



**Republic v Gachiabu (Criminal Case 24 of 2014)
[2025] KEHC 2343 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 24 OF 2014
RM MWONGO, J
FEBRUARY 6, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

EDWARD KORI GACHIABU ACCUSED

JUDGMENT

1. The accused person was charged with Murder Contrary to Section 203 as read with Section 204 of the Kenyan [Penal Code](#). The Particulars of the offence are that the accused on 22nd October, 2014 at Kianyaga Trading Centre within Kirinyaga County Murdered Geoffrey Gakuya Muchira.
2. The accused denied the charge and the hearing proceeded with Seven Prosecution witnesses. The accused was placed on his defence and gave a sworn statement and was cross examined.

Prosecution Case

3. PW1 Ann Wangare Wairimu testified that she opened Holiday inn Bar at around 10.00 a.m. At about 6.00 p.m the deceased walked in. He rented a room for which he paid Kshs.300/- and informed her that he had a visitor. She recalled serving the deceased with one beer and another bottle of beer which she took to the room he had rented.
4. The deceased was in the room when three men came to look for him. They sat at a table and ordered some drinks. The accused ordered for a bottle of beer and before long, the deceased emerged from the room followed by the lady. The lady sat at a far corner while the deceased who had greeted the three men sat with them at their table.
5. She further testified that she overheard the accused Edward Kori Gachiabu saying that he had seen the person he was looking for. That he followed the lady at the far corner to settle the bill of the two bottles she had served them in the room before she was referred to the deceased by the lady.



6. She stated that the deceased settled the bill, and when she told the accused to pay for this, he also told her the same was to be settled by the deceased. However, the deceased refused and grabbed him. An argument ensued before the accused removed a knife and stabbed the deceased. Then he removed the knife from his back.

PW1 screamed and the accused dashed to a stair-way as if to exit from the scene, but he was quickly arrested by members of the public and brought back to where the deceased had fallen while still bleeding.

PW1 narrated the events that followed and how the Police arrived just on time to disarm the accused who was still holding the murder weapon and the Police took over. She identified the knife that had a brown handle shown to her as MFI -1 which she said the accused had, with a knife holster around his waist. The knife holster was shown to her as MFI -2.

7. In Cross-examination, she stated that she heard the accused tell the deceased 'You will see'. By then he had removed a knife and aimed at the deceased.
8. PW2 Agnes Wangithi Cini testified that she received a call the same day being 22nd October, 2014. She was called by the deceased and they agreed to meet up at Kianyaga Trading Centre at about 2.00 p.m.
9. She said they met at 6.00 p.m and proceeded to have some drinks before the deceased walked out stating that he was being called. She followed him and noticed he was in the company of three men asking the deceased to settle their bills but the deceased refused.
10. She testified that the deceased went to the counter and paid their bill which seemed to infuriate the accused. When he made his way back, the accused grabbed the deceased by the collar of his jacket and demanded that he pays for the bottle of Guinness he had consumed. The deceased declined. The accused, however tried to force the deceased to settle the bill. In the melee the accused removed a knife and stabbed the deceased who fell down. The screams by PW1 brought the public to the scene and they wrestled the accused down.
11. PW3 Teresia Wanjiku Gichobi was the deceased's wife. She stated that she arrived at the scene after being informed of what had just transpired. She found the deceased dead. In cross-examination, she stated that she had met the accused before; that the deceased introduced him to her as his classmate at Karumandi.
12. PW4 Jane Njeri Mukami was a cook at Holiday Inn Bar and lived in Kianyaga Town. The accused was her customer. She testified that on 22nd October, 2014 at around 8.00 p.m. she was in the kitchen. The accused said that the deceased would pay the bill but the deceased declined, saying he had no money. The counter was manned by Ann Wangari.
13. The two left the bar as they quarreled. She heard Ann Wangari screaming saying, Gakuya had been stabbed in the back. On going outside, she found the deceased lying on his stomach with a knife protruding on his back. The accused removed the knife from the victim's back and began running away. Members of the public chased after him, caught him and took the knife away. The police soon came and arrested him. The deceased died at the scene of the crime. She identified the knife which was marked MFI -1.
14. PW5 Kabengi Kiura a matatu driver, testified that on 22nd October, 2014, he was making his way to Holiday Inn bar when he was greeted with screams from PW1. She was shouting "Shika Huyo" and he saw the accused dashing towards his direction. PW5 ran very fast and caught the accused before he could exit the gate. He testified that the accused was still holding the knife and he disarmed him. He



took the knife and wrapped it in a polythene paper and being assisted by others who had joined the fray, he escorted the accused back to the scene.

15. On cross-examination, he stated that he had not known the accused before the incident; that he recovered the knife from him, and handed it to the police. He identified the knife in Court marked MFI – 1.
16. PW6 PC Dennis Sailen attached to DCI Kirinyaga East stated that the file was handed over to him in 2018 by PC Johannes Nyangige. He testified on behalf of the Investigation Officer, PC Martin Mwalafu.
17. He produced the statement of PC Martin Mwalafu as P.Exhb 5 which indicates that he attended the deceased's postmortem at Kibugi Funeral Home. The postmortem concluded that the possible cause of death was cardio respiratory arrest due to massive internal hemorrhage due to stab wound at the back.
18. The defence objected to PW6 producing anything more than the statement of Mwalafu that he had attended the postmortem. As such, exhibits marked MFI -1, 2, 3 and 4 were rejected unless the officer who received the items or made the documents attended for cross-examination.
19. PW7 Dr. Karomo performed the postmortem produced the same as P. Exhb 6. He stated that the cause of death was cardio respiratory arrest resulting in massive bleeding due to stab wound on the back that penetrated to the chest.

Defence Case

20. The accused gave a sworn statement and was cross examined. He stated that on 22nd October, 2014 at 8.00 a.m he went to his office at the Ministry of Public Works at Siakago as usual. At 8.30 a.m he left for a site at Rwika Institute in Mbeere. He left the site at 6.00p.m and went to Embu via Kianyaga. He got to Kianyaga at 8.00 p.m.
21. He stated that he did not go to any bar and that he did not know the deceased. At the bus stage, he called a friend on his phone, and whilst they were talking, he was hit on the face. He fell down, was beaten by many people, and lost consciousness.
22. The following day he found himself at Kianyaga Police Station where his brother told him he was arrested for killing someone. He was shown a knife and denied having had any weapons.
23. In cross-examination, he stuck to his story. He said he was never allowed to get a P3 and did not know any of the witnesses who testified against him. He had heard their testimony, and each one had lied. He said he did not know the witnesses except for having seen them in Court. He asserted that he was not questioned by the Investigating Officer and did not sign any statement.

Issues for Determination

24. Having carefully perused the evidence and submissions of the parties, the issues I consider relevant for determination are:
 - a. Whether the accused was proved to have caused the death of the deceased, and
 - b. Whether malicious intent was proved.

Analysis and Determination

25. Section 203 of the *Penal Code* places the burden of the Prosecution to prove that:



1. The death of the deceased occurred
 2. The death was through unlawful acts or omission of the accused
 3. The accused person had malice aforethought.
26. Further Section 206 of the *Penal Code* stipulates that:
- a. An intention to cause death or grievous harm.
 - b. Knowledge that the act or omission causing death will probably cause death of or grievous harm to the same person.
 - c. An intention to commit a felony.

Death of the Deceased

27. The death of the deceased is not disputed. The postmortem report confirms it. The death occurred due to the unlawful acts of the accused.
28. The prosecution submitted that the evidence tendered places the accused person at the scene of the crime squarely and the death of the deceased was due to the wrongful act of the accused person.
29. It is trite law that, the burden of proof in a murder case lies with the Prosecution who must discharge the said burden by adducing evidence to prove beyond any reasonable doubt that both the actus reus and the mens rea of ingredient of the offence of murder have been duly proved.
30. The witnesses who testified stated that it was the accused person who stabbed the deceased; that the scene of crime was duly processed and the murder weapon namely a knife with its holster duly recovered from the accused person; and that an inventory was duly prepared at the scene by the Investigating Officer PC Nyangige; that the inventory document was duly signed by the accused person and all exhibits recorded for purposes of prosecuting the accused person with the offence of murder.
31. However, the alleged knife together with its holster was never produced in Court as evidence and further that, the inventory documents allegedly signed by the accused person at the scene of crime was also never availed to Court for a forensic examination.
32. The failure of the Investigating Officer PC Nyangige to testify in Court on how the investigations were conducted to prove that the accused person owned the murder weapon and that it was recovered from him as critical evidence. Instead of availing the Investigating Officer, the prosecution closed its case without adducing his very crucial evidence. Ultimately, it was submitted that in the absence of the murder weapon and other crucial evidence including the alleged inventory document and other admissible evidence processed at the scene of murder, the evidence on record was insufficient to sustain a charge of murder contrary to section 203 as read with section 204 of the *Penal Code*.
33. The defence further submitted that where the Investigating Officer is not availed to testify despite summons, the legal presumption is that, such witness did not have any admissible and corroborative evidence to adduce on behalf of the state. Further, that had he been called to testify, then his evidence would most probably have been to the benefit of the accused person.
34. In the circumstances, it was submitted that the state had not proved the charge of murder.
35. The witnesses who testified stated that it was the accused person who stabbed the deceased herein and that the scene of crime was duly processed and the murder weapon namely a knife, with its holster duly recovered from the accused person. That an inventory was duly prepared at the scene by the



Investigating Officer PC Nyangige and which inventory documents was duly signed by the accused person and all exhibits recorded for purposes of prosecuting the accused person with the offence of murder. All this cannot however be verified in the absence of evidence of the Investigating Officer.

36. PW1, PW2 and PW4 confirmed that the accused stabbed the deceased with a knife on his back. That he then proceeded to remove the knife from the back of the deceased and ran away from the scene of crime before being caught by PW5 a matatu driver. They identified the knife in Court as MFI – 1, but the same was not formally produced. It cannot therefore be verified that the knife was the murder weapon. Further, it was not examined or tested for blood comparison with that of the deceased.

That the accused had malice aforethought

37. From the evidence on record, the deceased suffered Cardio-respiratory arrest due to massive internal hemorrhage due to stab wound on the back.

Malice aforethought was defined in *Nzuki v Republic* [1993] KLR 171 where the Court of Appeal held that:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with;

- a. Intention to cause death
 - b. Intention to cause grievous harm
 - c. Where the accused knows that there is a risk that death or grievous bodily harm will ensue from his acts and commits them without lawful excuse”
38. Although PW1, PW2 and PW4 confirmed that there was a quarrel between the accused and the deceased, and that the accused had warned the deceased that he would stab him unless he paid the beer bill, there was no identification done of the accused to cement the claim that it was he who was at the scene. The accused testified that he was unconscious whilst at a bus stage and found himself at a Police Station the following day. No OB record was availed to indicate his crime; no investigation diary was availed to connect the accused to the crime.
39. No evidence was placed on record to show how the prosecution witnesses identified the accused as the perpetrator. Further, the accused denied ever writing a statement with the police and none was availed. In the result, I do not see any evidence that shows the accused had malicious intent.

Conclusion and Disposition

40. Ultimately, this is a case which was poorly presented with insufficient investigation material placed before the Court.
41. There is no basis given, on the evidence herein, to show that the prosecution has met the standard of proof required for the offence of murder.
42. Accordingly, I find the accused not guilty, and hereby acquit him of the offence. He shall be set at liberty unless otherwise lawfully held.
43. Orders accordingly.

DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 6TH DAY OF FEBRUARY, 2025

R. MWONGO



JUDGE

Delivered in the presence of:

Accused in person

Kamuga holding brief for Kahiga for Accused

Mamba for the State

Francis Munyao - Court Assistant

