



**Republic v Ahmed (Criminal Case E014 of 2022)  
[2025] KEHC 5636 (KLR) (7 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5636 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E014 OF 2022**

**JN ONYIEGO, J**

**MAY 7, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ABDINASIR NOOR AHMED ..... ACCUSED**

**JUDGMENT**

1. The accused person Abdinasir Noor Ahmed is charged with the offence of murder contrary to section 203 as read with 204 of the *Penal Code*. The particulars of the offence are that on 28<sup>th</sup>.08.2022 at Hagadera within Hagadera Sub – County, he unlawfully murdered one Mohamed Omar.
2. The accused person pleaded not guilty to the charge and the prosecution summoned a total of eight witnesses in support of its case.
3. PW1, Hassan Mohamed Ali, a shopkeeper at Hagadera Refugee Camp testified that on 28.08.2022, he was at his plot known as K3 Hagadera. That at 8.00pm, he left his house for his place of work. While at the bus stop, he found someone lying on the ground. He stated that the person was lying on a pool of blood with a knife besides him. That the said person was someone well known to him as he used to be his customer.
4. Noting that people had started gathering at the scene, he called Sgt. Bore of Hagadera Police Station but unfortunately, he did not find him and so he returned to the scene where he found police officers already in action. He stated that the police took away the body of the deceased person and that he did not witness the deceased being attacked.
5. PW2, Abdi Mohamed, a casual worker and a resident of Hagadera stated that on 28.08.2022 at 11.00 a.m., he was at Hagadera chewing miraa. That at 6.00 p.m., he went to some hotel where he bought his supper. At about 6.30 p.m., he returned to the stage to buy some cigarettes. On the way, he met a young man who demanded from him cigarettes. Upon declining the young man’s request, he (the



- man) drew a knife and stabbed him on the right thigh. At that moment, his phone fell down and so to the assailant's phone. He recalled that he picked his phone and thereafter ran towards town where he met mzee Osman whom he explained to about the incident.
6. He reported the matter to Hagadera Police Station from where he was referred to the hospital. It was his evidence that when he described his assailant, he heard people say that there was somebody who had been killed in town and the assailant was also responsible for a stabbing incident. That the attacker was known as Bantu and he was already in police custody. He identified the accused person as responsible for his attack. He further testified that the accused person compensated him for having assaulted him. On cross examination, he stated that the accused attacked him at 7.00 p.m. using a knife and not a panga.
  7. PW3, Ketsane Awil Elmi recalled that on 28.08.2022 at 9.00 p.m., his mum called him enquiring whether he had learnt of the deceased's death. He thus went to the bus stage near D5 where he found the deceased lying down and so, together with others, they organized and rushed him to the hospital at 7C. Unfortunately, his cousin was declared dead upon arrival. He further stated that he identified the deceased to the doctor who conducted post mortem.
  8. PW4, No. 106225 PC Patrick Kemboi Cherotich, the arresting officer recalled that on the material night, he was at the station working when the OCS Mohamed Muktar called and informed him of a person who was armed with a knife and was threatening people. That together with PC Otieno and Sgt. Bare, they proceeded to Block A. That when the suspect saw them, he ran away. That they managed to arrest him and then locked him in cells. According to him, at the point of effecting arrest, the assailant still had with him a knife which he allegedly used to kill the deceased.
  9. PW5, No. 110619 PC Wycliff Otieno testified that on 28.08.2022 at 2300 hours, he was at the police station when the OCS CIP Muktar called and told him to meet at the report office. That the OCS informed them that he had received a call from one Mohamed Dahir, the section leader (Section K) requesting for help. That the section head informed him of a man who was armed with a knife and was threatening passersby. The OCS thus sent them to the scene but upon reaching there, the said man fled. He confirmed that the accused person was the one they had arrested.
  10. On cross examination, he stated that they recovered a blood stained knife in as much as he did not include the same in his statement. That by the time they were arresting the accused, they were not aware that he had already killed someone despite the fact that a report of murder had already been made.
  11. PW6, Dr. Abdullahi Mohamed testified that he conducted post mortem on the body of the deceased in as much as he was not a pathologist. That on the external examination, he noticed a cut wound on the left side of the chest measuring 3cm in diameter and 5cm in depth with minimal blood coming out of the cut wound. According to him, the cause of death was a cut wound secondary to stab wound as a result of bleeding. On cross examination, he said that he was not a pathologist hence did not open the body of the deceased.
  12. PW7, No. 83272 Sgt. Hassan Ali, the investigating officer testified that on the material time, he was at the police station when Sgt. Bore informed him of the incident. That in company of PC Mutaru, Mbae and Keen, their driver, left for the scene where they found a crowd gathered around a man who was lying in a pool of blood. He checked and saw that the source of blood was a sharp stab wound and therefore, he started taking photographs of the scene. It was his testimony that he saw a panga next to the deceased. It was his evidence that after processing the scene, they took the body to Dadaab Sub-county hospital for post mortem purposes.



13. After the post mortem was done, the body was released to the relatives for burial. He stated that he collected blood from the scene together with the victims' shirt and trouser. Later, Chief IP Gitau called and informed him that a suspect had been arrested in connection with the said murder and that he had a blood stained knife. In carrying out his investigations, he forwarded the panga, shirt, trouser and the blood samples to the government chemist for analysis.
14. PW8, Kipngetch Benard, a government chemist analyst stated that he conducted analysis on various items received from Hagadera police station. That PC Hassan had sent some items to the government chemist in order to ascertain blood presence on a t-shirt marked C and trouser marked D which were heavily stained with human blood. Both the panga, Ex A and blood stained clothe, Ex E were stained with human blood. From his analysis, he concluded that the DNA profile generated from the blood stains generated from the panga, knife, T-shirt, trouser and blood soil were of an unknown male origin.
15. He went further to state that he did not receive blood samples from the deceased to connect with the blood in the items forwarded for analysis. Further, that the blood samples marked F1 and F2 obtained from the accused did not match the blood sample found in any of the two samples.
16. DW1, Abdinasir Noor Ahmed upon being placed on his defence denied committing the offence thereby claiming that on 28.08.2022, he fought with PW2 but thereafter, he went his way. That he fought with PW2 because of a woman and that he had with him a knife which was not strange, as the same is a Somali tradition. He additionally stated that he did not attack the deceased and that he did not see him. On cross examination, he stated that he has a nickname known as Nassir Bantu and that he knew Abdi Mohamed as they used to chew miraa together. He confirmed that he stabbed Abdi Mohamed noting that they had differed over a lady known as Fatuma.
17. Upon close of the defence, parties were directed to file their submissions. Prosecution in their submissions dated 16.12.2024 urged that it is trite law that the standard of proof in criminal cases is beyond any reasonable doubt. That for the prosecution to secure a conviction on murder, three ingredients to wit death of the deceased, that the accused person committed the offence and that he did it with malice aforethought must be proved.
18. It was submitted that the death of the deceased was proved by the evidence of Dr. Abdullahi Mohamed and the same was corroborated with the evidence of other prosecution witnesses. On whether the accused person committed the offence, it was submitted that the accused participated in the killing of the deceased in as much as the motive was not clear. That circumstantially, he wanted to deprive the deceased of her property, the black Samsung phone which was found in the possession of the accused person. It was urged that the circumstantial evidence on the killing of the deceased herein placed the accused person at the scene of crime.
19. Learned counsel contended that possession of a blood stained knife was key and the same was connected by the stabbing of PW2. On malice aforethought, the prosecution while relying on the case of *Roba Gama Wario vs Republic* [2015] eKLR submitted that the level of injuries sustained by the deceased clearly showed that the accused person had the intention to cause death or cause grievous harm. This court was thus urged to find the accused person guilty of the offence herein.
20. The defence on the other hand filed submissions dated 11.12.2024 wherein it was submitted that an accused person has the right to be presumed innocent until proven guilty for the offence charged. That it was clear that the prosecution preferred wrong charges against the accused person if any. It was contended that the prosecution did not prove its case to the required standard and therefore, the accused person cannot be held liable for the offence herein. While relying on the case of *Yongo vs*



Republic [1983] KLR, this court was urged to dismiss the case herein and acquit the accused person for the reason that the charge sheet herein was defective in nature.

21. I have considered the evidence as adduced by the prosecution witnesses and the defense proffered by the accused person. In my view, the main issue for determination is whether the prosecution has proved its case against the accused person beyond reasonable doubt to sustain a conviction for the offence of murder as charged.
22. 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.”
23. In the instant case, this Court is duty bound to make a finding whether the prosecution’s evidence as a whole proved beyond reasonable doubt the following elements of murder: that there was the death of the deceased and the cause of the said death, the death was caused by unlawful act or omission, that the accused committed the unlawful act which caused the death of the deceased and that the accused had malice afore thought.
24. On whether there is proof of death and the cause of the said death, the prosecution witnesses more so PW1, PW3, PW4 and PW5 testified to having seen the body of the deceased. The foregoing was corroborated by PW6, Dr. Abdullahi Mohamed who testified that he conducted post mortem on the body of the deceased and formed the opinion that the cause of death was a cut wound secondary to stab wound as a result of bleeding. In my view, therefore, the first element on death was thus proved by the prosecution.
25. On whether the death of the deceased was caused by an unlawful act and whose unlawful act it was, Article 26 (1) of the Constitution of Kenya 2010 guarantees every person the right to life. Under Sub-article 3, a person shall not be deprived of life intentionally except to the extent authorized by the Constitution or other written law. The evidence before this Court irresistibly points to an unlawful act that led to the death of the deceased as it was established that the cause of death was a cut wound secondary to stab wound as a result of bleeding.
26. The next key issue is; whether the prosecution has proved its case beyond reasonable doubt that it was the accused person and not somebody else who committed the unlawful act which caused the death of the deceased. From the evidence tendered before this Court, it is clear that no one saw the accused person kill the deceased. It therefore implies that the prosecution purely is relying on circumstantial evidence to prove its case.
27. It is trite law that before a court can draw an adverse inference from circumstantial evidence that the accused is guilty, it must also satisfy itself that there are no other co-existing circumstances which could weaken or destroy the inference of guilt. [see *Sawe vs Republic* [2003] KLR 364].
28. It is also settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests namely: the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.[see *Teper vs Republic* [1952] ALL ER 480 and *Musoke vs Republic* [1958] EA 715].
29. In respect to this case, the prosecution through the investigating officer urged that he collected blood from the scene together with the victims’ shirt and trouser. Later, Chief IP Gitau called and informed him that a suspect had been arrested in connection with the murder in question. He was further informed that the suspect had been arrested with a blood stained knife. In carrying out his



investigations, he forwarded the panga, shirt, trouser and the blood samples collected from the soil to the government chemist for analysis. In the same breadth, the government chemist testified that from his analysis, he found that he did not receive blood samples from the deceased to connect with the blood in the items forwarded for analysis. Further, that the blood samples marked F1 and F2 obtained from the accused did not match the blood sample found in any of the two samples.

30. Undeterred, the prosecution urged that noting that the accused person herein had stabbed PW2, the alleged assailant was equally responsible for the murder of the deceased herein. The foregoing notwithstanding, the identity of the alleged assailant being referred to was never proved. The same remained unclear. On the other hand, the accused herein while denying committing the offence argued that it was true that he fought with PW2 over a woman and indeed, he stabbed him.
31. In my view, it remained unknown the identity of the person who killed the deceased herein. The prosecution relied on the assumption that the blood stains found in the recovered knife was from the deceased. The fact that blood from the alleged t-shirt and trouser allegedly worn by the deceased on the material day matched with blood from the knife does not conclusively isolate blood from pw2 who was admittedly stabbed by the accused on the same day. It would have sufficed if blood was drawn from the deceased for comparison.
32. Nobody identified the alleged t-shirt and long trouser as belonging to the deceased. All that pw8 found out was human blood of unknown person. Noting that the prosecution has failed to prove that the accused person caused the unlawful act that led to the death of the deceased, it is my view that determining malice aforethought would be akin to an academic exercise.
33. In the end, I find and hold that the prosecution failed to shift the burden by proving that the accused herein caused the death of the deceased as the elements of the offence of murder against the accused person were not proved to the required standard.
34. Accordingly, I find the accused person is not guilty as charged and therefore set him free unless lawfully held.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 7<sup>TH</sup> DAY OF MAY 2025**

**J. N. ONYIEGO**

**JUDGE**

