



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Ndirangu (Criminal Case 4 of 2019)  
[2025] KEHC 11700 (KLR) (24 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 11700 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL CASE 4 OF 2019  
GL NZIOKA, J  
FEBRUARY 24, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSEPH NDIRANGU ..... ACCUSED**

**JUDGMENT**

1. The accused was arraigned before this court charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (cap 63) Laws of Kenya.
2. The particulars of the charge are that, on the night of 6<sup>th</sup> and 7<sup>th</sup> August 2018, at Kikopey Township in Gilgil Sub-County within Nakuru County, murdered Sofia Njeri Nganga.
3. The charge was read to him and he pleaded not guilty thereto and the case proceeded to full hearing. The prosecution case is that, the accused and deceased were living together at Kikopey township as husband and wife. That the deceased was running a bar business known as Royal Bar and on the 5<sup>th</sup> day of August 2018, both the deceased and the accused were at the bar.
4. That the accused went home leaving the deceased at the bar. The evidence of (PW1) Mercy Njambi Mwangi, a bar attendant at the subject bar, is that the deceased closed the business and left for home at 11:00pm.
5. Further evidence led by (PW2) Mary Wachuka Macharia is that when the deceased got to the plot where she was staying, she called out and (PW2) Mary opened the gate for her. According to (PW2) Mary she heard the deceased calling the accused to open the house for her. That the deceased called for about 10 minutes and (PW2) Mary went out of the house and similarly called the accused but he did not answer and (PW2) Mary went back to her house.



6. That after a while (PW2) heard the sound of a window breaking and got out to establish what it was. That she noticed the deceased had broken the bedroom window and upon inquiry from her why she did that, the deceased told her that she wanted to establish whether her husband was in the house.
7. (PW2) Mary stated that when they peeped through the window, they noticed that the bedroom lights were on and the accused was asleep. That she then pleaded with the deceased to go and spend a night in her house but the deceased declined. That (PW2) Mary was concerned and offered the deceased a maasai lessa to shield herself from cold and then (PW2) Mary returned to her house.
8. (PW2) Mary further testified that, after a few minutes she heard the deceased shouting “why have you locked me out” thereafter heard the back door gate open and close. According to (PW2) Mary she did not see the deceased the following day, as she went to work at 8:00am and returned 8:00pm.
9. That on 7<sup>th</sup> August 2018, the deceased sisters (PW3) Judy Wanjiku Nganga approached (PW2) Mary and told her that they were trying to reach the deceased in vain and that they wanted her to accompany them to the police station to report that she was missing.
10. Subsequently, (PW3) Judy Wanjiku Nganga obtained the accused’s cellphone number and called him but his phone was off. That in the company of one Jemimah, (PW3) Judy reported the matter to the police station at Gilgil. The police officers went and broke into the house and found that the deceased was dead, lying on the floor and blood oozing from her nose. That the deceased’s body was taken to the mortuary for post mortem as investigations continued.
11. The post-mortem on the body of the deceased was conducted by (PW5) Dr. Titus Ngulungu performed on 10<sup>th</sup> August 2018. He testified that he noted, incision and stab wound on the chest, penetrating the chest cavity and multiple bruises on the face. That internally, he noted stab wound on the lungs, and about 100mls of clotted blood in the cardiac sac. He concluded that the cause of death was cardiac muscle injury with hampepicadium and dysfunction due to penetrating single stab wound chest.
12. Apparently the accused was not at home when the deceased body was discovered in the house and according to (PW5) Corporal Karani who visited the scene, a blood stained kitchen knife was recovered and believed to be murder weapon. That the accused was later arrested six (6) months after the incident and charged.
13. At the close of the prosecution case, the accused was placed on his defence. He testified vide a sworn statement and conceded that he was living with the deceased as husband and wife. That on 4<sup>th</sup> August 2018, he left the deceased at their bar, as he was drunk and they agreed that, he goes home ahead of her.
14. That when the deceased arrived at home, he was asleep and did not hear her knock the door for him to open. However, when she entered the house she caused fracas, quarrelled and slapped him. That, he asked her what the problem was and she said “Utaniona” (“You will see me”) and went for a knife. That as he tried to calm her down in vain as she tried to stab him and as he reached for the knife she refused to release it.
15. That they rolled down and when he tried to wake her up as she was drunk, the knife cut her. That he is not the one who stabbed her. Further, the house had tiles and water had poured on them as such the deceased slipped and fell down.
16. Furthermore, after the knife cut her, he tried to wake her up but she could not talk and noticed that the knife had pierced her and as he loved her and he did not know what to do. Further as he was drunk, he decided to leave the house and returned after six (6) months, was arrested and charged accordingly.



17. At the conclusion of the entire case, the prosecution relied on the evidence on record, while the defence filed submissions dated 1<sup>st</sup> August 2024 and highlighted the same on 8<sup>th</sup> day of July 2024.
18. In a nutshell the defence submitted that, the death of the deceased was an accident and that he did not harbour malice afterthought towards the deceased neither did he plan to kill her.
19. That as stated in his evidence on oath, on the fateful day, the deceased was stabbed following a confrontation started by her. That, she picked a knife and attacked him and during the struggle, the deceased was stabbed. That on realizing he had injured the deceased, he panicked, got confused and fearing for his life, fled from the scene locking the door behind him.
20. The accused argued that, in cases of murder and grievous harm the basic principles of self-defence were applicable and relied on the case(s) of *Palmer vs Republic* [1971] AC 814 and *Republic vs Mcinness* 55 Cr App R 551 where the court held that it is good law and common sense that a man who is attacked may defend himself but only to what is reasonably necessary.
21. Further, that in *Jane Koitee Jackson v Republic* [2014] KEHC 6626 (KLR) it was held that in self-defence it must be shown there was no malice on the part of the accused and should not be vicious.
22. The defence further submitted that, the deceased died due to only one stab wound. That, the injury on her hand can be attributed to the deceased breaking the window, while the bruises on her face are evidence of the scuffle between the deceased and himself.
23. He cited the case of; *Tubere S/o Ochen vs Republic* EA (1954) 12 ECA 63 where the East Africa Court of Appeal stated that in determining whether malice aforethought was established the court considers the weapon used, manner it was used, part of the body injured and conduct of the accused before during and after the attack.
24. Further, the Court of Appeal in *Morris Aluoch vs Republic* Cr. Appeal No. 47 of 1996 (UR) stated that if an injury was inflicted by repeated blows malice aforethought can be presumed.
25. The accused submitted that, the situation was compounded by the fact both the deceased and himself were intoxicated rendering him incapable of thinking rationally. He quoted the case of, *Cherungwa vs Republic* [1956] 23 EACA 45 where the Court of Appeal stated that, intoxication can be a defence where the accused proves temporary insanity or can prove that he was incapable of forming intention to constitute the offence.
26. The accused urged that there was no malice aforethought and pleaded that if the court considers finding him guilty, he be convicted for the offence of manslaughter.
27. At the conclusion of the case I have considered the evidence adduced herein in total and note that, the offence the accused is charged with is provided for under section 203 of the Penal Code which states: -

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
28. The ingredients of the offence are indeed settled vide several court’s decision including the Court of Appeal decision in *Joseph Githua Njuguna vs Republic* (2016) eKLR, where the ingredients were stated as: a) proof of occurrence and cause of death, b) whether the death was lawful or unlawful, c) proof of commission of the offence by the accused and d) malice aforethought.



29. To revert back to the matter herein, there is no dispute that, the death of the deceased occurred as confirmed by PW1, PW2, PW4, PW5 and PW6, who testified that they saw the deceased body after the murder.
30. As regard the cause of death, (PW4) Stanley Nganga who identified the body for postmortem stated that the body had a knife wound. Further (PW6) Corporal Daniel Karani, who investigated this matter, testified that when they broke the door to the deceased and accused's house and entered the house they found the deceased lying in a pool of blood facing upwards with visible stab wounds.
31. Indeed, the photos taken at the scene are evident thereof. Photo marked as P. exh 1A shows a clear stab wound on the deceased's chest which is bleeding. Photo P. exh 1B shows blood oozing from the deceased's nose, photo marked P.exh 1C shows a very deep cut wound her chest, while photo P. exh 1D is a closer view of the wound on her chest and finally photo Pexh 1E shows the injury on the deceased hand.
32. However, the cause of death was established by the evidence of (PW5) Dr. Ngulungu, in a detailed post-mortem report, where he stated that, he observed incisions on the right dorsium of the right hand measuring 25mm and a stab wound on the upper inner quadrant of the left breast and when probed, it was penetrating to the chest cavity. That the dorsium on the right hand was a defensive injury. Further, there were multiple bruises on the face.
33. That internally there was a stab wound on the 5<sup>th</sup> costal cartilage with collapsed lungs and that the wound was communicating with left artna. Further, it went through the chest cavity and disappeared therein.
34. Finally, that there was about 100mls of clotted blood in the cardiac sac, due to bleeding in the cardiac sac after the cardiac sac, where the heart expands and ejects the blood in the system, collapsed. He further noted that the head was suppressed by the blood clot caused by trauma in the chest, which affected the heart.
35. According to Dr. Ngulungu, the cause of death was cardiac muscle injury with the hemopericardium and diastolic dysfunction due to penetrating single stab wound to the chest, in keeping with homicide.
36. Pursuant the afore evidence the cause of the deceased's death is well established that it was not accidental, or natural but unlawful act of man.
37. The next issue to interrogate is whether the accused person is the one who committed the offence. In that regard, I find that although there is no direct evidence of an eye witness to the commission of the offence, the accused has admitted that the death of the deceased occurred in their own home.
38. Furthermore, according to the evidence of (PW1) Mercy Njambi Mwangi when the deceased left her business premises on 5<sup>th</sup> August, 2018, at 11pm she was in good health and (PW2) Mary Wachuka Macharia who opened the gate to the plot for her night at about 4 a.m. confirmed she arrived home in good health.
39. Consequently, whatever happened to her is only within the knowledge of the deceased and the accused. The court has heard from the accused unfortunately the deceased's part of what happened will never be known.



40. The case thus rests on circumstantial evidence and to that extent, in the case of Ahamad Abolfathi Mohammed and Another v Republic [2018] eKLR, the Court of Appeal stated as follows: -

“However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in R v Taylor, Weaver and Donovan [1928] Cr. App. R 21: -

“It has been said that the evidence against the Applicant is circumstantial. So, it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.” (emphasis mine)

41. Similarly, the parameters for admission of circumstantial evidence were well settled in Rex vs. Kipkerring Arap Koske & 2 others [1949] EACA 135 as follows;

“In order to justify a conviction on circumstantial evidence the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt and the burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is always on the prosecution and never shifts to the accused.”

See also Sawe versus Republic [2003] KLR 354, Musili versus Republic CRA No.30 of 2013 (UR) and Abanga Alias Onyango versus Republic CRA. No. 32 of 1990 (UR)).

42. To revert back to this matter, the accused’s conduct when the deceased arrived home is worth considering. It is in evidence that he was inside the house when the deceased arrived home. It is also very clear from the evidence that the deceased knocked on the door for a long time waiting for him to open for her but he did not.

43. (PW2) Mary evidence further clearly indicates that eventually she heard the deceased asking the accused why he was not opening the door for her and the next thing she heard was the rear gate door which she described as a back door being opened and closed.

44. The accused avers that there was confrontation in their house but (PW2) Mary who heard the deceased asking the accused why he did not open the door for her stated that she did not hear any confrontation.

45. Furthermore, (PW2) Mary testified that she did not see the deceased before she left her house the following day at 8am. From her evidence and the defence advanced the deceased had long died by that time.

46. In the same vein, the evidence of (PW3) Judy Wanjiku, the deceased’s sister, is that when she went to her house on the 6<sup>th</sup> August 2018, she did not find the house open. That it was locked from inside and she left the children with a hope that the deceased was around to pick them but she did not hear from the deceased until later in the day when she was told by the neighbors to go pick the children because the deceased had not been seen.



47. The afore evidence confirms that from the time the deceased went back home on 5<sup>th</sup> August 2018, she never left that house again and undeniable that her death occurred in her own house. It suffices to note that the deceased's body was discovered on 8<sup>th</sup> August 2018, in a pool of blood and by that time the accused person who was with her last was nowhere to be seen.
48. At this point let's consider the accused's conduct of refusing to open the door for the deceased when she arrived back home from work. The evidence of the (PW2) Mary is very clear that the deceased, knocked the door so many times but the accused refused to open the door, yet the lights were on in the house an indication that he was not asleep. That the deceased broke the bedroom window. Didn't the accused hear the window break.
49. Ironically, the accused says he loved the deceased so much, yet she knocked on the door for a long time, the neighbor (PW2) Mary got attracted to the knock and yet he did not open the door for her.
50. The question is; what was going on in the mind of the accused person as he refused to open for the deceased and what does that indicate? Obviously, the only logical conclusion is that, for whatever reason he was quite unhappy with the deceased, and that is why he left her behind as he went home and it is possible that at this point he must have nursed the intention, motive and/or intent to eliminate her and proceeded to do that.
51. But even more, what happened after the deceased died? The accused person states that after he saw she was not responding he left. One would like to ask at this stage when he left the house was she dead or still breathing? And if she was dead and/or her death was an accident what was the most logical thing to do.
52. The further question is, why didn't he go to the police station to report the accident in his house and/or the wife's death. Why didn't he not call anyone to say there was an accident and the wife had died? Furthermore, why did he lock her in the house whether dead or alive or dead and disappeared for a whooping period of six (6) months.
53. The further question is; can he convince anyone that he acted in good faith? That he was not involved in murder or that he did not kill or intended to kill his wife? And eventually disappeared for a whole six (6) months. What does disappearance indicate? It is the finding of this court that the aforesaid conduct does not exonerate him from blame.
54. In his submissions to the court the accused argues that both of them were drunk and did not think rationally. However, that does not hold water as the defence of intoxication can only arise where it rendered the accused to be in a state of temporal insanity. That is not the case herein.
55. But even then the accused confirmed that they had a conversation with the deceased as she was asking him why he did not open the door for her. That evidence was corroborated by the evidence of (PW2) Mary who testified that she actually heard the deceased asking the accused person why he was not opening the door for him yet he was in the house.
56. So if the two were able to converse, what was the state of their mind. Furthermore, the accused further states that a disagreement arose between them, but that cannot be confirmed.
57. Be that as it were, even if the court were to assume that what the accused person is saying is the truth and give him the benefit of doubt. Let's recap his evidence, that when the deceased got home they disagreed because she needed to know why he did not open the door for her and she became agitated and even went got a knife and attempted to attack him.



58. That is in the course of confrontation she fell on the floor tiles that had water and the knife stabbed her. Does that story add up in the face of the other evidence before this court? Does that it confirms that the deceased died out of an accident?
59. Let's look at the other evidence that has been adduced. First and foremost, the doctor clearly indicates that the injury which the deceased died from was a stab wound on the chest cavity. That it was deep and penetrating. Is that the kind of an injury one would suffer if they accidentally fell on a knife?
60. Further, and number two, the doctor indicates in the post-mortem report that the deceased had another cut on the hand. The doctor described it as a defense injury. The question is this, did the deceased fall on the knife which injured her on the chest and then again moved, and cut her on the hand? Unlikely. If a person falls on a knife the person will either get a bruise, an abrasion, or a laceration but not be a deep penetrating wound. So it is possible that the deceased person sustained a cut on the hand as she was defending herself from a knife aimed at her chest by the accused?
61. More so, let's look at the part of the body that was injured, the chest, not a hand or leg. Such a deep stab wound on the chest near the lungs can only be fatal. Is that a person who does not intend to hurt and/or intend to give the victim an opportunity to live? Obviously, the answer is in the negative.
62. Furthermore, when a weapon like a knife, sharp penetrating is used and goes for the chest, what is the motive? What is the intention? To give the victim an opportunity to live? Certainly not.
63. Consequently, based on all the afore evidence, I am convinced beyond reasonable doubt that the accused person committed the offence he's been charged with, that he purposed and nursed the idea to injure, maim and fatally kill the deceased. In the given circumstances, I find the accused person guilty as charged and I accordingly convict him.
64. That is the judgment of the court.

**DATED, DELIVERED AND SIGNED THIS 24<sup>TH</sup> DAY OF FEBRUARY 2025.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Ms. Chepkonga for the State

Mr. Wairegi for the accused

The accused present virtually

Ms. Hannah: court assistant

