



**Republic v Macharia (Criminal Case E032 of 2021)
[2025] KEHC 9294 (KLR) (23 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE E032 OF 2021**

**MW MUIGAI, J
JUNE 23, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

STANLEY MACHARIA ACCUSED

JUDGMENT

1. The accused herein Stanley Macharia Mwangi was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the offence being that the accused on the 6th day of October, 2021 at Lemma House in phase 2 area in Mlolongo Township in Athi River Sub-County within Machakos County murdered CK.
3. The Mental Assessment Report dated 1st December, 2021 and filed in court on 2nd December, 2021 from Machakos Hospital, Level 5 Referral Facility found the accused person fit to plead.
4. The accused person took plea on 16th December 2021 whereof after the charges were read out to him in a language that he understood he said “Si kweli” translated to Plea of Not Guilty which was entered.
5. The accused was granted bond Ksh 700,000/- with 1 surety. The Defense confirmed that the ODPP served the Witness statements and Documentary exhibits.

Hearing

6. The State relied on both direct and indirect evidence to support the above charge. The State availed seven witnesses and documentary exhibits in support of their case whose testimonies are as follows:
 1. PW1 KM – He testified that on 6th October, 2021 at 9:30pm he was in his house at Mlolongo Phase 2 studying, when he heard his brother, the deceased knock the door. He did not answer,



he heard him ask who had put the rubbish and no one responded. The deceased was outside their house but inside the Plot. He heard a loud noise 'Woi! Amemdunga kisu!' He ran out and he saw 'Mrefu' the Accused person he did not know his names except this nickname. Mrefu held a torch and a knife. He asked him 'Mrefu kwa nini umefanya hivi?' The Accused almost stabbed him and he ducked and screamed to the neighbours for help.

2. The neighbours came to the scene and included friends Michael, Mark and Auntie who lived in the same Plot. The Accused person went to the house and picked a panga and came towards him and he screamed and ran away They took the C to hospital; he was stabbed on the stomach and he was bleeding. They went to Immaculate hospital and were unsuccessful and went to Athi river Level 4 Hospital and were unsuccessful and went to Kitengela Saitoti hospital. He was taken in and they waited outside, After, a while the doctor came and told them that C was no more.
3. PW1 reported the matter at Mlolongo Police Station and they arrested the Accused person. The accused had washed the knife. They lived with the Accused in the same Plot for 2 months without issue/incident. On the 8th October, 2021 he was present during the post mortem examination, he identified the body of his brother before the autopsy.
4. In cross examination, Pw1 said deceased was his late brother and they lived in Hse no 16 in the Plot. He lived with his brother for 2 months and he saw the Accused person during that time. He admitted that in his statement he said he knew the Accused person for 5 years and in Court he knew him for 2 months.
5. The Accused person's house was near the gate No 10 and he had a motorbike and it was parked near the stairs to go to the toilet and it was not near where the rubbish was thrown. His late brother did not complain of rubbish brought to his house and he took it near the motor bike. The deceased and Accused person had a problem of rubbish being thrown near the house over a long time. On the fateful day there was a sack of rubbish outside their house. He was in the house he did not see the rubbish. PW1 stated it was not true that he came out with a knife when he found the Accused and his late brother struggling and he mistakenly stabbed his brother. He was taken to the cells and after interrogation he was released.
6. PW2 Michael Wanyama – He testified that on the 6th October, 2021 at around 9:00 p.m. he left his house in order to buy food stuffs for supper. He heard PW1 K screaming my brother, my brother! He asked him what happened he told him that 'Mrefu' stabbed his brother. He saw 'Mrefu' walking with a knife with blood. He followed PW1 to where his brother lay on the ground and they took him up. Brian came and with his motorbike, they put the deceased and took him to hospital. They went to Immaculate Hospital were referred to Mlolongo Hospital and then to Kitengela-Saitoti Hospital. The doctor confirmed C dead. He knew the Accused 'Mrefu' and C the only story was about rubbish.
7. In cross examination PW2 stated when he heard the noise he knew it was K and he saw C running away and after that he heard a 2nd scream and heard K hitting the iron sheets and he was running down and the Accused was behind him with a knife. The security lights were on and the knife was shining and C was hurt on the shoulder and on the right side.
8. PW3 Ruth Okaria - stated that on 6/10/2021 I can recall at 9 p.m. – 9.30 p.m. she was closing down her business when she heard the noise from iron sheets at the plot they live in. She went to the gate and heard someone crying and he said this man is beating me and that this man stabbed with a knife. She met with the victim, C and he told her that "Mrefu" had stabbed him . She went ahead and found "Mrefu" had a knife and a torch in the other hand. She identified



the knife that was produced in court and marked MFI-1 and she stated that it is the one the accused person had on that day. Mrefu is the one who is in Court today.

9. She went to her home and came back to close her business. When she came back she found Mrefu with a panga and he was chasing K at the time. K screamed that Mrefu stabbed his brother and Mark into the Plot and he asked K what happened and Mark & Mrefu said it is the 2 who stabbed him.
10. Mark insisted that Mrefu shows where he was stabbed and that did not happen and mark Left. K and Mark went to look for C and took him to hospital.
11. Upon cross examination, she said that she lived at Lema for 3 years. My house is No.21. C lived there at No. 16 and lived with K. The accused lived at No. 10 near the gate of the plot. K/C lived near the crossline and where dirty water was poured. The rubbish was thrown at near the toilet. The accused person had a motor bike which was packed near the stairs of the Plot. Mrefu took the sack of rubbish to the C/K house. She was inside the house and did not see it herself. She said that where the rubbish was taken it is written 'usitupe takataka'. I live near C. We have lived 3 years and they called me Auntie though they are not related by blood. She said they had electricity but did not have security lights and It is dark outside and at the gate.
12. She said she has a kiosk where she sells maharagwe and choma mahindi outside the gate Lema One – Mama Tracy. She goes there at 12.00 noon and closes at 9.30 p.m. On the day of the instant day she heard the voice of C from hearing it before she saw him and met him as she came in at the gate.
13. C did not fall outside the house. She had the pot and her child and could not help him. She went upto Mrefu at the corner as he came from C/K and he was alone. Mrefu had a torch/ phone and the knife and she talked with him, K was not there. She found K going outside the gate and Mrefu was following him and he had the panga. He had it in his hand and he had a torch and he had a big torch with a bladder. K ran out of the gate and Mrefu came out and Mark went to stop Mrefu. Mrefu told us that it is the minor K/C who stabbed him. He did not know show them the stab wound. C was bleeding profusely and had blood on his clothes. Mrefu came back and returned the panga and left. When the police came she was there but I did not come out they found Mrefu. I heard him come back. She did not witness the fight or stab of C.
14. She testified that on the 6th October, 2021 at around 9:00 p.m. she was closing her business, when she heard a commotion inside the plot. She went inside the plot and witnessed the deceased running and crying that the accused had stabbed him.

She saw the accused standing at the corner holding a knife. She inquired from him, what had happened and he claimed that C was the one who stabbed him.

She dropped her pot at her house, and went back to the gate. She saw the accused holding a panga and knife chasing PW1, who was shouting that the accused had stabbed his brother. It took the intervention of neighbors, who asked the accused to show where he was stabbed by two brothers, to no avail. The accused vanished towards the direction of Mlolongo town with the knife.
15. PW.4, EKA stated that C was his 1st son and on 6/10/2021 at 6 p.m he left him at work at Children Home Liberty opposite police station. He was a Barber and he gave me kshs.100/- and at 9 p.m. he found they had not come back. C and K lived in the plot and he heard people screaming and found that “Mrefu” – the accused person stabbed someone and it was during



curfew. At that point they took him to Saitoti. When he came from work at 9 a.m. and he was told that C died at 11 p.m. They did not allow him to leave work.

16. The Caretaker called him 9 p.m. at work and after 20 minutes K called me and said C was in a bad state. That was at 9.50 p.m. I got means to go to K and we met at Kitengela and they were told to report at Mlolongo police station. They did went to the plot. He said he knew Mrefu well as he lived where my children lived and had a motor bike and they did not have any problem.
17. Upon Cross – examination she paid rent for the 2 sons K and C; K was in Form IV. He said he did not witness any incident. He went with police officers and they identified the body of his son. The stab wound was on the front to back at the heart. When they went to record statement his son K was arrested and later released after 30 minutes. He did not go with the police officers to the scene at which time the suspect was at the police station. She said she knew Ruth Okanyi as a neighbour whom they respected but they are not related.
18. PW.5 DR. P.M. Ndegwa testified virtually and stated that on 8/10/2021 he performed a post mortem of CK in the presence of HS and KM both brothers to C and Cpl. John Mwiti DCI Mlolongo. The body was of make adult aged 23 years moderately built – 177 cm tall. It was his testimony that externally, the body was dehydrated and pale and bandaged wound on the left scapula chest 4x2 cm and blood was oozing from the penetrating stab wound easily. Perforated left lung through and through and the pericardium (sac that surrounds the heart) was perforate and left side haemorrhage (blood & bleeding) 2 litres. He concluded that the cause of death was exsanguination (bleeding) due to severe chest injuries due to penetrating sharp force trauma consistent with assault. He filled in the post mortem Report at Saitoti Kitengela Hospital and dated it 8/10/2021 the same day.
19. PW6 HS stated that CK was my brother – late brother. He stated that on 8/10/2021 he went to the hospital, he identified the body of his late brother and post mortem was conducted by the doctor and he said that the deceased died from the stab wound.
20. Upon Cross – examination he said that he saw the injuries on his late brother at the back left side.
21. PW. 7 - CPL. Mwiti John testified virtually and stated that in 2021 he was in Mlolongo OCI and on 6/10/2021 he was on duty with other officers on 24 hours Patrol/duty and a report was made of murder occurrence. The Reportee said they took him to hospital in Kitengela and he succumbed to his death. We proceeded to Kitengela Hospital with Reportee took us to the Hospital and to the scene. CKA succumbed to his death. The Reportee led them to Lemma estate Mlolongo Phase 2 and on arrival the gate was closed. They knocked severally at the gate and one Mark came opened the gate for them and KM led them to the house of one Stanley Mwangi Macharia as he identified him as Macharia Mrefu.
22. He contended that they interrogated the suspect who was fully dressed upon their arrival. They conducted a search and recovered a knife/kitchen knife which was positively identified by Pw1 K MA, the brother of deceased , Pw2 – Mark Wafula Lumbasi of Room 17 and PW.3- Ruth Okanyi who sells food at the estate
23. He testified that after recovery of the kitchen knife they took him to Mlolongo police station and booked him. The next day he filed a Misc. at Mavoko Law courts to get orders to detain the suspect at Mlolongo police station. He recorded statements from witnesses and arraigned him



in court. He identified and produced the knife that they recovered from the accused person's house.

24. In Cross – examination he said that he was the investigating officer in this matter and knew the gravity of charges against the accused person. He contends that through investigations were to be made before charging the accused person. He said that a report was made on 6/10/2021 by KM (PW.1) and that during investigations he discovered the accused person and the deceased lived in the same estate. The deceased was in House 16 and the Accused in House No.10. In the estate there was a dumping site for waste and it was not near the deceased house. The dumping site was at the place the accused placed the motor bike.
25. PW7 said that he recorded witness statements and the witness Mark Wafula and all witnesses who came to Court. He did not know what transpired. He interviewed them and they did not tell him that dumping was at the deceased house. He said that the deceased lived with his brother in the same house. During investigations he did not come across the fact that the accused person complained that dumping site to be marked properly. He got information from the witnesses that there was a problem. He said he did not see posters of dumping site. He went to the deceased's house, the disputed position of the dumping site.
26. It was his contention that led to the deceased's death was alleged dispute of the dumping site between the deceased and accused person. He was not aware that the accused person removed the trash and the deceased and his brother came out with a knife. It was contended that when Pw.1 tried to stab the accused person he tilted and he stabbed his own brother. He did not hear or know of the missed target. He was not aware the accused person came to report at the police station as 1st Reportee as victim in OB 78.
27. PW7 denied relying on what He was told by deceased's brother and Pw4 to press the charges. He was not aware that Pw.1, Pw3 and Pw.4 were relatives. He went to the accused person's house and recovered a knife which he suspected was the murder weapon; from the description given by the witnesses. He said he did not do an inventory and KM saw him recover the knife at the accused persons house. He denied being given the knife by KM.
28. It was his testimony that the incident took place at 9 p.m. and tenants were in the houses other than the witnesses he got an independent witness Mark Wafula was inside the estate. He said he found the accused person had cleared the scene, from his investigations the incident took place outside the house at the verandah. Mark Wafula saw the accused clear up the scene and recorded a statement. Pw7 did not contact the management of the estate. PW7 denied knowledge of a grudge between the deceased and his brother against the accused person because of the complaint the accused person made to management.
29. This Court delivered Ruling on Case to answer on 31/5/2024.

C - Defence Case.

30. The accused person was placed on his defence and he gave sworn evidence. The accused maintained that he did not murder the deceased. He gave a chronology of events that led to the death of the deceased.
31. The Accused person stated that he worked as a mason and he was arrested at Lema 1 estate-Mlolongo. He rented Room 10 opposite Room No1 at the gate.-entrance. There were 21 rooms and the Room Number 5 was demolished and it was towards the toilet. He denied committing the offence and agreed that he heard the evidence adduced in Court. K PW4 was his friend and ran a barber shop and he lived with the deceased and PW1 who are brothers.



32. On 4/10/2021, he woke up and went to check on his motor cycle which was packed by the stairs. That morning he found rubbish near the Gate.He called the Caretaker who put up a poster.
33. On 5 & 6/10/2021 The accused person maintained that he found rubbish poured at the site.Room 16 K and K lived together and he left the motorcycle at the Plot. On 6/10/2021 he worked and came home at 5 pm and it was raining and waited upto 9pm then got a vehicle to Mlolongo.He found electricity was off there was a blackout. He did not cook but bought milk, bread, bananas and githeri. When he got to the estate , he found someone smoking bhang. He went to where he left the motorcycle and found Michael Munyao PW2 K PW1 and they were together and he asked why they poured rubbish at the site.They spoke in Luhya and he told them he was reporting them to their Auntie PW3 and her husband they are related.He took the mobile phone to Room 21but PW3 was asleep.. Later he reported to PW3 and she spoke to them in Luhyaand she called them to Room 17Wcylyffe was asleep.
34. C and Michael came and accosted him and C called K Pw1 to bring a knife they struggled and he screamed and he promised to give them the motorbike.
35. The Accused was facing C, there were wet clothes and foodstuff poured and K came with a knife, C instead of taking the knife C told K to stab and he was stabbed in the back C staggered towards K. Michael Left him He ran to Masai Shop and went to Jared His cousin, C & Michael went towards Brian Masen Shop.
36. He left the scene and went to Mama Tracy asked where they went and then went to Mlolongo Police Station and reported and got OB78.He went home and he was to come the next day.that night 1.30 am 6 Police Officers, 2 from Kitengela and 4 from Mlolongo Police Stations. They searched his house he gave the knife and they went to K.He locked his house and was arrested and taken to the Police Station.
37. PW1 stabbed the deceased but his intention was to stab the accused person. He also stated that after the incident, PW1, PW2 and the deceased who had attacked him ran outside the gate leaving the accused alone. Thereafter he went to report and came back.
38. The accused denied that the knife belonged to him and when the Police Officers came, he showed them his knife but they left it there in his house.
39. The Accused and Prosecution filed written submissions each summarizing evidence on record. The Accused Person's Counsel evaluated the evidence and relied on High Court Criminal Case No 47 of 2014 Republic vs Martin Kyalo Muthiani Machakos High Court Hon Odunga J (as he then was) The Prosecution similarly evaluated the evidence and relied on Republic vs Daniel Musyoka Muasya vs Paul Mutua Muasya & Walter Otieno Ojwang High Court Mombasa high court Case Number 42 of 2009.

Analysis & Determination

40. I have carefully considered evidence on record and submissions and the issue for determination is whether the Accused person committed the offence of murder and caused death of the deceased or not. In criminal case the burden of proof solely rests with the Prosecution. In H.L(E)Woolmington vs. DPP [1935] A.C 462 pp. 481, Viscount Sankey L.C held that:-

“Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [the offence was committed by



him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

41. The standard of proof is proof beyond reasonable doubt. According to Lord Denning on what is proof beyond reasonable doubt in *Miller vs. Ministry of Pensions*, [1947] 2 ALL ER 372 stated that:-

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

42. The accused person is faced with the charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.

43. In *Republic vs. Mohammed Dadi Kokane & 7 Others* [2014] eKLR the elements of the offence of murder were listed by Hon. LJ M. Odero, as follows:-

- 1) The fact of the death of the deceased.
- 2) The cause of such death.
- 3) Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly
- 4) Proof that said unlawful act or omission was committed with malice aforethought.

The fact of the death of the deceased & The cause of such death.

44. PW.5 DR. P.M. Ndegwa testified that externally, the body was dehydrated and pale and bandaged wound on the left scapula chest 4x2 cm and blood was oozing from the penetrating stab wound easily. Perforated left lung through and through and the pericardium (sac that surrounds the heart) was perforate and left side haemorrhage (blood & bleeding) 2 litres.

He concluded that the cause of death was exsanguination (bleeding) due to severe chest injuries due to penetrating sharp force trauma consistent with assault. He filled in the post mortem Report at Saitoti Kitengela Hospital and dated it 8/10/2021 the same day.

Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly

45. The testimony of PW1 & PW3 place the Accused person at the scene. The Accused person as he gave sworn testimony admittedly, he was on the scene on the fateful day. PW2 saw Mrefu walking away with a knife. The Accused person contends it is PW1 who mistakenly stabbed deceased from the back. PW3 stated that night 6/10/2021, she heard someone crying on checking saw C who told her Auntie, that Mrefu stabbed him. She saw Mrefu he had a knife and a torch in the other hand. PW3 corroborated PW1 that Mrefu the Accused was at the scene that night, she saw with a knife and earlier that night the deceased C told her that Mrefu, the Accused person stabbed him.



46. If as alleged by the Accused person, that it is PW1 who stabbed his brother mistakenly at the back again the Doctor PW5 stated injuries were on the chest stab wound and shoulder and not at the back as the Accused person alleged.
47. Both PW1 PW2 PW3 & the Accused person himself all alluded to the dispute regarding pouring rubbish at the doorstep of PW1's house where he lived with his late brother the deceased and where the Accused person parked the motorbike.
48. The Accused person alluded to a scuffle where PW1 & PW2 & the deceased accosted him yet he did not raise the issue of the 3 fighting him and the deceased sending PW1 to bring a knife except that it is PW1 who stabbed his brother mistakenly.
49. I find the evidence by PW1 PW2 & PW3 placing the Accused person at the scene, that there was ongoing dispute over rubbish, and the Accused person had a knife which was produced as exhibit in Court leads to the logical and reasonable conclusion that the Accused stabbed the deceased with the knife and thereby caused his death.
50. The Accused person's version/defense that he was accosted no evidence direct or circumstantial was adduced by any other witness, he did not go for treatment or P3 form as he went to report to the Police Station and in the absence of any tangible and /or cogent evidence finds the defense not plausible in the circumstances.
51. The deceased's death was due to the Accused's act of commission.

Proof that said unlawful act or omission was committed with malice aforethought.

52. Section 206 of the [Penal Code](#) sets out the circumstances which constitute malice aforethought as follows:

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- a. An intention to caused death or to do grievous harm to any person whether such 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 such person is the person actually killed or not, although such knowledge is accomplished by indifference whether death or grievous harm is caused or not, or by a wish that it may be caused or not, or by a wish that it may not be caused.
- (c) An intention to commit a felony.
- (d) An intention by an act or omission to facilitate the flight or escape from custody of any person who attempt to commit a felony.

53. The Court of Appeal in *Nzuki vs. Republic* [1993] KLR 171 held that:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused;-

- i) The intention to cause death;



- ii) The intention to cause grievous bodily harm;
- iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed 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 a crime of murder. (See Hyman vs. Director of Public Prosecutions (1975)AC 55". (emphasis added).

54. This Court finds that from the circumstances surrounding the commission of the offence of murder by the Accused person to the deceased, there is no evidence of pre meditation, planning to kill or cause grievous harm , maim or intentionally going for the deceased with intention to harm or kill him, instead it is a dispute of laying rubbish at each other's doorstep and motorbike within the Plot, and Caretaker was called in to put Notices, despite this the problem persisted and altercation resulted unfortunately with dire consequences.
55. The Court is not satisfied that malice aforethought has been established in terms of Section 206 of the *Penal Code* despite that admission by the accused that he stabbed the deceased. A life has been lost and the accused has admitted having stabbed the deceased, but based on the evidence in totality, I am unable to find that the ingredients of murder especially mens rea pre meditation or intention with malice aforethought to cause grievous harm or kill the deceased have been proved.
56. Section 179 of the *Criminal Procedure Code* provides-
- (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.
 - (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

Disposition

54. In the premises, I reduce the charge of murder to manslaughter. The accused is acquitted of the charge of murder but convicted of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.

JUDGMENT DELIVERED DATED & SIGNED IN OPEN COURT MACAHKOS HIGH COURT VIRTUALLY ON 23/6/2025.

M.W.MUIGAI

JUDGE

