



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mwebi (Criminal Case E012 of 2021)
[2025] KEHC 4281 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E012 OF 2021**

KW KIARIE, J

APRIL 4, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMSON MARANGA MWEBI ALIAS EDWARD MICHIRA ACCUSED

JUDGMENT

1. Samson Maranga Mwebi alias Edward Michira is charged with an offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The particulars of the offence are that on the 12th day of March 2021, at the Kenyerere village, Masabo sub-location, Masaba South Sub County of Kisii County, he murdered Thomas Ogaro Osea.
3. The prosecution contends that two machetes which were recovered in the house of the accused had the blood of the deceased.
4. In his defence, the accused testified that he had no grudge against the deceased. He denied that he killed him.
5. The issues for determination are:
 - a. Whether the machetes with the deceased's blood were recovered from the accused's house;
 - b. Whether the two machetes bore the blood of the deceased;
 - c. If so, whether the accused inflicted the fatal injury on the deceased; and
 - d. Whether the prosecution proved the charge of murder against the accused.
6. Clifford Muturi Keri (PW2) testified that on the 14th of March 2021, while at the home of the deceased, the bishop leading the prayers requested to be accompanied to the home of the accused.



Several items were recovered from the accused's house, including a hoe, a machete and some shoes. He stated that he was the one who retrieved the machete from the roof, which appeared to have blood on it. Alfred Orina Hosea (PW3) testified to the same effect but noted that two machetes were recovered: one from the roof and the other from under the bed. He also mentioned that a jacket had been recovered.

7. Sergeant Cosmas Nyongesa (PW5) testified that on March 15, 2021, the area chief informed the police of some recovered exhibits. These were two machetes, a hoe, a pair of black boots, and a maroon jacket. The government analyst analyzed these items. The findings were as follows:
 - a. The pangas (items “D” and “E”) were lightly stained, while the jacket (item” F”) was moderately stained, all with blood of human origin.
 - b. The DNA profiles generated from the above-listed items are tabulated at the end of this report.

The conclusion by the analyst was as follows:

 - a. The DNA profiles generated from the bloodstains on the pangas (items “D” and “E”) match the DNA profile generated from the reference samples of Thomas Ogare Osea (deceased).
 - b. The DNA profiles generated from the bloodstains on the jacket (item” F”) belong to a single, unknown male person.
8. The evidence that was adduced against the accused was circumstantial. In the case of *Mohamed & 3 Others vs Republic* [2005]1KLR 722, Osiemo Judge explained what circumstantial evidence is as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved.
9. Earlier, the Court of Appeal in the case of *Republic vs Kipkering Arap Koskei & another* 16 EACA 135, had held:

In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
10. Samson Maranga Mwebi alias Edward Michira, the accused, in his defence, contended that he was called home after his brother was found dead. This defence did not displace the evidence by the prosecution that the two machetes were recovered from his house. These items had the blood of the deceased. The only logical inference to make is that he was involved in the killing of his brother. This evidence is incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
11. To base a conviction for the offence of murder on the evidence on record, the prosecution must prove the existence of malice aforethought. In *Black’s Law Dictionary*, 10th Edition, malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called “abandoned and malignant heart”), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).
12. Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:



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.

13. The way the body of the deceased was found suggests that the killing was carried out elsewhere. It was then burnt to simulate a probable accidental death by burning. This was a planned killing. After analyzing the evidence on record, find that the prosecution has proved the offence of murder against the accused. I find him guilty and convict him of the offence.

DELIVERED AND SIGNED AT KISII ON THIS 4TH DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

