



REPUBLIC OF KENYA



**Republic v Wanjala (Criminal Case E007 of 2022)  
[2025] KEHC 2164 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2164 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL CASE E007 OF 2022  
AC MRIMA, J  
FEBRUARY 13, 2025**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**RICHARD SIMIYU WANJALA ..... ACCUSED**

**JUDGMENT**

**Introduction**

1. Richard Simiyu Wanjala, the accused herein, was charged with the information of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on the 16<sup>th</sup> day of March 2022 at Hillario Musenwa village in Kiminini Sub-County within Trans-Nzoia County murdered Elizabeth Nasimiyu Wafula (hereinafter referred to as ‘the deceased’). The Accused pleaded not guilty.
2. The prosecution’s case was heard by Hon. Chemitei, J and Yours truly. Upon closure, the accused was placed on his defence. He gave a sworn testimony and called a witness. At the close of the respective cases, parties filed written submissions, hence, this judgment.
3. A look at the trial now follows.

**The Prosecution’s case:**

4. The prosecution called eight witnesses. It was undisputed that the accused and the deceased were a husband and wife. They were blessed with four children. They lived in their home in Kiminini. Their marriage was riddled with challenges mostly due to allegations of infidelity from either side. At one time, the animosity led to the deceased leaving their home. She proceeded to Nairobi where her mother was and looked for work. When she was unable to find any meaningful engagement, the deceased returned to her parents’ home. A meeting was convened at the accused’s home on 15<sup>th</sup> March 2022



where the matter was addressed. Three representatives from both sides attended and the discussions were fruitful. The couple was successfully reconciled. To everyone's utter shock and surprise, it was alleged that the accused killed the deceased a day after the meeting.

5. Wanjala K. Makokha testified as PW3. He was the father to the deceased and had also attended the reconciliatory meeting. He confirmed that the meeting was attended by six people including himself, the deceased, the accused, one of the accused's cousin who testified as a defence witness [DW1 – Sharon Mulama Sabwayi] and the accused's two brothers. The issue of infidelity was raised by both parties. Whereas the deceased suspected the accused of having extra-marital affairs with other women, the accused was emphatic that the deceased had been impregnated by one Pastor Lihanda [not a witness] and had carried out an abortion. The meeting, however, ended well and the couple was reconciled. Thereafter, those who had attended the meeting dispersed leaving the accused and his family behind.
6. The 16<sup>th</sup> March 2022 was a dark day. ASI [testified as PW2], JS [testified as PW6] and AN [testified as PW7] testified on how they witnessed the accused assaulting the deceased inside their house. They were all neighbours. They affirmed that the incident took place during the day and at a time where many neighbours had left for work. PW6 and PW7 were on their way home from school for lunch when they came across the incident. PW2 had just returned from working in the farm when his attention was drawn to loud cries of a woman in the neighbourhood. He stepped out to ascertain if there was any issue only to witness the attack on the deceased.
7. PW2, PW6 and PW7 variously narrated how the accused used various items in beating the deceased including a piece of wood and a rubber stripe. As the chastisement went on for a long period and the accused would not allow anyone to intervene as he threatened attacking such with a panga, PW2 rushed to local police station and made a report. The police promised to proceed to the scene. The three also saw the accused come out of his house with the piece of wood he had used to beat the deceased which was then broken. He dropped it inside a pit latrine, locked the deceased inside the house and walked towards the market place. Shortly, the accused returned while being carried on a motor cycle by one Augustine Wafula who testified as PW5. The accused opened the door to his house and got the deceased out. He placed her on the motor cycle and sat behind her as they left for a nearby hospital. According to PW5, the deceased was still alive by that time.
8. PW5 left the accused and deceased at the hospital. It was the Brown's Memorial Hospital which was the nearest from the house of the accused. He knew the accused with his family well and had even worked with the accused in riding motor cycles for reward. PW5 was later informed that the deceased had died. He recorded a statement with the police.
9. The deceased was truly received at the hospital. A Clinical Officer one Joseph Sifuna Ndela [testified as PW1] readily attended to her. It, however, appeared that the deceased had already passed on as she was pronounced dead on arrival. PW1 identified the accused and PW5 as those who had taken the deceased to the hospital. He later recorded a statement with the police.
10. On learning of the death of the deceased, the accused rushed and reported the death at the Kiminini Police Station. He was then put in custody as the police [led by the investigating officer who testified as PW8 No.247919 PC Purity Lomolo] rushed to the hospital. They confirmed that the deceased had died and moved the body to Kiminini Cottage Mission Hospital for preservation and further police action.
11. The police commenced investigations without delay. PW8 visited the scene with her colleagues and interrogated several people. Statements were recorded. On return to the police station, PW8 also interrogated the accused who informed that he had a disagreement with the deceased and beat her only to fall unconscious and that he had thrown a piece of wood in the latrine at his home. The police



revisited the scene and successfully recovered the piece of wood. PW2, PW6 and PW7 also witnessed the retrieval of the piece of wood by the police. They confirmed that it was the very wood that was used by the accused in beating the deceased.

12. The police then organized for and a post mortem examination on the body of the deceased was conducted. That was on 24<sup>th</sup> March 2022 by Dr. Dennis Nanyingi [testified as PW4] at the Kiminini Cottage Mission Hospital mortuary. The body of the deceased was identified by Wanjala Kasembeli [not a witness] and John Fidelis Wafula [not a witness]. The Doctor examined the body carefully. He observed pale conjunctiva and pale mucous membrane on the hands and feet. There was a cut wound on the head that caused a fracture of the skull and multiple bruises on the face, neck, posterior aspect of the thorax, abdomen, and upper and lower hand areas.
13. The lungs were pale and had collapsed, but there was no blood in the chest. The heart had also collapsed and the chambers had no blood. The liver, spleen, stomach, uterus, vagina and intestine were all pale. There was no blood in the stomach. PW4 saw a placenta in the womb, but the foetus was missing. There were also blood clots in the brain. PW4 formed the opinion that the primary cause of death was heart and lung failure secondary to hypovolemic shock due to over-bleeding. The secondary cause of the death was the head injury resulting from assault.
14. PW4 explained that both causes could have independently caused the death of the deceased. It was also confirmed that the deceased had recently carried out an abortion. The Doctor filled in and signed a Post Mortem Report which he later produced in Court.
15. On conclusion of the investigations, PW8 forwarded the police file to the Director of Public Prosecutions with a recommendation that the accused be charged with the information of murder. The recommendation was approved and the accused was taken through a mental assessment before he was formally charged before Court. Upon close of the prosecution's case, the accused was placed on his defence. He gave a sworn defence and called a witness, DW1.

#### **The Defence:**

16. In his defence, the accused also narrated the events that led to the death of the deceased. He recalled how the deceased left him and the children and went to Nairobi for 3 months. He looked for her and upon finding her the deceased refused to return to her home, but instead went to live with her parents until on 15<sup>th</sup> March 2022 when he was called by PW3 and informed that they were returning the deceased to him the following day. The accused was tasked to get his people for a meeting. He gathered two of them.
17. The meeting scheduled for the 16<sup>th</sup> March 2022 was duly held. The deceased was accompanied by PW3 and her two siblings. The accused had called his father and two brothers. According to the accused, he complained that the deceased had been impregnated by a Pastor Lihanda and later carried out an abortion. The accused affirmed that the deceased admitted that she was pregnant for another man, but denied carrying out an abortion. Instead, she stated that she had fallen down and miscarried. After a discussion, the matter was amicably resolved and the accused forgave the deceased. The meeting ended and the rest dispersed leaving the couple at their home.
18. The accused was really disturbed by the events of the following day. As he walked home for lunch, he met one of his children taking maize to the local grinding machine. He had been sent by the deceased. Around 20 meters ahead, the accused met his two other children seated by the roadside. On enquiry, the accused was informed that the deceased had a visitor at home and they had been asked to stay away until when the visitor left. The accused rushed home. On opening the door to his house, he found a man in a deep-caressing session with his wife. Shocked, the man hit the accused. There was a commotion for about 10 minutes. Surprisingly, the deceased joined in restraining him as to allow the



man to escape. The accused was fallen down as the man fled. The accused unsuccessfully pursued the man. He identified the person as Pastor Kennedy Wafula [not a witness] of Lightway Church.

19. According to the accused, when he returned home he found the deceased lying down unconscious. He rushed and found PW5 who assisted him to take the deceased to a nearby hospital where she was pronounced dead on arrival. The accused then reported the matter to the police and asked the police to assist him apprehend the man who had fled, but he was instead arrested and booked into custody.
20. The accused further narrated how he had been led by the police to his home where a panga and piece of wood were recovered and forced to sign a document before he was arraigned in Court. The accused denied ever assaulting his wife and distanced himself from the witness accounts in Court. He affirmed that he always had a very cordial relationship with the deceased and denied causing the death of his wife.
21. DW1 confirmed that she indeed attended the reconciliatory meeting where the issue of the deceased's pregnancy and miscarriage was dealt with and well settled. She was shocked to learn of the death of the deceased and the allegation that it was the accused who had caused the death of the accused.
22. At the close of the hearing, parties were directed to file and exchange written submissions. Both parties duly complied and filed their rival submissions. The arguments in the submissions and authorities cited shall be dealt with in the analysis section of this judgment.

#### **Analysis:**

23. There is only one issue that arises for determination in this case. It is whether the prosecution proved the information of murder beyond reasonable doubt against the accused.
24. For the prosecution to secure a conviction on a charge of murder, it has to prove three ingredients. The Court of Appeal at Nyeri in Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari vs. Republic [2014] eKLR, summed up the elements of the offence of murder as follows: -
  - (a) the death of the deceased and its cause;
  - (b) that the accused committed the unlawful act which caused the death of the deceased; and
  - (c) that the accused had malice aforethought.
25. This Court will deal with the above elements in seriatim.

#### **Death and its cause:**

26. There is no doubt that deceased died. The fact was attested to by PW1, PW3, PW4, PW5 and PW8.
27. As to the cause of death, PW4 produced the Post Mortem Report which he filled after he conducted the autopsy. In his professional assessment, the deceased died as a result of two distinct causes being the primary cause as heart and lung failure secondary to hypovolemic shock due to over-bleeding and the secondary cause as head injury resulting from assault. The accused did not controvert the cause of the deceased's death and there was no other contradictory evidence.
28. This Court, therefore, conclusively finds that the prosecution rightly so proved the death of the deceased and its cause.

#### **Who caused the death?**

29. The second element of the offence of murder requires proof that the accused committed the unlawful act which caused the death of the deceased. In this case, there were several witnesses who testified on



seeing the accused assaulting the deceased. They were PW2, PW6 and PW7. These were eye-witnesses. They observed the events at close range and were neighbours. The incident occurred during the day. They knew the couple well. In a bid to mitigate the beating which had lasted for over 30 minutes, PW2 rushed to the police and sought help.

30. The Court of Appeal in *Wamunga vs Republic* (1989) KLR 426 dealt with the issue of identification as follows: -

.... It is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of conviction.

31. In taking that caution into account, a trial Court must also consider the accused's defence, if any. In this case, there was one such defence. According to the accused, the deceased may have been injured in the course of the commotion that ensued when he bursted her and her lover, Pastor Kennedy Wafula, making love in their house.
32. This Court has carefully considered the defence. During the prosecution's case, Learned Defence Counsel cross-examined several witnesses on the alleged secret love affair between the deceased and a Pastor Lihanda. However, in his defence, the accused stated that he caught his wife red-handed with one Pastor Kennedy Wafula. There is no evidence that the two people are one and the same. Therefore, going by the defence, the deceased having admitted to have been impregnated by Pastor Lihanda, having carried out an abortion and after being forgiven, went ahead, and on the following day, to bring another man in their house and during the day. She also told her children to keep off until the visitor left. Even knowing the nature of children, they still left the door to the house open.
33. The accused also contended that when he went to the police station, he reported the death of his wife and asked the police to assist him in apprehending the said Pastor Kennedy Wafula. PW8 who was the investigating officer interrogated the accused. She confirmed that the allegations of the deceased's infidelity with Pastors was never brought forth during the investigations.
34. Be that as it may, the accused admitted being at the scene of crime at the time the deceased was injured and became unconscious. In fact, according to the accused, the deceased had already collapsed as he rushed her to hospital. Could it be that the deceased was injured during the confrontation between the accused and the said Pastor Kennedy Wafula? None of the three eye-witnesses testified of such a confrontation. They only attested that it was the accused who beat the deceased for over 30 minutes.
35. The eye-witnesses were neighbours to the accused. PW6 and PW7 were even minors. It was established that none of the witnesses had any issue that would have made them give false testimonies in the matter more so against the accused. The witnesses were straight-forward and their evidence was coherent forming a unified whole. The Court observed the witnesses as they testified. There was no adverse inference against any of them. This Court believed their testimonies.
36. The Court finds the defence not plausible. The narrative that the accused caught the deceased in a love affair in his house with another man is not convincing. Whereas the deceased had recently carried out an abortion, that is not to infer that she would offer herself to any man at any time even a day after she had admitted guilty and was pardoned. There was need for more evidence to concretize the allegation as to displace the prosecution's evidence. This Court, therefore, finds that the defence is not holding, is an afterthought and is for dismissal.



37. The Court now returns the finding that there is adequate evidence that it was the accused who attacked his wife and caused the injuries that led to her death.

### **Malice aforethought?**

38. The Court will now consider whether the accused acted with malice aforethought in injuring and killing the deceased.

39. Section 206 of the [Penal Code](#) defines 'malice aforethought' as follows: -

206. 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 the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.
- c. An intent to commit a felony.
- d. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

40. The Court of Appeal has also dealt with the issue of malice aforethought on several occasions.

41. In *Joseph Kimani Njau vs Republic* (2014) eKLR, the Court of Appeal in concurring with an earlier finding of that Court (but differently constituted) in *Nzuki vs Republic* (1993) KLR 171, held as follows: -

Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused; -

- i. The intention to cause death;
- ii. The intention to cause grievous bodily harm;
- iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed. The mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into a crime of murder. (*See Hyman vs. Director of Public Prosecutions* (1975) AC 55". (emphasis added).

42. Malice aforethought can be established expressly or by inferences to be drawn from the facts and circumstances before Court. The East African Court of Appeal explicated the circumstances in which



malice aforethought can be inferred in the case of Republic vs. Tubere s/o Ochen [1945] 12 EACA 63 as follows: -

- a. The nature of the weapon used; whether lethal or not;
  - b. The part of the body targeted; whether vulnerable or not;
  - c. The manner in which the weapon is used; whether repeatedly or not;
  - d. The conduct of the accused before, during and after the attack.
43. On the conduct of the deceased, it is on record that the couple did not enjoy a peaceful union. PW3 testified on reconciling them on several occasions. The cause was infidelity. It appears that each spouse suspected the other of having a secret love affair. In the fulness of time, the deceased admitted having had an affair and getting pregnant. She, however, denied carrying out an abortion, but that she fell and had a miscarriage.
44. With such a humongous disclosure and admission by the deceased, the accused readily forgave her. It seems the forgiveness was not genuine. The accused purposed to revisit the issue later. That is why on the following day, being sure that the deceased was in their house alone, the accused returned and vengefully and for such a long period chastised the deceased. The accused would not even allow the deceased to be rescued as he threatened anyone attempting to do so to face the wrath of a panga which he had. It was in such circumstances that PW2 rushed to the police station to seek for help.
45. The Accused purposed to harm or kill the deceased. He fully prepared himself for the mission. He was aware that the deceased was weak having undergone an abortion and ensured that no assistance would come her way. The deceased was obviously defenseless. The deceased also sustained several injuries on the head, nervous system, spinal cord and the spinal column and all over the body.
46. The injuries caused massive bleeding and fractured the skull. The head is such a critical part of the human anatomy. It goes beyond any peradventure that once the human head is subjected to serious injuries, then death was eminent. It is also common knowledge if one is subjected to immense blood loss, life is threatened. Inflicting such injuries on someone can only be intentional. The rationale was apparent that it was to deprive the deceased of her life.
47. The manner of execution of the mission was very deliberate and targeted. The accused aimed the head and the spinal cord; very vital and delicate organs, with all his might. By considering the cumulative actions of the accused in the manner he executed the killing and his conduct before and during the unlawful act, it is without any shred of doubt that the accused purposed to kill the deceased.
48. The prosecution, therefore, proved malice aforethought in this case. In essence, all the ingredients of the offence of murder were well proved in support of the prosecution as against the accused.

#### **Disposition:**

49. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
50. In the premises, therefore, this Court finds and hold that the prosecution proved its case on the information of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).



51. The accused herein, Richard Simiyu Wanjala, is accordingly convicted of murder pursuant to Section 322(2) of the *Criminal Procedure Code*.

52. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**A. C. MRIMA**

**JUDGE**

Judgment delivered virtually in the presence of:

Mr. Kimani, Learned Counsel for the Accused.

Mr. Mugun, Learned Prosecutor instructed by the Director of Public Prosecutions for the State.

Chemosop/Duke – Court Assistants.

