



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kamau (Criminal Case 11 of 2019)
[2025] KEHC 2061 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2061 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL CASE 11 OF 2019
SM GITHINJI, J
FEBRUARY 18, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVIS MURIMI KAMAU ACCUSED

JUDGMENT

1. Davis Murimi Kamau is herein charged with the offence of murder, contrary to Section 203 as read with section 204 of the Penal code, chapter 63 of the laws of Kenya.
2. The particulars of this offence are that on the 24th day of September 2019 at Mandani village, Rongwe Location in Lamu West Sub-county, within Lamu County, the accused murdered John Hesiron Masanga.
3. The first three prosecution witnesses were heard before Hon Justice Reuben Nyakundi and I therefore proceed with the matter from the point reached.
4. The prosecution case is that Pw-2 in this case sells palm wine, locally known as mnazi at Mpeketoni. Her husband is a wine tapper. On 24/9/2019 she was at home where she sells the palm wine from. Pw-1 got to the place at about 4:00pm. The accused in this case and the deceased entered the place together. They were only the two of them at the table where they sat. They took mnazi beer and at about 8:00pm picked an argument between them. There was solar light and Pw-1 was able to see them. The accused then attacked the deceased who was aged then 74 years old. The deceased fell from the chair he had sat on and died while on his knees. The accused escaped after the said attack.
5. A close check on him revealed that he had been stabbed in the chest. Pw-1 called Karisa, the husband of Pw-2. The village elder was also called at the scene. The village elder ordered for apprehension of the suspect.



6. There was a neighbouring family which had been bereaved and villagers were going to condole with them. Pw-3 was among those going. Near Karisa's home they heard screams. They went to the place and found the body of the deceased. The body had a stab wound in the chest. The group then proceeded to the bereaved family. There was a disco at the place. At the said disco the accused was seen. He was arrested. Upon his arrest he removed a needle used to stitch sacks. He wanted to throw it away. Those who arrested him recovered it. He was led back to the scene. He was tied up and placed next to the deceased body with the recovered needle, of which was suspected to be the murder weapon. The police got to the scene. He was re-arrested and the deceased body collected.
7. Post-mortem was conducted at Mpeketoni Hospital on 30/9/2019 by Dr. Lugman. The Doctor found that the deceased had a perforated injury at 4th intercostal space (between 4th and 5th ribs on the chest). It was from front to back. There was a metallic screw driver of which upon removal was 15cm in length. The injury was 3 to 4 cm from the middle chest. The screw driver was bent at distal part (mid line of the chest). The Doctor made an opinion that he died out of excessive bleeding, leading to cardiovascular collapse. The post-mortem report was thus filled.
8. The investigating officer took the recovered sack sewing needle with a yellow string of which was blood stained, together with blood sample of the deceased and his blood stained cream T-shirt, forwarded them to the government chemist at Mombasa for examination. They were examined and a report was made on 23/12/2019 to the effect that the needle and T-shirt blood stains, generated male DNA profiles that matched the DNA profile generated by blood sample of the deceased. The report was produced as exhibit -5. The accused was then charged with the offence of murder.
9. The accused in his defence stated that he worked as a mechanic at Mombasa but lived in Mpeketoni which is his home place. On 24/9/2019 he was at Mpeketoni walking towards home. He passed through the homestead of Mzee Karisa. There were about 20 people there taking beer. He recognized some who are Mzee Masanga, Maina, Safari and wife of Mzee Karisa. He deliberated with them as he took beer for about 30 minutes. He then left for his home. At home he took supper, locked in animals and went for a burial meeting. He had no grudge with the deceased and he did not quarrel with him. While at the burial meeting a group of people entered. Samuel alias Rasta was among them. There was also Gitari and Mwangi in the group. Mwangi gave him 20ksh to pay for disco at the place. It was then he was held by some others from behind. He was tied on hands and legs. It was alleged he had deliberated with the deceased. He was carried to the house of Mzee Karisa, where they were previously taking beer. The deceased was there on the ground dead. Mwangi the village elder was there.
10. The accused was laid near the body. Mwangi removed a sack stitching needle. He said if the accused does not take it they will kill him. It was placed on his hand and he held it. When the police arrived, Mwangi took the needle and handed it to the O.C.S. There are many who had recorded statements as witnesses, of which statements were handed to the defence, but were not called as witnesses in court.
11. There's a man called Gitari who was using the deceased land. He had even built rental houses on it and relocated the deceased to another place without a title deed. He deals in cereals and therefore had use for the sack stitching needle.
12. The accused denied the offence saying he never killed the deceased and does not know who killed him.
13. The offence of murder is defined under section 203 of the penal code (Cap. 63), which states;

“ Any person who, with malice aforethought, causes the death of another person by unlawful act or omission is guilty of murder”



14. In an offence of murder, the prosecution must prove the following elements beyond a reasonable doubt;
 1. Death of the victim. There must be proof that the victim died or is dead.
 2. Act or omission by the accused.

Here the prosecution must establish that the accused either committed an act or failed to act (omission) in a way that directly caused the death of the victim.
 3. Malice aforethought (Mens Rea) – The accused must have had intention to kill or cause grievous harm. Under section 206 of the penal code, malice aforethought is established if:
 - i. The accused intended to cause death or grievous harm
 - ii. The accused knew his actions) would probably cause death.
 - iii. An intent to commit a felony (a serious crime)
 - iv. An intention to facilitate the escape of any person who has committed or attempted to commit a felony.
15. I will now proceed to determine whether the forgoing ingredients have been established by the prosecution beyond reasonable doubt.
 1. Death of the victim

There is no dispute in this case as to death of the victim. All the prosecution witnesses' evidence indicates that the victim died. The defendant who was also taken to the scene confirms that the victim was dead. The post-mortem report produced by Pw-4 as an exhibit indicates of the death of the victim due to excessive bleeding, leading to cardiovascular collapse. This fact is therefore well settled beyond reasonable doubt.
 2. Act or omission by the accused person, leading to the death of the deceased.
16. Pw-1 and Pw-2 are eye witnesses who saw the accused and the deceased sitting together at a table taking beer and deliberating. Pw-1 witnessed the two engage in an argument. He then saw the deceased falling from the chair as the accused escaped. The two had entered during day time at about 5:00pm. At the table where they sat there was no one else. Apart from Pw-1 and Pw-2 there was also no one else at the beer drinking place. Though the incident took place at 8:00pm, there was solar light that enabled Pw-1 and Pw-2 to see, and given that the deceased and accused entered during the day and both were well known to the witnesses, a mistake could not have been made on his identity. It also pays to note the accused in his defence stated he was at the place and took beer. The evidence by Pw-1 and Pw-2 of which I find to have been honestly offered; is trustworthy and reliable. The evidence shows no one else was present who would have had an opportunity to stab the deceased apart from the accused. I do find that there is credible evidence to the effect that he is the real culprit.
17. In his defence he implied Gitari could have committed the offence as he had taken accused's land. However he agreed on cross- examination that he was not aware of the circumstances under which the said Gitari took the said land. There is no evidence of presence of the said Gitari at the scene on the material time or of any quarrel or grudge between him and the deceased. The defence is therefore unbelievable.
18. There is an issue about the murder weapon. While Pw-1 alleged the accused may have used a sack's stitching needle of which was recovered upon arrest from him, and it was blood stained, the Doctor



during post-mortem recovered a screw driver in the wound that caused the deceased's death. From the evidence nobody saw the accused stab the deceased. Though clearly he had the needle, being the culprit, the possibility of anything he had having had blood stains of the deceased is not a remote or unrealistic possibility. The evidence of Pw-4 confirms the murder weapon was a screw driver. The accused in his defence stated he is a mechanic which points to the fact that he had the screw driver. I do find that he is the one who stabbed the deceased using a screw driver, which led to his death.

Had he had the necessary Mens Rea?

19. He used a screw driver and stabbed a 74 years old man in the chest causing a wound of 3 to 4 cm deep. Definitely if he never intended to cause him grievous harm, which under section 206 of the penal code amounts to malice aforethought.
20. Given the foregoing considerations I am convinced beyond a reasonable doubt that the defendant herein committed the offence of murder contrary to section 203 as read with section 204 of the penal code. He is accordingly convicted of it.

DATED, SIGNED AND DELIVERED AT GARSEN THIS 18TH DAY OF FEBRUARY, 2025.

S.M. GITHINJI

JUDGE

In the Presence of; -

Mr. Mouko for the accused

Accused – Present virtually in prison

Ms Mkongo for the State

Ms Mkongo: -We have no previous record. He can be held as a first Offender. The convict is a first offender.

Mr. Mouko: -I have not spoken to the accused about mitigation. He is a First offender. He has a young family and children who depend on him. They have suffered for the period he has been in custody. The mother of the accused underwent a major operation and is very sick. The accused is the only one who can offer support. She is a widow. I pray the court consider circumstances under which the offence was committed. We pray for leniency. He has been in custody.

Court; - I have considered the mitigation. We can have a pre-sentence report prepared by a probation officer which should also carry victim's impact assessment report. Mention on 5th March 2025

18/2/2025

