat that the Accused person was wearing on the material date during trial.
  26. No 59986 Corporal Thomas Bii (hereinafter referred to as "PW 6") was the Investigating Officer having taken over the case from Corporal Kenneth Mugambi. He reiterated the evidence of PW 1, PW 2, PW 4 and PW 5. He produced as evidence the assorted clothes of the deceased and the trouser with pink/red stripes, open shoes and jungle hat belonging to the Accused person as exhibits in court.
  27. After carefully analysing the evidence that was adduced by the Prosecution witnesses, it was evident that although there was no eye witness in this particular case, PW 1, PW 4 and PW 5 linked the Accused person to the scene of crime as PW 5's evidence corroborated that of PW 1 stating that the shoes and cap that were found next to the deceased body belonged to the Accused person as they had seen him wearing the same the material day.
  28. Weighed against the evidence that was adduced by the Prosecution witnesses, this court did not find the Accused person's evidence to have been watertight enough to have weakened the inference of guilt on his part. He did not rebut PW 1's and PW 5's evidence that the trouser with pink/red stripes, the shoe and jungle hat belonged to him, which items were recovered found at the scene of crime and were produced as evidence in court. His defence was a mere denial as the circumstantial evidence linked the him to the death of the deceased.
  29. As the Accused person's defence did not displace and/or dislodge the consistent and cogent evidence that was adduced by PW 1, PW 2, PW 4, PW 5 and PW 6, this court was thus persuaded to find and hold that he was responsible for the death of the deceased and it was not have been a case of mistaken identity.

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

30. 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.
31. 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 the inference of 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.



32. It pointed out that it had adduced evidence to show that the aim of the Accused person was grievous harm and that that was established by the nature of injuries he inflicted on the deceased which were injuries on the neck leading to strangulation. It was its contention that the Accused person's actions spoke of malice aforethought.
33. 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* (Supra) where the East Africa Court of Appeal held that malice aforethought could be presumed where repeated blows were inflicted.
34. The seriousness of the injuries the deceased sustained was confirmed by PW 2. He observed that her nails, tongue and lips appeared dark-bluish in colour, she had four (4) minor grazes on the front neck, bruises on the left thigh outer aspect and on the private parts, extensive blood clot under the skin on the front part of the neck from up to down and was extensive, blood surrounding the hyoid bone in the neck, bruises in the birth canal and swollen lungs with froth in her airway. There was also evidence of sexual assault.
35. The extensive injuries all over the deceased's body were evident that she suffered greatly before she died. They could not be said to have been bereft of malice aforethought on the part of the Accused person.
36. 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**

37. 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).
38. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**J. KAMAU**  
**JUDGE**

