



REPUBLIC OF KENYA



**Republic v Halake (Alias Blacki) (Criminal Case E005 of 2020)
[2022] KEHC 13068 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13068 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL CASE E005 OF 2020
JN NJAGI, J
SEPTEMBER 22, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

JIRMA GODANA HALAKE ACCUSED

ALIAS BLACKI

JUDGMENT

1. The accused is facing a charge of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the offence are that on the December 17, 2020 at Dakabaricha location within Marsabit County he murdered one Moke Ore Moke (herein referred to as the deceased).

Case for prosecution-

2. The prosecution called 11 witnesses in the case. Their case was that the deceased was a boyfriend to a lady Florence Jemutai PW1. That on the material day at around 4 pm the said Jemutai was visiting her friend called Regina Gelsoi PW2 who is a neighbour to the accused. The accused and Regina started to quarrel over a jiko. A person called Guyo Dambala Arobale PW3 was at the time there. The accused then hit Regina with a blow on the face. Jemutai asked him why he was beating Regina. The accused entered into his house and came out with a knife. He stabbed Jemutai on the left hand and on the chest. The two ladies went and reported to the area Assistant Chief, PW4 who referred them to the police. When they were going away they met with the accused. The accused attacked Jemutai again and hit her with blows on the face and head. After he left her Regina escorted her to the house of her boyfriend, the deceased. They did not find him in the house. Jemutai was left in the house and Regina went back to her house.
3. Jemutai testified that the deceased returned to his house at 7pm and found her in the house. She told him that she had been beaten by the accused. They went to the plot of the accused to ask him about



it. They did not find him in his house but he appeared shortly after. It was dark. Regina PW2 was at the time outside her house. Guyo PW3 had at the time gone to the plot to visit the landlord PW5. The deceased asked the accused why he had beaten Jemutai. The accused did not answer him but only extended his hand towards the deceased. Jemutai, Regina and Guyo then saw the deceased falling down. They saw the deceased bleeding. They realized that he had been stabbed. Guyo checked on him and found that he had been stabbed on the abdomen. The accused had ran away. The two ladies started to scream. The landlord PW5 arrived at the place and found the two ladies screaming. The deceased was lying on the ground. He was told that the deceased had been stabbed by Blackie who is the accused. He was not around. The Assistant Chief PW4 heard the screams while at her house and went to the place. She called the police.

4. PC Ndegwa PW9 of Marsabit police station was informed of the incident by the OCS who asked him to attend to the matter. He went to the scene with officers from the DCIO. They rushed the deceased to hospital but he succumbed. Cpl Gichuki PW11 then of DCIO's Office Marsabit also visited the scene and met the police vehicle taking the deceased to hospital. When the policemen returned to the station they found the accused at the police station. He surrendered to the police.
5. CPL Gichuki and PC Ndegwa PW9 returned to the scene on the following day. They found a knife stuck on a timber frame on the veranda of the house where the incident took place. It was blood stained.
6. A postmortem was conducted on the body by Dr. Ahmed Jaldesa PW8 of Marsabit County Referral Hospital. The body was dressed in a green T-shirt and a combat print vest that were soaked in blood. The doctor found the body with two stab wounds on the thorax - one between the 4th and 5th ribs and the other below the 12th rib at mid collar bone. The doctor concluded that the cause of death was due to severe hemorrhage secondary to stab wound directly aimed at the heart.
7. CPI Gichuki PW11 investigated the case. He prepared an exhibit memo and sent the knife, the soaked T-shirt and the vest to the government analyst Nairobi together with the nail clippings of the deceased. A government analyst Kipngetich Bernard examined the items and found them to be stained with human blood. He generated a DNA profile from the items and came to the conclusion that the sword, the T-shirt and the vest matched the DNA profile generated from the nail clippings of the deceased. The accused was charged with the offence of murder. During the hearing Dr. Jaldesa produced the post mortem report as exhibit, PExh. 1. A government analyst, George Kakuta produced the government analyst's report as exhibit, PExh 1A. The investigating officer PW11 produced the knife and the exhibit memo as exhibits, Pexh 2 and 1B respectively.
8. When placed to his defence, the accused stated in an unsworn statement that the deceased was his friend. That on the material day, he returned home and found the deceased at the door to his house. The deceased chased him while holding a small knife. He, the deceased, stabbed him on the left ear. The deceased fell down on stabbing him as he was drunk. He felt dizzy on being stabbed. He sat down. He then rose up and escaped towards the hospital. He went to the police station to report. On getting there the police officers interrogated him. They asked him whether his nickname was Blackie. He answered in the affirmative. He was then told that he had killed someone. He was placed in the cells. He was charged.
9. Neither the prosecution nor the defence made submissions in the case.

Analysis and determination—

10. The accused is charged with murder contrary to section 203 of the *Penal Code*. The section provides as follows:-



Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

11. The above definition was emphasized in the case of *Roba Galma Wario v Republic* (2015)eKLR, as cited in *Republic v Martin Kinyua Nancy* (2016) eKLR, where it was stated that:

For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter as it would mean the death of the deceased during the brawl was not intentional.

12. In essence for the offence of murder to be proved the prosecution has to establish that the accused committed an act causing the death (*actus reus*) and that the accused possessed the necessary malice aforethought (*mens rea*). The essential ingredients of the offence of murder that the prosecution must prove against the accused are:

- a. The death of the deceased and cause of death.
- b. That the death of the deceased was unlawful.
- c. That in causing death the accused had malice aforethought.

13. There is no doubt that the cause of death of the deceased in this case was due to severe bleeding as a result sustaining two stab wounds on the chest. The report of Dr. Jaldesa PW8 to that end was not challenged. I therefore accept his findings as pertains to the death of the deceased and to the cause of his death. The question is whether the accused is the one who caused the death of the deceased and whether the death was unlawful.

14. The events leading to the deceased being stabbed were narrated by his girlfriend, Florence Jemutai PW1 and her friend Regina PW2.

15. It was the evidence of Jemutai that when the deceased asked the accused why he had assaulted her, she all over sudden saw the deceased falling down and the accused running away. She saw the deceased bleeding and realized that he had been stabbed. Regina on her part stated that the accused did not answer the deceased when he asked him why he had assaulted Jemutai. That she only saw the deceased falling down. She saw him bleeding from the chest and realized that he had been stabbed. The accused had escaped. Guyo PW3 on his part stated that after the deceased asked the accused why he had stabbed Jemutai, he saw the accused throwing his hand towards the deceased. The deceased then fell down. He went and checked him and found that he had been stabbed on the chest. The accused had escaped. Police were then called.

16. The accused admits that he was at the scene of the incident though he says that it is the deceased who chased him with a knife and stabbed him on the left ear. That he sat down there as he was feeling dizzy. He then went to report to the police.

17. There is no doubt from the evidence of the three prosecution witnesses -Jemutai, Regina and Guyo - that the accused is one who stabbed the deceased. Though the witnesses did not see the actual stabbing as it was dark, their narration of the events left no doubt that the accused is the one who did so. The deceased was within reach of the accused when he asked him why he had assaulted Jemutai. Guyo saw the accused extending his hand towards the deceased before the deceased fell down. The accused ran away immediately when the deceased fell down. I do not believe his evidence that it is the deceased who was chasing with a knife nor that he was stabbed by the deceased with a knife. There is no truth that he sat down there for some time before he went away. The defence never put any questions to the



prosecution witnesses in cross-examination to the effect that the deceased chased him with a knife nor that he was stabbed on the left ear. If it were true that the accused was stabbed with a knife he would have gone to hospital for treatment. There was no such evidence. The inference to be drawn from all these is that the defence by the accused was an afterthought and a made-up story. The accused is the one who stabbed the deceased. Regina PW2 and Guyo PW3 were independent witnesses who had no reason to lie against the accused. They corroborated the evidence of Jemutai on the events of that day. I find that the three witnesses were credible and truthful.

18. A DNA profile was generated from the blood-stained clothes of the deceased and the knife that was recovered from the scene by police officers and it was found that the DNA on the 3 items matched that of the deceased. There is then no doubt that the knife P.exh. 1 is the one that was used to stab the deceased. It has been proved that the accused unlawfully caused the death to the deceased by stabbing him with a knife.
19. The next question is whether the accused stabbed the deceased with malice aforethought. Malice aforethought is defined in section 206 of the [Penal Code](#) as follows:

“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 death or grievous harm to some person, whether that person is the person killed or not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.
- (c) An intention to commit a felony.

20. In *Republic v Tebere 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.
21. In the case of [John Mutuma Gatobu v Republic](#) [2015] eKLR the Court of Appeal stated that:

“Malice aforethought in our law is used in a technical sense properly defined under section 206 of the Penal...There is nothing in that definition that denotes the popular meaning of malice as ill will or wishing another harm and all the related negative feelings. Nor, for that matter, is it to be confused with motive as such. Our law does not require proof of motive, plan or desire to kill in order for the offence of murder to stand proved, though the existence of these may go to the proof of malice aforethought.”

22. In this case the accused had earlier in the day stabbed the deceased's girlfriend, Jemutai PW2, with a knife. It is clear that he had kept the knife within himself and was walking while armed with it. When in the evening the deceased inquired from him why he had assaulted his girlfriend, he just drew out the knife and fatally stabbed him. It is to be noted that he stabbed the deceased two times on the chest. According to Dr. Jaldesa PW6, the stabs were aimed at the heart. The fact that the stabbing was aimed at the heart is clear indication that the accused intended to kill the deceased or to cause him grievous harm. I therefore find that the accused caused the death of the deceased with malice aforethought.



23. The upshot is that the prosecution has proved beyond reasonable doubt the charge of murder against the accused. I find him guilty of the offence as charged and convict him accordingly.

DELIVERED DATED AND SIGNED AT MARSABIT THIS 22ND DAY OF SEPTEMBER 2022.

J. NYAGA NJAGI

JUDGE

In the presence of:

Mr. Nyenyire for accused

Mr. Ochieng for respondent

Court Assistant: Peter

14 days R/A.

