



**Republic v Kalanjo (Criminal Case 23 of 2023)
[2025] KEHC 6409 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6409 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 23 OF 2023**

**RB NGETICH, J
MAY 15, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ELIJAH MORO KALANJO ACCUSED

JUDGMENT

1. The accused Elijah Moro Kalanjo has been charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge were that the accused on the 24th day of September, 2019 at Pombo village, Ngendalel Location in Mogotio Sub- County within Baringo County murdered Daniel Arap Kogo Kimengich.
2. The accused denied the charge and the matter was set down for hearing and the prosecution availed 7 witnesses.

Prosecution's Evidence

3. PW 1 Mercy Jelimo from Kisanana, Bombo in Baringo County testified that in June, 2019, she was at home and at about 9:00 p.m., she was asleep when she heard sheep making noise. She said that one sheep was sick and when she went to check, she heard people making noise and a child crying at the gate of her Aunt Franciscah's home.
4. She said she picked the child and went away towards to their neighbour's house. She said that she did not see Franciscah. She said people made noises and she confirmed that she knows Elijah Moro Kalenjo and stated that she did not see him that night. She also confirmed that she did not know a person called Daniel Arap Kago Kimengich. She later recorded statement and informed police that she only picked the child but she did not know anything else which happened.



5. PW2 Evaline Jepkoror Kemeywa from Bombo testified that on the 24th September,2019 at about 9:00p.m, she was sleeping at her home when she heard her sister Franciscah asking her to open the door saying she was dying. She said Franciscah lives at her brother's home which is far.
6. She said on going out, she heard people shouting from her brother Kimogut Kimeywa's home. She said that she heard people saying her brother in-law Elijah had killed a person. She said she had known Elijah for long but she did not know one Daniel Kogo Kimengich. She said she feared to see the body but the chief called police who went there and took the body. She said her sister Franciscar had disagreed with her husband and she went back to live in a house given to her by her brother. She said she did not know who killed the deceased and confirmed that the accused Elijah Moro was the husband to Franciscah and the deceased was in Franciscah's house.
7. PW3 Hudson Kiplagat Cheruiyot testified that on 24th September,2019, at about 9: 00p.m, he received a call from one Purity asking what was happening at his home as she was hearing screams. He called his wife who informed him that the noise was from Kemeiywa's home. He said he called another person who confirmed to him that the accused Elijah Moro had killed someone. He said the deceased had an affair with Franciscah which made Franciscar leave her matrimonial home. He called the Assistant chief Komen Jackson and requested him to confirm if the incident was true and the assistant chief later called him confirming the incident and he reported the matter to the police. He said he learnt from the people who were present at the time of the incident that accused arrived and found the deceased with his wife and killed him.
8. He said he did not see Elijah at the scene but he saw the deceased who had an injury on the throat. He said he did not see any weapon at the scene. He said police arrived and took the body and on 25th September,2019, they went and recorded statements with the police where the police officers informed them that Elijah had presented himself to the police.
9. PW4 Jackson Kemei the acting Chief of Ngendalel Location testified that on the 24th September,2019, at about 9:00p.m, he received a call from a Nyumba Kumi elder who informed him that there was an incident at Mzee Kameiywo as someone had been injured. He reported to the Assistant County Commissioner(ACC) who advised him to visit the scene. He went to the house of Franciscah who was a sister to mzee Kameiywo with Nyumba Kumi elder and they found a dead person inside the house. He reported back to the ACC so that he could alert Mogotio police station.
10. He said that the body had a stab wound on the chest and on the cheek. On inquiring, he was told Francisca's husband is the one who killed him. He said police officers later went there and removed the body. He confirmed that Franciscah was the wife of the accused but she had left his home and went back to her parent's home and that the deceased was a lover to Franciscar.
11. PW5 No. 240114 Inspector Patrick Owala Odemba who was stationed at Mogotio police station testified that on 25th September,2019 at around 10:30hours, he was with other officers when a person appeared at the report office, introduced himself and said he had killed the deceased at Kombo; that he stated the following words "ile kisanga ilifanyika Kombo ni mimi nilifanya" meaning "the incident which occurred in Kombo,it is me who committed ". He said they arrested the accused and handed him over to the DCI at the station.
12. PW6 Michael Kipngetch Sikuku testified that the deceased Daniel Arap Kogo Kimengich was his brother and that he identified the deceased body to the doctor for postmortem.
13. PW7 Jonathan Kiplagat formally of DCI Mogotio and currently retired officer testified that on 24th September,2019, at around 22:30 hours, he received a call from duty officer informing him that there



was a murder scene within Bombo village, Ngendalel Location in Kisanana. That in company of duty officer and other officers, they visited the scene led by area Assistant Chief and upon arrival at the scene, they were shown the house where the body of the deceased was and he noticed that the body was in a pool of blood and upon physical examination, the body had stab wounds on the throat both left and right side, ribs and also on the right hand and right thigh on the back and a cut on the face.

14. He said that he interrogated the owner of the house Franciscah Kemeiywa Kabon and she informed him that they were attacked by the accused Elijah Moro Kalanjo who was her ex-husband and that he stabbed the deceased. That she further informed him that the deceased was her boyfriend and he had visited on Monday 23rd September, 2019 and that the accused stabbed the deceased on 24th September, 2019 at around 9: 00p.m; she added that the accused also threatened to kill her but she managed to escape. He said that they searched for the murder weapon but they could not find then they took the body to Nakuru Provincial mortuary awaiting postmortem and arrested Franciscah for further interrogation.
15. That on 26th September, 2019, he recorded statements and further did a search for the murder weapon but they did not find. He said the suspect Elijah Moro Karanjo surrendered to Mogotio police station and was arrested. That from the evidence adduced by the witnesses, Elijah Moro had separated from his wife Franciscah Kabon for 4 years and Franciscah was housed by his brother where the accused found her with the deceased.
16. He testified that postmortem was conducted on the deceased's body on 30th September, 2019 postmortem was conducted on the deceased's body and the cause of death established and accused was later charged with the offence of murder.
17. Upon the close of the prosecution's case, by ruling delivered on 23rd January, 2025 the court found that the accused had a case to answer and proceeded to place him in his defence.

Defence Case

18. The accused Elijah Moro Kalanjo testified as DW 1. He gave a sworn statement. He denied that he killed the deceased on the 24th September, 2019 though he heard the incident occurred. He said he lives about 60 km from the place of incident. He said he was at Kaptota herding animals and only heard that the incident occurred in a place called Bombo which is about 60 kilometers away from his home. He said he was not in Bombo that day.

Analysis And Determination

19. Section 203 of the penal code under which the accused has been charged defines the offence of murder and from definition, the ingredients the prosecution is required to prove beyond reasonable doubt are proof of death, the cause of that death, proof that the death was due to an unlawful act or omission on the part of the suspect and that the unlawful killing was with malice aforethought.
20. The above ingredients of murder were explained in the case of *Roba Galma Wario v Republic* [2015] eKLR where the court held that:-

“For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”



21. Further in Mombasa High Court Case Number 42 of 2009 between Republic v Daniel Musyoka Muasya, Paul Mutua Musya and Walter Otieno Ojwang the court expressed itself as hereunder:

“The prosecution therefore is required to tender sufficient proof of the following three crucial ingredients in order to establish a charge of murder:

- a) Proof of the fact as well as the cause of the death of the deceased persons.
- b) Proof that the death of the deceased’s resulted from an unlawful act or omission on the part of the accused persons.
- c) Proof that such unlawful act or omission was committed with malice aforethought.”

(a) Proof of death

22. From evidence adduced there is no doubt the deceased herein died. PW 2, PW 3, PW 4 and PW 7 testified that the deceased died on the 24th September, 2019; that they went to the scene and found that the deceased died in a house of one Franciscah. PW 6 Dr. Wangare Wambugu upon performing post mortem confirmed that the cause of death was head decapitation due to sharp force trauma following assault. She produced the postmortem report in court as exhibit.

(b) Proof that the death of the deceased’s resulted from an unlawful act or omission on the part of the accused.

23. As to whether the deceased met his death as a result of an unlawful act or omission on the part of the accused person, it is clear that there was no direct evidence that the accused caused the death of the deceased. Proof in criminal cases can either be by direct evidence or circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness’ testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence. Therefore, where circumstantial evidence meets the legal threshold, it may be a basis for finding the accused person culpable of the offence charged. In the case of Neema Mwandoro Ndurya v R [2008] eKLR, the Court of Appeal cited with approval the case of R v Taylor Weaver and Donovan [1928] 21 Cr. App. R 20 where the court stated that:

“Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.”

24. Whereas it is appreciated that a charge may be sustained based on circumstantial evidence, the courts have established certain threshold to be met if a conviction is to be based thereon. In Sawe v Rep [2003] KLR 364, the Court of Appeal stated that:-

“In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt; Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on; The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is



on the prosecution. This burden always remains with the prosecution and never shifts to the accused.”

25. Further, in the case of *R. v Kipkering Arap Koske & Another* [1949] 16 EACA 135, the Court of Appeal for Eastern Africa had this to say:-

“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. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused.”

26. In *Mwangi v Republic* [1983] KLR 327 Madan, Potter JJA and Chesoni Ag. J. A. held: -

“In order to draw the inference of the accused’s guilt from circumstantial evidence, there must be no other co-existing circumstances which would weaken or destroy the inference. The circumstantial evidence in this case was unreliable. It was not of a conclusive nature or tendency and should not have been acted on to sustain the conviction and sentence of the accused.”

27. From the foregoing for this court to find the accused guilty, the inculpatory facts must be incompatible with innocence and incapable of explanation upon any other hypothesis than that of guilt. This proposition was well stated in the case of *Simon Musoke v Republic* [1958] EA 715 as follows:

“It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.”

28. In this case, the prosecution’s evidence connecting the accused to the murder is the evidence of PW 2, PW 3, PW 4 and PW 7. It was the evidence of PW 2, PW 3 and PW 4 that it was the accused who committed the offence. PW 7 the investigations officer stated that she interrogated one Franciscah in whose house the offence took place and she informed him that it was the accused who was his ex-husband who attacked them killing the deceased.

29. Pw 6 testified that he received the accused in the report office who went to report that he was responsible for the incident that happened in Bombo and that he was the one who killed the deceased.

30. The question that arise is whether the circumstantial evidence herein is incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt and is there any other existing circumstances either from the prosecution or the defence that weaken the chain of circumstances relied on.

31. Having considered the evidence before me, both from the prosecution and the defence, I find that there is overwhelming circumstantial evidence linking the accused to the offence. The accused further took himself to the police station and even if he did not record confession, he failed to explain why he took himself to police station yet he said he lived 60 kilometers away from the scene. The accused’s evidence in defence did not cast any doubt in the circumstantial evidence linking him to the offence herein. I am convinced beyond reasonable doubt that the accused was involved in the murder of the deceased.



(c) Whether malice aforethought was proved against accused beyond reasonable doubt

32. Malice aforethought is provided for under Section 206 of the [Penal Code](#). It may be established by way of evidence when any of the following circumstances exist:

- “(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 death or grievous harm to some person, whether that person is the person killed or not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.
- (c) An intention to commit a felony; and
- (d) An intention to facilitate the escape from custody of or the flight of any person who has committed a felony or attempted it.”

33. In the case of *Nzuki v Rep* 1993 KLR 171 the learned Judges Gicheru, Cockar & Muli of the court of Appeal set out the principles of determining whether intention to commit murder is proved as follows:

- “1. Malice aforethought is a term of art and is either an express intention to kill or implied where by a voluntary act by a person intending to cause grievous bodily harm to his victim and the victim died as the result.
- 2. Before an act can be murder, it must be aimed at someone and must be an act committed with one of the following intentions
 - (a) To cause death;
 - (b) Cause grievous bodily harm; and
 - (c) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits these acts deliberately.
- 3. Without an intention of one of these three types, 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 the crime of murder.
- 4. ...
- 5. ...”

34. In the above case, the Court of Appeal held that even though the appellant’s conduct was done with the knowledge that the action is likely or highly likely to cause death or grievous harm, that in itself is not enough if there is no evidence to establish that the accused had formed an intention to cause death or to cause grievous harm, or knew his conduct may cause serious harm or death but committed the act deliberately any way.

35. PW 2, PW 3, PW 4, PW 5 and PW 7 stated the injuries they saw on the deceased body at Francisca’s house. They confirmed that the deceased had stab wounds on his body which information was confirmed by the findings of doctor who did the postmortem.



36. The injuries inflicted on the deceased were very severe. The acts of the accused as evidenced from the prosecution witnesses and the postmortem report is evidence of malice. It is clear that the intention the accused had while attacking the deceased was to kill him. The choice of where he aimed and injured the deceased is indicative of one bent on inflicting maximum harm or death on his victim.
37. It is trite law that anyone who uses such a lethal weapon and uses it to strike the deceased as accused did, ought to know that the injuries inflicted are likely to cause the death of that person. The fact that the accused targeted the part of the body that is very delicate and could easily lead to death establish that the accused had premeditated his actions.
38. Further, there is no evidence that at the time of the incident, the deceased provoked the accused in any way. The accused also said that he resides far from the scene about 60km away. For him to have been at the scene and exactly at the house where his estranged wife was with the deceased, he must have known that the deceased and his estranged wife had an affair and he planned to kill the deceased. The deceased died instantly meaning he inflicted serious injuries as confirmed by the doctor who performed postmortem and this clearly conform that he had intentions of killing the deceased and he executed his plan and killed the deceased instantly. From the foregoing, I find that the prosecution proved malice aforethought against the accused herein.
39. In view of the above, I find that the prosecution has proved the charge of murder contrary to Section 203 of the *Penal Code* against the accused person beyond reasonable doubt and proceed to find accused guilty and convict him of the offence murder contrary to section 203 as read with section 204 of the penal code.
40. Final Orders: -
1. Accused is hereby found guilty and convicted of the offence of the offence murder contrary to section 203 as read with section 204 of the penal code.
 2. Right of appeal 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 15TH DAY OF MAY 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Ms. Omari for State.

Ms. Barasa holding brief for Mr. Mwaita for Accused.

Elvis/Christopher – Court Assistant.

