



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Muriathi (Criminal Case 66 of 2019)
[2025] KEHC 4859 (KLR) (Crim) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4859 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL CASE 66 OF 2019

K KIMONDO, J

APRIL 24, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN KAMAU MURIATHI ACCUSED

JUDGMENT

1. Gidraph Mwangi Maroro (hereafter the deceased) died as a result of multiple chop wounds inflicted by a sharp object on his neck and head. According to Joseph Mwangi Kahiga (PW8), the accused confronted the deceased, retrieved a panga from his clothing and cut him.
2. The Republic thus brought Information to the High Court charging the accused with murder contrary to section 203 as read with section 204 of the *Penal Code*.
3. The particulars were that on the 21st July 2018 at Cabanas Stage along Mombasa Road near Rapid Kate Logistics, Embakasi Sub-County within Nairobi County he murdered the deceased.
4. He pleaded not guilty. The prosecution marshalled eight witnesses. It was a blend of direct, circumstantial and documentary evidence. The accused defended himself under oath and did not call any witnesses.
5. PW4 was Police Constable Polycarp Masai. On 27th September 2019 at about 06:23 hours, he got a tip off from a member of public that the accused was at the General Motors stage. He and his colleague, Police Constable Victor Kibet (PW6) arrested him and booked him at Embakasi Police Station.



6. PW6 was Police Constable Joseph Mwema. He visited the scene with his colleague, Sergeant Ogada. The body had a deep cut on the face and on the rear part of the head. Under cross examination, he insisted that he found PW8 at the stage. He added:

“Joseph Mwangi [PW8] came up. He said he was also working at the stage and he knew both the deceased and the accused. We went with him to record a statement. I recorded his statement. His statement states that after attacking the deceased, Mwangi turned against him and he had to take refuge at the GSU offices. The GSU offices are about 100 metres away. The statement says he then went home. The truth is that I met him at the stage”
7. The body was removed to the city mortuary. On 24th July 2018, PW6 attended the post mortem at the City Mortuary. The body was identified by the deceased’s father, Abraham Muroro Mwangi (PW3); and, the deceased’s uncle John Watathe Mwangi (PW2).
8. The post-mortem report (exhibit 1) was produced by Dr. Dorothy Njeru (PW1) who concluded that the cause of death was “multiple injuries due to chop wounds”.
9. When the accused was placed on his defence, he denied killing the deceased. He claimed that he had re-located to his native Murang’a County but kept visiting the city to trade in farm produce. He admitted that he worked as a Kamagera (a tout who loads passengers into different vehicles) at the General Motors stage and that he was arrested there a year after the incident. He claimed that there was rivalry with another Mungiki group over management of the matatu stage. He thus testified that he was “framed-up to remove [him] from the [matatu] stage”.
10. Under cross examination, he conceded that he knew PW8; and, that they had worked together at the same stage for three years, albeit on different “shimos”. He denied that the stage was lit or at all. Although he had no grudge with PW8, the latter worked with the rival Mungiki group. He denied demanding any money from deceased on 21st July 2018.
11. Learned counsel for the defence, Mr. Mwale, opted not to file final submissions but to rely on the earlier set of submissions filed under section 306 of the *Criminal Procedure Code*. The tenor and substance of those submissions was that the quality of evidence fell far short of the required standard of proof; and, accordingly, the accused should be acquitted. Learned counsel cited a number of precedents including *Woolmington v DPP* [1935] AC 462 and *Pius arap Maina v Republic*, Criminal Appeal 247 of 2011 [2013] eKLR.
12. I take the following view of the matter. The burden of proof that the accused murdered the deceased lay squarely with the Republic. *Woolmington v DPP* [1935] AC 462, *Bhatt v Republic* [1957] E.A. 332.
13. Section 203 of the *Penal Code* provides that any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
14. There are three key ingredients that must be present: first, the prosecution must prove beyond reasonable doubt the death of the deceased and the cause of that death; secondly, that the accused committed the unlawful act that led to the death; and, thirdly, that the accused was of malice aforethought.
15. There is no doubt about the death of the deceased. The body was identified by the deceased’s father, Abraham Muroro Mwangi (PW3); and, the deceased’s uncle John Watathe Mwangi (PW2).



16. Doubt is completely erased by the evidence of the pathologist, Dr. Dorothy Njeru (PW1). The cause of death was “multiple injuries due to chop wounds”. That conclusion is consistent with the evidence led by PW8. I thus readily find that the death was unlawful.
17. The next question then is whether the Republic proved beyond reasonable doubt that the accused, of malice aforethought, killed the deceased. Interwoven with it is whether the accused was positively identified as the person who attacked the deceased.
18. The key and direct evidence on those twin issues is from PW8. He worked as a tout at the at the matatu stage and knew both the deceased and the accused. On the material day, he was in the company of the deceased when the accused confronted the deceased saying: “wewe ndiye unafanya nisikule hii stage”. The accused then retrieved a panga from his clothing and cut the deceased on the neck and cheek.
19. He testified as follows-

“On 21/7/2018, I was working with Gidraph (deceased) as touts. At 7:00 to 7:30 p.m., his friend, John Kamau (accused), came and said “wewe ndiye unafanya nisikule hii stage.” There was an argument. John Kamau is the one in court. The argument was over money. He, accused, removed a panga from his jeans and cut him on the neck. Deceased fell down. He cut him again on the cheeks. I saw all this. I ran away, when accused faced me and said, “wewe unataka nikuue?” I ran to the GSU [camp] for help.”
20. That evidence was unshaken in cross-examination. He answered as follows:

“The stage is well lit and there were many people. I saw what happened – I was 5 meters away. There were other touts. I don’t know if they recorded statements. I did not mention it in my statement. Accused had a grey jacket, jeans and cap. He removed the panga from his right. I was facing him.”
21. The accused person and PW8 had known each other for nearly three years. In his defence, the accused conceded he worked at the stage and was arrested from there by PW5 and PW6 more than one year after the homicide. I thus readily find that PW8 knew both the deceased and the accused very well; that he was working at the stage as a tout with the deceased; that the scene was lit and he identified the attacker who was just about 5 metres from him.
22. The assailant was the accused and he is the same attacker who threatened PW8 immediately after chopping the accused on the neck and head. He was thus positively identified beyond any doubt. This was in fact evidence of recognition that was not affected by the night condition. See generally *Wamunga v Republic* [1989] KLR 424; *Maitanyi v Republic* [1986] KLR 198 at 201.
23. Regarding mens rea, there are two fragments of evidence that point to his guilt. Firstly, immediately after the murder, the accused went underground for a year. In his defence, he said he relocated to Murang’a County although he kept bringing farm produce to the market at Nairobi. When he thought the temperatures had sufficiently cooled down, he returned to the locus in quo where he was arrested on the fifth day at work.
24. Secondly, by attacking and cutting the deceased with a sharp object on the neck and head, he knew or ought to have known that it was likely to cause grievous harm or death. That conduct is completely inconsistent with his plea of innocence.
25. I thus find that the accused had malice aforethought as defined in section 206 (b) of the *Penal Code*. The deceased died as a consequence of his conduct. The line of evidence adopted by the accused was evasive



and unbelievable in light of the testimony of PW8. It amounted to a mere denial and was unadorned by any element of known defences to a charge of murder. The entire corpus of direct and circumstantial evidence points irresistibly to his guilt.

26. The upshot is that the prosecution has proved the charge beyond reasonable doubt. The accused, of malice aforethought caused the death of the deceased by an unlawful act. I accordingly enter a finding of guilty and convict him of murder contrary to section 203 as read with section 204 of the [Penal Code](#).

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL 2025.

KANYI KIMONDO

JUDGE

Judgment read virtually on Microsoft Teams in the presence of-
Accused.

Ms. Awino holding brief for Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Mwale for the accused instructed by Litwaji Achieng & Kiprop Advocates LLP.

Mr. E. Ombuna, Court Assistant.

