



**Republic v Nthiga alias 'Blackie & 3 others (Criminal Case E012 of 2023)
[2024] KEHC 16266 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16266 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE E012 OF 2023
LM NJUGUNA, J
DECEMBER 19, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

STANLEY MWANGANGI NTHIGA ALIAS 'BLACKIE 1ST ACCUSED

SIMON WACHIRA NGARI ALIAS 'KANGALI 2ND ACCUSED

AMBROSE MUGENDI IRERI 3RD ACCUSED

JOSIAH WAWERU NTHIGA 4TH ACCUSED

JUDGMENT

1. The accused persons are charged with murder contrary to Section 203 as read together with Section 204 of the Penal Code. The particulars are that on 07th October 2021 at Minuri village in Mbeere South Sub- County within Embu County, the accused persons jointly murdered Faustino Njeru Njoka.
2. Upon arraignment, they pleaded not guilty and a plea of not guilty was duly entered for each of them before the matter proceeded to full hearing.
3. PW1 was Felista Kathi Ganji, the deceased's sister who stated that after a day's work at her farm, she went to the home of the deceased for a cup of tea. That while she was in the house with the deceased and other family members, they heard a group of people outside the gate making noise. That they went outside to check and one of the members of the group threw a stone at them. Soon afterwards, they broke the gate and entered the compound where they threatened the members of her family with pangas and they scattered. She testified that the crowd burned down 2 motor vehicles, one which belonged to her, and then demanded to see the deceased. That she was roughed up by the crowd and was forced to show them where the deceased was and they took him away into the shamba.



4. She identified the 1st, 2nd and the 4th accused persons from the crowd. She stated that after the deceased had been taken to the shamba, she returned to the homestead where the house had been surrounded by another crowd and one of the people cut the deceased's wife with a panga on her head. That she managed to get away together with her brother's wife and they took a motorcycle to the hospital. She stated that her motor vehicle which was burned by the crowd was still new and she was still in the process of transferring ownership to her name.
5. That the deceased was the chairman of the Nditi clan who was following up on cases that touch on the said clan land. That at the time of the incident which lasted about 3 hours, the deceased was pleading with the 1st accused not to attack him. That later in November when she went back to the compound, she found all the houses had been burned down. On cross-examination, she stated that when they were being attacked, she ran away and did not know who else was behind her. That she was hiding somewhere when she heard someone nearby asking where the petrol was. She stated that before the incident, she did not know the accused persons.
6. PW2 was Jacinta Kiura Njeru, the deceased's widow who stated that she was at home with the deceased, PW1 and her grandchild when they heard a group of people led by the 1st accused, outside the gate demanding their right. That the deceased went outside the house and told them that if they feel like he owes them anything, they should take him to court. That the group, which included the 3rd accused, were armed with pangas and other crude weapons. That the group, broke the gate, causing them to run into the house for their safety. She stated that the people set the house on fire using dry maize stalks and she saw them through the window panes.
7. That PW1 was ordered by the 3rd accused to open the door for the people inside the house to get out and when they got out, the 1st accused hit her with a panga on the head. That the deceased was taken to the shamba, leaving her outside the house and when they returned, the 1st accused hit her on the head and said that she would be a witness in case the issues end up in court. That she was bleeding profusely and they stopped a motorcycle to take her to hospital by what time she was unconscious.
8. She stated that she learned of the death of the deceased 2 days after the incident and she recorded her statement with the police. That after her treatment, she did not return home because her house was burned down. That their motor vehicle was also burned down during the incident. She identified 1st and 3rd accused persons as part of the group that attacked them. On cross-examination, she stated that the accused persons are members of the deceased's clan and are their neighbours. That even though she stated that she had been hit on the head by a different person, she told the court that she was hit by the 1st accused.
9. PW3 was Augustino Ngari Njeru who stated that on the day of the incident, he met the 1st, 3rd and 4th accused persons carrying jembes and metal rods, a few meters from the home of the deceased. That the 1st accused was the one who was leading them.
10. PW4 Elishaban Nthiga stated that he was informed of the deceased's death while he was on his way home from Nairobi. That he informed his sister about the incident and told her not to go to the said land because the word on the street was that anyone who would go to the land would be killed. He stated that there had been a long-standing dispute between Gikandi and Nditi clans about land. The deceased was the chairman of the Nditi clan.
11. PW5 was Josephat Nyaga Mukembo, senior chief of Mbita location who stated that he was at an event when he received news that some people had lit fire in the deceased's compound and he informed the OCS. That the matter was reported at the police station and he visited the scene with the OCS, where they found houses burning and 2 cars had already been burned. The road leading to the scene had been



closed with thorns and tree branches but there was nobody at the scene. That a boy told them that his grandfather had been set ablaze in the shamba and when they went with the boy, they found the burning body of the deceased. That they were told that the shamba belonged to the deceased but PW1 in the company of some people, had gone to another parcel of land to evict the owner. He did not know how the accused persons were involved in the incident. On cross-examination, he stated that the problem was a land dispute between the deceased and the Nditi clan.

12. PW6 was CI Sarah Bokosh who produced 15 photographs and the corresponding certificate by Inspector Kiboma, whom she worked with. The photographs were of the crime scene. On cross-examination, she stated that it was a scene of mob injustice.
13. PW7 was A.D. a minor, who testified following *voire dire*. He stated that he was at home with his grandfather the deceased and his grandmother who is the deceased's sister when some people went to their gate armed with arrows, spears and pangas and they demanded to know why the deceased was demolishing their properties. That the people started throwing stones at them but they ran into the house with PW1. That they started beating the other men who were with the deceased and then they set the house on fire. That himself and the deceased were forced out of the house and they went to hide in a room next to the house where he hid in a box. That when he got out of the room, he started running away but the men told him they had no problem with him and he saw his grandparents heading towards the shamba. He stated that he saw the people cutting PW2 with a panga on the head and the deceased was cut with a panga severally.
14. That he saw the 1st accused leading the other men who was armed with a panga in attacking the deceased but he did not know if he cut the deceased. On cross-examination, he stated that in the room where he was hiding, there was smoke but he could see outside and he clearly saw the 1st accused. That he stopped running when the people told him that they were not interested in him and that is when he saw the deceased being taken away to the shamba. That he could see the deceased running ahead of the people who were chasing him. That he stood at the gate to the shamba and he saw about 20 men and women all chasing the deceased and they were being led by the 1st accused, who was also the one who put the tyre on the deceased and started the fire.
15. PW8 was Patrick Kariuki Nditu who stated that he worked for the deceased and on the day of the incident, the deceased asked him to pick fodder for his cows. That he went to his home where he found the deceased with PW1, PW2 and PW7 and some other people. That as he joined them for a cup of tea, he saw a group of people breaking through the gate and fence into the compound. The people were demanding that the deceased leave the land. He stated that the deceased moved near them and tried to talk to them but they refused to listen and they were led by the 1st accused. That they forced their way into his compound and one of the people, whom he could not identify, hit him with a panga on his back.
16. That he ran outside the compound and called the police and they went to the scene. That he tried to call the deceased to offer help but the call was disconnected. He went back to the home of the deceased where he found that the deceased had died while PW1 and PW2 had sustained cut wounds. He identified the 1st accused person who had a panga and was leading the rest of the crowd. He stated that his motor cycle was burned during the incident. On cross-examination, he stated that there were many people but he identified the 1st accused and the deceased also called him by the name 'Blackie'. That when he returned to the scene the second time, he found the police had arrived.
17. PW9 was Eunice Martha Kiutho who stated that she had gone to visit the deceased and PW1 was also there with 6 young men whom she had brought to help her work on the land. That PW1 went to the shamba with the men but before long, they returned and then a group of about 40 angry people went



- to the deceased's home being armed with runigus and pangas. That the deceased went to the gate to talk to them and they said that they were looking for the young men who were with PW1. Soon, the crowd became violent forcing the deceased, PW2 and PW7 to run to the house to hide.
18. She ran into a latrine and PW1 was cut by one of the men with a panga. That she saw the crowd breaking the windows to the house and they set it on fire. They also burned the deceased's and PW1's vehicles that were outside the house. It was his testimony that the deceased ran towards the shamba and the people, being led by the 1st accused, chased after him saying that petrol should be brought so that they can burn the deceased, whom they alleged had stolen land from them. That she only went out of her hiding place when the police arrived.
 19. PW10 was Diana Nyaguthii Njeru who stated that she identified the body of the deceased for postmortem purposes at Embu Level 5 Hospital.
 20. PW11 was Dr. Sheila Shavulimo, a psychiatrist at Embu Level 5 Hospital who stated that she conducted mental assessments on all the accused persons and she found them mentally fit to stand trial. She produced the mental assessment reports as evidence.
 21. PW12 was Dr. Philis Muhonja who conducted postmortem on the body of the deceased. She noted that the body was charred and there were fractures on both elbows and ankle joints and knees. On the right upper limb, there were 18% 4th degree burns, on the chest, there were 16% 4th degree burns, the face, head, neck and lower limbs had 18% 4th degree burns. The total surface burns amounted to 94% burns. There was soot in the thorax and the heart and scalp were all charred and the brain matter was shrunken. In her opinion the cause of death was severe thermal injury amounting to 94% burns. She produced the postmortem report as evidence.
 22. PW13 was Cpl. Joseph Ngari of DCI Mbeere North who stated that PW5 reported the incident at the station after he was informed about it. That he visited the scene together with his colleagues and when they arrived, there was no one there and the 3 houses in the deceased's compound were on fire. There were also 2 motor vehicles, 1 motor cycle and a donkey cart that had been burned. The deceased's body was found in the shamba and it was on fire. He stated that the police called the fire brigade from the county government who put out the fire. The crime scene was processed by scenes of crime personnel.
 23. That from the investigations, he learned that PW1 had gone to her shamba which is near the home of the deceased with some 6 men to prepare the land for planting miraa. That afterwards she went to the home of the deceased and as they were eating some snacks, they were attacked by a group of about 40 people who were armed with runigus and pangas. That the deceased was with PW1, PW2, PW7, PW8 and PW9 when the people forced their way into the compound despite the deceased trying to calm them. He stated that the investigations revealed that the crowd set the deceased's house on fire and since he was hiding in it with PW2 and PW7, he went outside and the people killed him in the shamba and set him on fire.
 24. He stated that he recorded witness statements, arrested the accused persons and compiled a file which he sent to the ODPP for approval before the accused persons were charged with the offence. On cross-examination, he stated that the accused persons were the leaders of the group that went to the home of the deceased. That the matter was reported at the police station by a member of the family of the deceased. That when the police arrived at the scene, the houses within the deceased's homestead had been set on fire and his body was burning and it took the fire brigade about 30 minutes to get to the scene. That initially, there were 7 suspects but only 4 of them were charged.
 25. At the close of the prosecution's case, the court found that the accused persons had a case to answer and they were placed on their defense.



26. DW1 was the 1st accused person who stated that 8 days after the incident, the police arrested him and he explained himself regarding the incident. That he was released and then in 2023, he was re-arrested. He stated that on the day of the incident, he was at his place of work until evening when he heard about the incident and the death of the deceased. That he was nowhere near the scene and that the deceased had a land case with his (DW1) father in the 1990's and that is why he was implicated. He denied involvement in the offence.
27. On cross-examination, he stated that the 4th accused is his brother, the 3rd accused is his cousin while the 2nd accused comes from his village. That his home from that of the deceased is 1km and he knew James Njeru Munyi whose house PW1 had burned and she destroyed his miraa. That his father and the deceased had a case which the deceased lost and his land was declared clan land. He stated that he told the police that he had 2 enemies, being PW3 and PW5 and that he did not write his statement voluntarily by himself. That he also faces charges of attempted murder and arson against PW2.
28. DW2 was the 2nd accused who stated that at 6am, he went to work at the farm at Ngangari and was there until 1pm when he took a lunch break and then returned to work until 9pm. That while on the way home, he heard that the home of PW3 was on fire and he confirmed this from his wife. That when he got home, he slept and later he was summoned by the DCI about the incident. HE denied any involvement in the murder of the deceased and he stated that he had no grudge with the deceased or his family. On cross-examination, he stated that he did not know that on the day of the incident, PW1 had cut down miraa belonging to James Munyi. That the deceased had land cases in court where the complainants were DW2's parents, and he lost the case. He denied being at the scene that day and that PW3 said he saw him there because there is a grudge between them.
29. DW3 was the 3rd accused who stated that on the day of the incident, he had gone to pluck miraa in the company of Muriuki at around 4am and afterwards, they went to sell it in the market until 11pm when he returned home and slept until the next day between 5am-6am. That he left home and went to the shopping center to buy airtime when he was told that the police were arresting people at the shopping center. He returned home and later that month, he was summoned by the DCI when he was questioned about the incident and released. After 2 months, he was charged with the offence. On cross-examination, he stated that the 1st and 3rd accused are his cousins and his parents have never had a land dispute with the deceased. He did not know that on the day of the incident, PW1 had destroyed James Munyi's miraa and house.
30. DW4 was the 4th accused who stated that on the day of the incident, he went to attend a burial ceremony of one Jane Njeri at Karurumo. That he arrived at the funeral between 12pm and 1pm and he left at 4pm-5pm and arrived home at 6pm. That he heard about the incident and that PW1 led a group of people to invade and destroy the homes of James Njeru, Muriuki Gatura and Augustino and killed him. That it was the same group of people that had invaded the 3 homes. That he was summoned to the DCI offices where he gave his statement and later, he was charged with the offence. He denied involvement in the death of the deceased and stated that he was not near the home of the deceased that day. On cross-examination, he stated that the deceased had a land dispute with his grandparents and that he belonged to the Mbandi clan but bought land from the Ikandi clan. That there was a land dispute between the Ikandi and Nditi clans and the deceased belonged to the Nditi clan which had lost the case. That he has known PW3 for a long time and that there was a grudge between them.
31. The defense case was closed and the court directed that the parties file their written submissions. Only the prosecution complied.
32. In its submissions, the prosecution relied on the case of Anthony Ndegwa Ngari v. Republic (2014) eKLR and section 203 of the Penal Code. It also relied on the case of Republic v. Stephen Sila Wambua



- (2017) eKLR and argued that the testimonies of PW1, PW2, PW3, PW7, PW8 and PW9 give a clear picture of what happened that day and they saw the accused persons at the scene. It argued the malice aforethought had been proved in line with section 206 of the Penal Code and it relied on the case of Joseph Kimani Njau v. Republic (2014) eKLR.
33. It also relied on section 21 of the Penal Code and the cases of Njoroge v. Republic (1983) eKLR, Dickson Mwangi Munene v. Republic (2014) eKLR and Otieno Evans Oduor v Republic (2021) eKLR and argued that the accused had the common intention of killing the deceased. It urged the court to convict the accused persons.
34. The issue for determination is whether the prosecution has proved the offence of murder beyond reasonable doubt against the accused persons.
35. Article 26 of *the Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by *the Constitution* or written law. The accused persons herein face the charge of murder contrary to section 203 as read together with 204 of the Penal Code. It was the duty of the prosecution to prove beyond reasonable doubt, that the accused persons murdered the deceased. These provisions of the Penal Code provide the elements of the offence as follows:
- “ 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
204. Any person who is convicted of murder shall be sentenced to death.”
36. In the case of Republic v W.O.O. [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) the elements of murder were stated, being guided by the Court of Appeal in the case of Anthony Ndegwa Ngari vs Republic [2014] eKLR, as follows:
- “ For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the Accused had the malice aforethought.”
37. On the first element of death and cause of death, PW12 produced a postmortem report and opined that the cause of death was severe thermal injury amounting to 94% burns.
38. On the element of unlawful act which caused the death of the deceased, the prosecution bears the legal burden of proving that the accused persons are linked to the death of the deceased. This means that the accused persons should be placed at the scene of crime at the time of the incident. PW1 stated that she was at the home of the deceased when they were attacked by a mob that forced their way into the compound, burned their vehicles and houses. That the people also chased the deceased into the shamba and beat him before setting him on fire. This account was also given by PW2 and PW7 who stated that when the crowd started becoming violent, they went to hide inside the house with the deceased and when they were discovered, the house was set on fire, forcing them to get out.
39. That PW2 was cut with a panga on the head as the deceased was chased into the shamba where he was beaten and burned. PW1 stated she saw the 1st, 2nd, 3rd, and 4th accused persons. She distinctly remembered them because the 1st accused was the one leading the gang and the deceased was pleading with him not to harm him. That the 3rd accused is the one who told her to open the door for PW2 and PW7 after the house had been set on fire. PW9 was also at the home of the deceased that day and she said that after the crowd became violent, she went to hide inside a pit latrine. She saw the crowd armed



with pangas and runkus. PW3 also stated that he met the 1st, 3rd and 4th accused persons coming from the direction of the deceased's home carrying jembes and metal rods.

40. In his defense, the 1st accused denied being at the scene and stated that he heard about the death of the deceased from other people in the village. He stated that there was a land dispute between his parents and the deceased and that the deceased had lost the court case about the land. The 1st accused and the 4th accused are brothers and both of them are cousins to the 3rd accused. The 4th accused, in his defense, stated that PW3 implicated him because there was bad blood between them.
41. He stated that on the day of the incident, he was away attending a funeral where he arrived between 12-1pm and left at about 4-5pm. Being a village Nyumba Kumi elder, he heard about the incident and got concerned, thus he asked his fellow elder who told him that the same group had invaded 3 different homes. The 2nd accused defended himself saying that he was at his place of work from 6am until 1pm when he took a break and then returned to work until 9pm. The 3rd accused stated that he went to pluck and sell miraa between 4am in the morning and 11pm at night. The incident in question occurred about 10.00 a.m and according to PW2, it lasted about 3 hours.
42. The defenses of the accused persons, considered alongside the prosecution's evidence, do not completely account for their whereabouts between the hours when the incident is said to have occurred, such that they should be exonerated. In my view, the accused persons were at the scene when the incident occurred. Indeed, there were several people at the scene, a group of about 40 people, some of whom were seen chasing the deceased to the shamba and setting him on fire. It is my view that all the accused persons together with the others participated in killing the deceased. This finding is buttressed by section 21 of the Penal Code which provides:

“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”

43. Lastly, is the issue of malice aforethought. In the case of Republic v Stephen Sila Wambua Matheka [2017] eKLR it was held;

“The courts in interpreting the provisions of section 206 have stated as such in various authorities. In the classic case of Republic v Tubere S/O Ochen [1945] 12 EACA 63 the court held that an inference of malice aforethought can 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. In the Ogelo v Republic [2004] 2KLR 14 the appellant in this case chased the deceased and another. He caught up with the deceased and stabbed him with a knife on the chest. The deceased died of the stab wounds. The court held inter alia that by dint of section 206 (1) an intention to cause death or grievous harm malice aforethought is deemed to have been established by evidence presented by the prosecution. Malice aforethought can also be inferred from the manner of killing. See the case of Ernest Bwire Abanga Onyango v Republic [1990] Cr. Appeal No. 32 of 1990. The principle here as enunciated under section 206 and the authorities is the fact of establishing by evidence that the accused conceived the criminal mind before converting that in the mind into acts of omission to commit the murder.

44. In addition to the finding that was supported by section 21 of the Penal Code it is clear through evidence that the accused persons intended to kill the deceased. They all had the common intention



at the same time and the end result was the death of the deceased. The prosecution witnesses testified that the deceased was taken to the shamba and beaten before being set on fire. By the time PW13 was arriving at the scene, the body of the deceased was still burning. PW12 testified that the deceased died from 94% burns. In my view, the accused persons bore malice aforethought at the time of committing the offence. Malice is also buttressed by the fact that they all went to the deceased home armed with crude weapons and the deceased's plea to them to have the matter resolved amicably fell on deaf ears. They violently broke his gate, entered the compound, attacked PW1, PW2 and killed the deceased herein in addition to burning his two houses, two motor vehicles and a motorbike.

45. In conclusion, I find that the prosecution has proved its case against the accused persons beyond reasonable doubt. The accused persons are hereby found guilty of the offence of murder contrary to section 203 of the Penal Code and they are hereby convicted accordingly.

46. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF DECEMBER, 2024.

L. NJUGUNA

JUDGE

