



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Mutai (Criminal Case E028 of 2021)  
[2025] KEHC 6013 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6013 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CRIMINAL CASE E028 OF 2021**

**JR KARANJA, J**

**MAY 8, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOSHUA KIBET MUTAI ..... ACCUSED**

**JUDGMENT**

1. The charge against the Accused, Joshua Kibet Mutai, is that of Murder, Contrary to Section 203 as read with Section 204 of the [Penal Code](#) and is anchored on the allegation that on the 1<sup>st</sup> November, 2014 at Yala Market, Chepkumia Location within Nandi County, he murdered the deceased Charles Kemboi Cheruiyot.
2. The case for the prosecution was that on the material date at about 9:00pm the deceased was sitted near a bar waiting for Julius Kiprono Kemboi [PW1] so that they could transport some goods to a particular destination using a motor vehicle driven by Julius. The two were to be joined by others and a few metres from them there was a motor cycle parked on the roadside belonging to one Dennis who was inside the bar paying a bill.
3. The Accused happened to be nearby. He made an attempt to remove the motor cycle from where it was parked, but was restrained by the deceased for reasons that the motor cycle was not obstructing anybody. The Accused, out of anger, reacted by jumping over a fence and returning to the scene holding a stick which he used to attack and assault the deceased who took off with the Accused in hot pursuit followed by Julius [PW2] and others.
4. Together with Hillary Kipngeno Keter [PW2], Julius restrained the Accused, but he picked some stones and threw them towards their direction. In the meantime, the intoxicated deceased was hiding at a nearby spot from where he was called out by the Accused to be taken home.



- After emerging from the hiding spot the deceased approached the Accused who held him while holding a knife with his hand.
5. Shortly thereafter, the Accused stabbed the deceased on the back of the neck using the knife. It was then that Julius [PW1] went to the rescue of the deceased, collected the knife [P. Exhibit 1] and handed it to a village elder who appeared at the scene and joined the crowd of people already gathered at the scene. The deceased, however succumbed to his injuries inflicted on him by the Accused using the knife while the two engaged in a fight.
  6. Hillary [PW2] fled from the scene and went into hiding on hearing that the Accused was in possession of a knife. He was later informed that the deceased had been stabbed to death.  
A brother of the deceased, Geoffrey Kiplangat Kemboi [PW3] was asleep at home when he received a phone call at midnight informing him that the deceased had been stabbed with a knife by the Accused and that the police had arrived at the scene and removed the body of the deceased to the mortuary.
  7. The brother later identified the body of the deceased for post mortem purposes and in the process noted that it had a deep stab wound at the back of the neck and bruises on the hands and back.  
Dr. Evans Kibiwott [PW4], produced the post mortem report [P. Exhibit 4] compiled by a fellow doctor called Kenduiywo indicating that the deceased died from severe haemorrhage due to stab wound.
  8. After the necessary investigations carried out by PC. Hillary Iganza [PW5] and his colleagues the Accused was charged with the present offence after it was gathered that he was a friend of the deceased with whom they were drinking in the bar when the unfortunate incident occurred.
  9. The defence case was a denial and a contention that the accused was in his butchery at Yala Market on the material date upto 8:00pm when he proceeded to the nearby bar to have drinks with friends. In the process, he noticed the deceased leaving the bar and returning shortly thereafter. He [Accused] had his motor cycle parked outside the bar and when he went out to check it found a group of three young men who hired him to take them to a place called Shiru on the motor cycle. The three men one of whom had a knife became violent after he [Accused] declined to take them to Shiru. The deceased and others came to his rescue and in the process he heard the deceased saying that he had been stabbed. The three young men escaped from the scene even as he [Accused] left the deceased bleeding from his injuries and went away.
  10. The evidence foregoing clearly shows without substantial dispute that the deceased suffered fatal injuries after being stabbed with a knife after a senseless altercation and duel with the Accused even though he implied in his defence that he did not fight with the deceased nor do anything harmful to him, but rather the deceased was stabbed and injured by the three strangers.
  11. The basic issue for determination was therefore whether the deceased was stabbed with a knife and occasioned fatal injuries by the Accused and if so, whether the Accused acted of malice aforethought.  
Under Section 203 of the *Penal Code*, murder is defined in the following terms: -  
“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
  12. Herein, the post mortem report [P. Exhibit 4] compiled by Dr. Daniel Kenduiywo and tendered as an exhibit by Dr. Evans Kibiwott [PW4] established that the cause of death of the deceased was severe haemorrhage secondary to stab wound. This meant that the person who stabbed the deceased was the



person who actually caused his death. The question would be whether the person intended to cause the death.

13. Such intention is what is referred to as malice aforethought under Section 206 of the Penal Code which provides as follows:-

“Malice aforethought shall be deemed to be established by evidence proving anyone 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.”

14. The post mortem report [P. Exhibit 4] indicated that the deep stab wound on the posterior neck measuring 6cm x 4cm was the “killer blow” and by its very nature it pointed towards an intention by the assailant to cause the death of or to do grievous harm to the deceased.

The Accused denied responsibility for the fatal assault against the deceased and indicated that the actual culprit was one of the three young men that allegedly became violent towards him after he refused to transport them to a particular destination on his motor cycle.

15. However, the evidence by the prosecution through Julius [PW1] and Hillary [PW2] debunked the Accused’s narrative in relation to the presence of three young men at the scene and showed that the deceased was innocently at the scene when the Accused picked an argument with him over a parked motor cycle and proceeded to physically assault him using firstly, a stick and thereafter, a knife [P. Exhibit 1] after convincing him to emerge from the spot he was hiding.

16. Julius [PW1] actually witnessed the Accused stabbing the deceased on the back of his neck with the knife. This was the unlawful act by the Accused against the deceased which proved fatal and indeed caused the death of the deceased as confirmed by the post mortem report.

17. It was notable that the prosecution witness [PW1 and PW2], the Accused and the deceased were all known to each other such that it could not be mistaken that the Accused is the person who actually stabbed the deceased on his neck with a knife. Therefore, the Accused’s defence was adequately disproved and rendered an afterthought or an attempt to divert criminal culpability from himself to three unknown or non-existent strangers.

18. In sum, it is the finding of this court that the Accused is the person who of malice aforethought stabbed the deceased with a knife and occasioned him fatal injuries.

The prosecution fulfilled its obligation of proving the charge of murder against the Accused beyond any reasonable doubt. Accordingly, the Accused is hereby found guilty as charged and convicted.

**DELIVERED AND DATED THIS 8<sup>TH</sup> DAY OF MAY 2025**



**HON. J. R. KARANJAH,  
JUDGE**

