



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Thiuru (Criminal Case E079 of 2021)
[2025] KEHC 1572 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E079 OF 2021
TW CHERERE, J
FEBRUARY 6, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

GODFEY KINOTI THIURU ACCUSED

JUDGMENT

1. The accused, Godfrey Kinoti Thiuru, was charged with the offense of murder under Section 203 as read with Section 204 of the *Penal Code*. It was alleged that on 17th September 2021, at Kijja Sub-Location in Imenti Central Sub County within Meru County, he murdered Thomas Mugendi (deceased).
2. The first Witness stated that on 17th November, 2021, at around 7:00 pm, he was consuming alcohol with friends, including the accused and the deceased. That deceased assaulted his wife, and the accused intervened, asking him to stop. That subsequently, deceased and his wife left together, and the accused departed 30 minutes later. A short while later, the witness received information that the accused and deceased were fighting. Upon reaching the scene, the witness found a crowd and the deceased lying dead but accused was not at the scene.
3. The second witness stated that on the material date at around midnight, while walking home, he heard someone threatening to kill another. As a pillion passenger on a motorcycle, he saw the accused standing nearby and the deceased lying down. He called out to the deceased, who did not respond. The accused was unarmed, and PW2 did not witness him killing the deceased.
4. The third witness stated that he saw the accused beating the deceased, who was lying on the ground. The fourth witness informed the second witness that his brother had been killed. He accompanied the second witness to the scene and finding deceased dead reported the matter to the Assistant Chief and the police, who later removed the body from the scene.



5. The Investigating Officer stated that Accused surrendered himself and was placed in custody. In the course of investigations, he recorded statements and received a Post-mortem Report (PEXH 4) filled by Dr. Mugambi on 05th January 2022 and which revealed that deceased died of severe head injury secondary to blunt trauma to the head.
6. Accused testified that the deceased was his friend. He intervened when the deceased attacked his wife at the home of the first witness and deceased and his wife left the home and went away. He stated that upon learning of his friend's death, he voluntarily went to the police station, where he was arrested and charged. He denied assaulting the deceased, reiterating that he only intervened to stop the deceased from beating his wife.

Analysis And Determination

7. Under Section 203 of the [Penal Code](#), murder and Section 204 of the [Penal Code](#) provides for punishment for murder.
8. In the case of Joseph Githua Njuguna v Republic [2016] eKLR the Court of Appeal outlined the ingredients of the offence of murder as follows: -

“...Under section 203 of the [Penal Code](#), any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. It is clear from this section that there are three elements which the prosecution must prove beyond reasonable doubt to secure a conviction for the offence of murder. These are; (a) the death of the deceased and the cause of that death; (b) that the appellant committed the unlawful act which caused the death of the deceased; (c) and that the appellant had harboured malice aforethought. See Milton Kabulit & 4 others v Republic [2015] eKLR.”
9. The foregoing sections require that the prosecution prove beyond reasonable doubt. In Stephen Nguli Mulili v Republic [2014] eKLR the court emphasised the prosecution's duty in a criminal case and stated that;

“...it is not in doubt that the burden of proof lies with the prosecution. The locus classicus on this is the case of DPP V Woolmington, (1935) UKHL 1 where the court eloquently stated that the “golden thread” in the “web of English common law” is that it is the duty of the prosecution to prove its case. The Kenyan Courts have upheld this position in numerous cases. See Festus Mukati Murwa V R, (2013) eKLR”
10. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the Mugendi; that Accused caused the said death and that that he actuated by malice.
11. The Post-mortem Report (PEXH 4) filled by Dr. Mugambi on 05th January 2022 revealed that deceased died of severe head injury secondary to blunt trauma to the head.
12. In order to establish the accused's culpability, the prosecution mainly relied on the evidence of visual identification by the third witness who stated that he saw accused beat deceased on the material night at about mid night.
13. Identification of suspects under challenging conditions, such as nighttime, requires careful scrutiny to prevent wrongful convictions. The Court of Appeal in Wamunga v. Republic [1989] KLR 424 emphasized that evidence of visual identification in difficult conditions must be examined meticulously to avoid errors.



14. In *R v. Turnbull* [1976] 3 All ER 549, the court provided guidelines for assessing identification evidence, especially under unfavorable conditions. These guidelines include considering the duration the witness observed the suspect, the distance between them, the lighting conditions, and whether the witness had seen the suspect before.
15. In *George Hezron Mwakio v. Republic* [2010] eKLR, the court underscored the importance of considering the circumstances under which identification is made, especially at night. The court noted that the complainant had ample time and opportunity to see the appellant, which contributed to the reliability of the identification. In contrast, PW2's opportunity for observation was limited
16. Applying these principles to the testimony of the third witness, his observation occurred while he was a passenger on a moving motorcycle at midnight. The brief and transient nature of this encounter may have limited his ability to make a reliable identification. The incident took place around midnight. the witness did not provide details about the lighting conditions, such as the presence of streetlights or other light sources, which are crucial for assessing visibility. There is no indication that the third witness was previously acquainted with the accused, which could have aided in a more reliable identification.
17. Given these factors, the evidence of identification of the accused by the third witness is subject to significant limitations. The brief observation from a moving motor cycle, coupled with unspecified lighting conditions and lack of prior acquaintance, raises concerns about the reliability of his identification.
18. Accused denied the offence thereby raising a reasonable doubt to the evidence by the third witness which is uncorroborated.
19. In criminal law, an accused is entitled to the benefit of the doubt as a matter of right, not as a matter of grace or concession. (See *Machira v. Republic*, Criminal Appeal E018 of 2023 [2024] KEHC 2712 (KLR) (14 March 2024), This principle ensures that if there is any reasonable doubt regarding the accused's guilt, he must be acquitted.
20. This principle was also upheld in *Muthini v. Republic*, Criminal Appeal 15 of 2023 [2024] KEHC 2182 (KLR) (22 February 2024), where the court emphasized that any doubt in the prosecution's case must be resolved in favor of the accused.
21. Furthermore, in *Paul v. Director of Public Prosecutions*, Criminal Appeal E069 of 2023 [2024] KEHC 5520 (KLR) (25 April 2024), the court reiterated that even a single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient to warrant an acquittal.
22. The prosecution having failed to prove actus reus', it would be futile for this court to delve into the issue of malice aforethought.
23. From the foregoing analysis, I find that Accused NOT GUILTY of the offence of murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#) and hereby acquit him. He shall be set at liberty unless otherwise lawfully held.

DATED THIS 03RD DAY OF FEBRUARY 2025

WAMAE.T. W. CHERERE

JUDGE

DELIVERED AT MERU THIS 6TH DAY OF FEBRUARY 2025

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H.M. NYAGA

JUDGE

This Judgment is delivered under the provisions of Section 200 (1) as read with Section 201 (2) of the *Criminal Procedure Code* Cap 75 Law of Kenya

Apology for delay

The Court acknowledges that there has been a delay in the delivery of this Judgment due unfortunate accident involving the Judge who initially presided over the matter. The Court sincerely regrets the inconvenience this has caused to the parties involved. The Judiciary remains committed to the timely dispensation of justice, and every effort has been made to ensure that this matter is concluded appropriately.

