



REPUBLIC OF KENYA



**Republic v Kangethe (Criminal Case 9 of 2014)
[2025] KEHC 3234 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 3234 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 9 OF 2014
J WAKIAGA, J
FEBRUARY 18, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID MUNGAI KANGETHE ACCUSED

JUDGMENT

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*, the particulars of which were that on the 21st day of January 21014 at Kihumbuni, Gatanga District with Muranga County, murdered Daniel Ngochi Kihu.
2. He appeared in court for the first time on 3rd February 2014 before Ngaah J without an Advocate and the plea taking was deferred to the 17th February 2014 when a plea of not guilty was recorded.
3. On 23rd June 2014, this trial commenced before the Judge , who recorded the evidence of four prosecution witnesses before proceeding on transfer. On 12th October 2016 the accused appeared before Waweru J as he then was, who complied with the provision of Section 200 of *CPC* but did not hear any witness.
4. On the 30th July 2018 the file was placed before Kimondo J who once again complied with the provision of section 200 and directed that the matter proceeds from where it had reached and proceeded to record the evidence of PW5 before proceeding on transfer.
5. 12th October 2022 having assumed jurisdiction, the file was placed before me and on abundance of caution, complied once again with section 200 and took the evidence of PW6 and having placed the accused on his defence recorded his evidence .
6. For record purposes, I did not have the advantage of hearing and seeing five prosecution witnesses but have read and understood their recorded evidence for the purposes of this judgement.



Prosecution Case

7. It was the prosecution case that on the 21st January 2014, the deceased was at about 8.30 p.m. carried by PW1 Stanley Wamichwe Maina on motor cycle registration number KMCG 164 D up to the gate of the accused person, who was known to him as Kibui, who confronted the deceased and told him that he would beat him. The accused, who was carrying a panga, hit the deceased with his fist causing him to fall down.
8. PW1 proceeded to the home of the deceased and informed them that the same was being attacked by the accused. He proceeded back to the scene in the company of the deceased wife and daughter and found the same lying down on the ground with injuries to the face and complain of stomach aches. They took him to the house and later on called for PW1 to take him to the hospital, which he did passing through the Police station. The deceased later on died while undergoing treatment.
9. In cross examination, he stated that he was with the deceased at a Soup place belonging to Mama Njeri and that he was able to see and identify the accused as the attacker using motor cycle lights while he was coming from his home. That whereas the accused was armed with a panga, he did not see him attack the deceased with it and that by the time he returned to the scene, the accused had run away.
10. PW2 Lucy Muthoni Ngochi the wife of the deceased was called by PW1, who informed them that he had been attacked by the accused and when they got to the scene, the deceased asked them, why the accused whom he called Kibui had assaulted him. They took him home and on 22nd January 2014 his condition worsened and was taken to the hospital. It was her evidence that she knew the accused who was a friend of her son and a neighbour and on the material night she saw him running away from the scene.
11. In cross examination, she stated that there was adequate light from and that the accused ran away from the scene when he saw them and that the deceased confirmed that it was the accused who attacked him .
12. PW3 Faith Wairimu Ngochi stated that PW1 called them and told that the deceased who was her father was being beaten by the accused and when they got to the scene, the deceased told them that he had been attacked by the accused whom he called Kibui and that with the aid of a spot light she saw the accused kicking the deceased on the ribs. The deceased had injuries on the head with blood coming out of the head and mouth. They took him to the house where her mother PW2 attended to him.
13. In cross examination she stated that she followed her mother to the road and that on that day there was no electricity. With the use of the light from the torch, he saw the accused running away from the scene.
14. PW4 Peter Kibui Ngochi's evidence was that he was called on 22nd January 2014 by PW2 who informed him of the attack on their father and on 23rd they took him to the hospital, passing through the police station. His complaint was that he could not breath well and had pains in the neck and stomach where the accused had kicked. The deceased later on fell down in the hospital toilet where he was found unconscious and was pronounced dead .
15. PW5 Dr Eunice Mugweru conducted post mortem examination on the body of the deceased and formed the opinion that the cause of death was perforated bowel by blunt trauma consistent t with assault. In cross examination, she stated that blows to the intestates is what caused perforation .
16. PW6 Francis Nguti a son of the deceased identified the body of the deceased for purposes of post-mortem examination and noted that it had injuries to the ribs and the face



Defence Case

17. DW1 David Mungai Kangete stated that on 21st January 2014, he woke up and went to his place of business until evening when he went home. He denied being with the deceased on the said date. He was later on with the deceased and were carried on the motor bike by PW1. They later on fought and each went to his home

Submissions

18. At the close of the defence case the accused filed written submissions in which it was contended that the accused rebutted the evidence of the prosecution and that the prosecution case was solely based on circumstantial evidence which was not corroborated and did not meet the test set out in *Sawe v R* [2003] eKLR. It was further contended that the accused alibi defence was not dislodge as was stated in *Solomon Karim Mrurakia v Republic*.

Analysis and Determination

19. To sustain a conviction on a charge of murder, the prosecution is under a legal and evidentiary duty to establish the following:
- A. The fact and cause of death
 - B. That the said death was caused by an act of omission and or commission by the accused person
 - C. That the said was caused with malice aforethought.
20. The fact on d the cause of death was not disputed. All the prosecution witnesses confirmed that the same died on the 22nd January 2014 and the c cause thereof was confirmed through the evidence of PW5 Dr Eunice Mugweru to be peritonitis caused by perforated bowel secondary to blunt trauma. I therefore find and hold that the fact and cause of death was proved beyond reasonable doubt.
21. On whether the said death was caused by an unlawful act of commission on the part of the accused, the evidence of PW1 was that he met the accused at his gate where he had dropped the deceased and he immediately without provocation attacked him hitting him with a blow to the ground. This evidence was corroborated by PW2 and PW3 who were called by to the scene and saw the accused running away therefrom. The deceased in his dying declaration asked them why the accused whom he called by name of Kibui had assaulted him.
22. The accused was positively identified and placed at the scene by PW1 PW2 and PW3. In his defence the accused confirmed that he was with the deceased having both been carried on a motor bike by PW1 and that they fought and each went his way. I am therefore satisfied that the identification of the accused was not mistaken.
23. It is the find of the court and I hold that the death of the deceased was caused by unlawful act on the part of the accused person and no one else as confirmed by the deceased dying declaration to his wife and daughter that he had been assaulted by thje accused and as confirmed by aPW5 that the cause of death was consistent with assault.
24. The final issue is whether there was malice aforethought on the part of the accused. The evidence on record shows that the accused attacked the deceased without any provocation at all. According to the evidenced of PW1 the accused who was armed with a pang, told the deceased that he would beat him and proceeded to hit the same causing him to fall down. The deceased later on died as a result of the injuries inflicted upon him by the accused.



25. I therefore find and hold that the accused had the intention to cause the death of the deceased and or to inflict grievous injuries to the same and he succeeded in so doing. I find and hold that malice aforethought was proved beyond any reasonable doubt .
26. I find and hold that the prosecution proved beyond any reasonable doubt that the death of the deceased was caused by un lawful act of commission with malice aforethought by the accused person.
27. Before this judgement was delivered, the court was notified that the accused person died on the 24th day of December 2024, leading to abatement of the case and consequently hereby dismiss the charges herein in and close this file as the ultimate object of the criminal proceedings is to punish the accused on his conviction of any offence , therefore the criminal proceedings abate on the death of the accused as their continuance will be infructuous and meaningless as was stated in *Boro v DPP*[2024] KEHC740(KLR).
28. Before penning off, I must state for record purposes that this is a case where the legal system failed both the accused and the victim's family as the record will bear me out that the accused first appeared in court on the 3rd of February 2014 and the hearing concluded on 24th April 2024 with the defence hearing. On the 9th May 2024, the prosecution applied for typed proceedings since the Prosecuting Counsel did not take part in the proceedings and on 9th October 2024, the parties highlighted the submissions but before the judgement could be delivered, the Fourth Judge in this matter proceeded once again on transfer. The court should have done better in this matter.
29. And it is ordered .

DATED SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF FEBRUARY 2025.

J. WAKIAGA

JUDGE

In the presence of:

Mr Onderi for Bwonwonga for accused.

No appearance for DPP

