



**Republic v Amwoma (Criminal Case 24 of 2020)
[2025] KEHC 8646 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8646 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 24 OF 2020
JRA WANANDA, J
JUNE 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL ATAKO AMWOMA ACCUSED

JUDGMENT

1. This case reminds me of the quote, "most people have two emergency modes. Fight and Flight. But Conner always knew he had three. Fight, Flight, and Screw Up Royally.". This is a famous quote from the book "Unwind" by Neal Shusterman. The question is whether there really exists such third emergency mode as alleged?
2. The accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on 5/04/2020 at Bondeni village, Mwamba sub-location, in Lugari sub-County within Kakamega County, he murdered one Joseph Muchiri.
3. The accused is represented by Mr. Ngigi Mbugua Advocate, while for the State, its case was first handled by Ms. Okok, then Mr. Onjuro and finally, by Mr. Okaka.
4. From the record, the accused was first presented before Court on 16/04/2020 before Sewe J and he took plea on 23/04/2020. He denied the charge and a plea of not guilty was entered.
5. After further proceedings touching on various preliminary issues, including bail/bond, the hearing eventually commenced on 13/10/2021 before E. Ogola J who took the evidence of PW1 – PW7. Upon the Judge being transferred, I took over the matter and during taking of directions under Section 200(3) of the *Criminal Procedure Act*, the defence elected not to ask for recall of any witnesses and asked that the matter proceeds from where it stopped. Upon concurrence by the Prosecution, I then took the evidence of PW8 after which the prosecution closed its case.



6. I will now recount the testimony given by the respective witnesses.
7. PW1, Joseph Mabonga testified that the he was a caretaker of a house neighbouring the deceased and that he also knew the accused who used to come to stay with his uncle. He stated that on 4/4/2020 in the evening, the accused came to visit his (accused's) uncle and that they spent the night and, in the morning, (Sunday, 5/4/2020) the accused left for Majengo and returned at about 1.00 pm with a friend and they prepared food and ate. He stated that shortly thereafter, the deceased joined them and asked who the other person was upon which the accused answered that the house was his (accused's) uncle's and he therefore could do anything there. He stated that the deceased left but came back at around 7 pm with a rungu and a panga, that the accused and the deceased then began fighting and the accused took the panga from the deceased and cut the deceased thrice on the head killing him. He stated that he ran out and went and called one Jeremiah (PW2) and when they came back, they found the deceased lying down dead and the accused had already fled after closing the door, that (PW2) called neighbours and PW1 phoned his boss (the home owner) and informed him of the incident and the police came at around 8 pm and collected the body. He stated that he went to spend the night at a neighbour's place and in the morning, the police returned and broke the door to the house and found the panga inside. He identified the panga in Court. He stated that the accused returned later that morning upon which he was arrested and taken to Lumakanda Police Station, that he (PW1) accompanied them and wrote a Statement at the police station and he then identified the accused sitting in the dock in Court.
8. In cross-examination by Mr. Ngigi Mbugua, he stated that the home had 3 houses and he (PW1) used to live in the mabati one, and that the accused used to stay in his (PW1's) house (servant quarters) whenever he came to visit his uncle as the main house was locked. Regarding the friend that the deceased came with from Majengo, PW1 said his name was Kevo. He testified further that from his boss' house to where the deceased was, was about 200 metres. He stated that the deceased was noisy when he came back and for this reason, the said Kevo left because he said he did not like chaos. He stated that the accused escorted Kevo but when he (accused) returned, he was again accompanied by a different visitor whose name PW1 stated that he did not know. He stated that the deceased came back at around 7.00 pm, he appeared drunk and was shouting at the accused who, on his part, had no weapon and that the deceased was shouting that "huyu kijana hajaenda?" (this young man has not left yet?) and stated that he could kill somebody. PW1 reiterated that he saw the accused take the panga from the deceased and cut him on the head. Regarding the arrest of the accused, he stated that the accused came back on his own and also did not resist arrest.
9. PW2, Jeremiah Kamau, testified that the deceased was his uncle (his father's brother), that on 5/04/2020 he came back from work at around 4.00 pm and was relaxing with a friend when at around 7.00 pm, the deceased passed by and appeared drunk and entered his house but did not speak to them. He stated that when he went out to relieve himself around 7.30 pm, he saw the deceased pass by and he (PW2) went back to sleep. He stated that at around 8.30 pm, PW1 came over and told him that the deceased had been cut and they needed to take him to hospital upon which they went to the scene and found the deceased already dead and there was a lot of blood around him. He testified that the deceased had two head wounds and there was nobody else there, that he phoned a daughter of the deceased (PW6) and informed her of the incident and also phoned his (PW1's) brother and asked him to come over and he also called the police who came and took the body to the mortuary. He testified further that at that point, he saw a third wound on the deceased's head, and that he wrote a Statement at the police station. He stated that he did not know the accused well as he only used to see him around but he did not see him at the scene. In cross-examination, he stated that he and the deceased used to stay in the same compound and that their houses were about 20 metres apart and that the deceased used to stay alone. He testified that the deceased used to drink alcohol and that on that day, when he saw



him at around 7.00 pm, he was already drunk. He stated that when he went out to relieve himself at around 7.00 pm, the deceased was walking around and talking to himself.

10. PW3, Shaban Bukolwe, testified that the deceased was his neighbour in Lumakanda and the accused is his nephew. He stated that on 5/04/2020, his caretaker (PW1) called him at around 8.00 pm and told him that the accused had visited the home the previous day, that the deceased went to the home armed with a panga and a rungu and attacked the accused, chasing him from the home and upon which an argument ensued. He stated that he then phoned his uncle and gave him the information, the uncle went to the home to check and found that the deceased had been slashed by the accused. He added that he travelled to the home the following morning and met the Assistant Chief and some neighbours who told him that the body had been taken to the morgue, that he and the caretaker then went to report the matter at the Turbo Police Station, and later the police officers came to the home. He stated that at around 8.30-9.00, the accused returned, and was in panic and shock but did not tell PW3 what had transpired, and that the accused was then taken to the police station. He testified further that the police officers broke the door and found a panga inside, that he later went to the police station and recorded his Statement. He was then shown various photographs of the home and he identified the houses therein and also described the set-up of the home. He also pointed out a photograph of the inside of the mabati house showing a panga lying on the floor. He also identified the panga in Court said to be the murder weapon. In conclusion, he stated that the accused was a regular visitor at the home. In cross-examination by Mr. Ngigi Mbugua, he stated that prior to the incident, he had known the deceased for about 3 years, since 2017 when he (PW3) purchased the land to build his home, that the deceased was a “hustler” with no known work, that at one time, he attacked PW3’s foreman with a panga during the construction of PW3’s house. As for the accused, he stated that in 2020, he was on attachment as a teacher and was in college. He stated that when the accused resurfaced, he (PW3) asked him what had happened but he (accused) was in a kind of a shock. He, too, confirmed that the accused did not resist arrest. In re-examination, regarding the incident where the deceased allegedly attacked PW3’s foreman, he stated that he was not there and was only told about it.
11. PW4, Edwin Aluhaba Nashirobe, testified that he is the area Assistant Chief and that he knew the deceased who was a resident of the area and also the accused who was brought up in the area. He testified that on 5/04/2020 at about 10.00 pm, he received a phone-call from one Rajab Mukolwe Atako who is an uncle to the deceased informing him that the accused had cut the deceased in PW3’s compound and the deceased appeared dead, that the said Rajab was a brother to PW3. PW4 stated that he then, in turn, phoned the police and he went to the scene where he found the deceased lying in a pool of blood with a panga cut on his head on a spot between the servants’ quarters and the main house and by which time police officers had already arrived, that the caretaker (PW1) was also there and the body was taken to the morgue. He testified that he later heard that the deceased had been in the home during the day and wanted to know what the accused was doing in the home and that the caretaker (PW1) told him that the deceased came to the home to attack. PW4 stated that he knew the deceased’s habit of misbehaving and becoming rowdy whenever he was drunk but he had not received any reports of any conflict between the accused and the deceased prior to the incident. Mr. Ngigi Mbugua did not have any questions to ask in cross-examination.
12. PW5, Chief Constable Joshua Orende testified that he was the Officer Commanding Turbo Police Station at the time of the incident. He stated that on 5/04/2020 at about 8.15 pm, he received a phone call from the duty officer informing him of a report that someone had been killed, and that the information came from the Assistant Chief of the area concerned. He testified that he mobilized officers and went to the scene where they reached around 8.30 pm and found other police officers were already there and the body lying down sideways in a pool of blood at a spot between the main house and a mabati house. He stated that he was informed that the deceased was one Mzee Muchiri



and when he checked him, he realized that he knew him since he had been to his office previously. He testified that neighbours were also there, that the caretaker, upon interviewing him, narrated to PW5 what had transpired, that the caretaker told him that the deceased had on 4/04/2020, visited the home and then left only to return the following day at about 5.00 pm in the company of another person whom the caretaker did not know, that the deceased told the accused to leave the home and should not be there when the deceased returned. PW5 stated that he learnt that it is the deceased who had sold the parcel of land to PW3 and that is why he spoke the way he did. According to PW5, he learnt that the deceased returned at around 7.30 pm and picked a quarrel with the accused which turned tragic, and that the accused cut the deceased on the head several times using a panga then ran away from the scene. PW5 stated that he then arranged for the body to be taken to the mortuary, that the police officers also photographed the scene using their phones. He testified that he accompanied the body to the mortuary where they took photographs of the body, which photographs he then identified. He stated he also spoke with PW3 on phone on that night who then went to the station the following morning and recorded his Statement and they also revisited the scene that morning where he found the caretaker. He stated that the caretaker told him that after the incident, he ran away due to shock and left the door to his house unlocked but that when he returned, he found that the door had been locked with a padlock and that looking inside through the window, he could see a panga. PW5 stated that they broke the padlock and entered the house where they found drops of blood on the floor and the blood-stained panga, that this was in the mabati house which used to house him (caretaker). He then identified the photographs of the home which, he stated, were taken by his officers and he, too, pointed out the various houses and which photographs, he stated that he handed over to Criminal Investigations Department (CID) for processing. He also identified a panga in Court which she stated, was the one they found inside the mabati house. He reiterated that the caretaker told him that it is the accused who had killed the deceased but that it is the deceased who had attacked the accused with the panga. He stated that as they were still talking, the accused arrived, that he appeared normal and that PW5 pulled him aside and when he questioned him about the incident, the accused denied any knowledge of it and that he then had both the accused and the caretaker arrested and taken to the Lumakanda Police Station CID office. He testified further that when he returned to the office, he prepared post mortem Forms and also handed them over to the CID, together with blood samples that they had taken from the deceased, and also the panga, for forensic tests. In cross-examination, he stated that he recognized the deceased because he had been to his office twice, about 3 weeks before, complaining of a case of assault against his older brother.

13. PW6, Margaret Wairimu Mwangio, testified that she is a daughter of the deceased, that she attended the post mortem on 6/04/2020 at Kimbilio Mortuary and that the body had multiple cuts on the head and on the hands. In cross-examination, she agreed that the deceased used to take alcohol but stated that he was a peaceful man
14. PW7, Corporal Benjamin Some, stated that he is attached to the Department of Criminal Investigations (DCI) Lugari Police Station and he was the Investigating Officer in this case. He testified that on 6/04/2020 he was in the office when he received instructions from his Seniors to go and investigate a case of murder which had been reported to have occurred at a place called Mwamba, Bondeni area, and which had occurred on 5/04/2020 at around 7.30 pm when the accused person had visited the homestead of his uncle (PW3) where he picked a quarrel with a neighbour with whom a fight ensued. He stated that the deceased is believed to have been armed with a panga and appeared drunk, was cut on the head several times on the head by the accused and died instantly at the scene outside the servant's quarters near a mabati house and that the OCS Turbo Police Station (PW3) had visited the scene and taken the body to the mortuary. He stated that when he (PW7) visited the scene on 6/04/2020 at around 8.00 am, he found the owner of the home (PW3) and his caretaker (PW1) at



the scene, that on interrogation, PW1 told him that the accused visited on 4/04/2020 from Matunda and they stayed together at the servant's quarters, that on the morning of 5/04/2020, the accused went to visit his grandmother about 2 kms away and later returned with a friend, that immediately they arrived, they were followed by the deceased who wanted to know the other person whom the accused had come with, upon which a fight ensued and the accused snatched the panga from the deceased and cut him several times on the head. He added that according to PW1, the accused dropped the panga at the servants' quarters and locked the door from outside. PW7 testified that while they were still at the scene, the accused arrived at about 12.00 pm looking disturbed and surrendered to them upon which they arrested him and they broke the door to the servants' quarters and managed to retrieve the blood-stained panga which he then produced as Exhibit 1. He then stated that they later went to the mortuary after the post mortem had been done and they took photographs of the body which he also produced together with the relevant certificate as Exhibits 2(a)-(b) and Exhibit 2(f), respectively. In cross-examination, he stated that he could not tell the number of people who were at the scene when the incident occurred. He also stated that no forensic analysis was conducted on the panga to ascertain the identity of the person whose blood was thereon.

15. PW8, Dr John Kiberenge Wanambisi, testified that he had practiced as a doctor since 2015 having graduated in 2014 with a Bachelors Degree in Medicine and Surgery and was pursuing a Master's Degree. He testified that in the year 2020 he was an intern Medical Officer at the Kakamega County Hospital and he is the one who performed the post mortem on the body of the accused on 6/04/2020. Regarding the appearance of the body, he stated that the clothes worn by the deceased were soaked with blood, his apparent age was 65 years, and that the body had stayed in the fridge for about 1 day and had undergone the normal post mortem changes. On physical findings, he testified that the body had multiple cut wounds on the head, brain tissue was visible from the cracks on the skull, he had cut wounds on the left forearm just above the wrist attributed to defence marks and he must have been fighting back against an attack. On the head, he testified that it had deep cut wounds, visible cut wound on the occiput on the left side, deep cut on the frontal left side, and deep cut on the cervical region and all these regions had skull fractures exposing brain tissue. Regarding his opinion on the cause of death, he stated that it was the multiple cuts wounds on the head with severe injuries secondary to multiple cut wounds on the head. According to him, the most likely weapon was a sharp object. He then produced the Post Mortem Report as Exhibit 3.
16. By the Ruling delivered on 24/11/2023 after the Prosecution closed its case, this Court found the accused person to have a case to answer and placed him on his defence. In informing the Court on how the defence intended to conduct its case, I recorded Mr. Ngigi Mbugua to have addressed the Court as follows:

“We had intended to call 3 witnesses but we have noted that that the 3 had already testified for the State. We therefore make the election to keep quiet and leave the Court to render a decision.”
17. In view of the above election, I gave the parties leave to file written Submissions. However, both Mr. Ngigi Mbugua and Prosecution Counsel Mr. Okaka, stated that they would rely on their respective Submissions filed earlier in respect to the issue of case to answer.

Prosecution's Submissions

18. Prosecution Counsel Mr. Okaka, in his said Submissions in respect to the issue of case to answer, and which he has chosen to rely on herein as well, as aforesaid, had recounted the testimonies of the respective witnesses and cited Section 203 of the Penal Code on the definition of the offence of



“murder”. He submitted that the death of the deceased and the cause thereof death proved by the medical doctor (PW8). He submitted that it is clear from the evidence adduced that it was the accused who caused the death of the deceased, that the evidence against the accused is direct evidence as he is placed at the scene by PW1 who saw him cut the deceased using a panga, the accused was well known to PW1 and even though the incident occurred at night, PW1 was able to identify him and that identification was therefore by way of recognition which is the best form of identification. He urged further that PW8’s evidence was clear that the deceased did not die of natural causes. According to Counsel therefore, the unlawful act of the accused, that is assault, is what caused the death of the deceased.

19. On “malice aforethought”, he cited Section 206 of the [Criminal Procedure Code](#) and submitted that the accused had an intention of causing the death of the deceased, that PW1 testified that the deceased confronted the accused while armed with a panga and he appeared drunk, that the accused overpowered him and cut him at least 3 times on the head using the panga, that PW8 stated that the deceased died due to multiple cut wounds on the head and that the weapon that he used and the part of the body that he cut clearly show that he intended to cause the death of the deceased. He urged further that the accused used excessive force in restraining the deceased, even though it appears that the deceased was the aggressor, that the deceased succumbed to the injuries on the spot, and that the evidence of malice aforethought is therefore solid.

Defence Submissions

20. Mr. Ngigi Mbugiua, Counsel for the accused person, also recounted the testimonies of the witnesses and put emphasis on the alleged testimony of the deceased’s daughter (PW6) that the deceased liked drinking alcohol and that she was aware of a prior incident that the deceased had been involved in attacking someone. He then cited the case of *Republic v Kevin Aboki Onsom* [2009] eKLR which, he submitted, relied on the case of *Palmer v Republic* (1971) AC 814. He urged that when the deceased attempted to assault the accused, the latter shielded himself and was slightly injured on two fingers of his left hand and that he only snatched the panga because he reasonably believed that the deceased was actually going to kill him. He submitted further that the Investigating Officer (PW7), during cross-examination, stated that he had not conducted any forensic analysis on the panga found at the scene to confirm if the blood stains match that of the deceased and if the accused’s fingerprints were on the panga. According to him therefore, it was not conclusive evidence that the accused was handling the panga when the deceased was being struck. He then cited Section 203 of the [Penal Code](#) and submitted that the prosecution has failed to prove that the accused intended to cause the death of the deceased, that in fact, PW1 clearly stated that it was the deceased who approached the accused and instigated an altercation, and that he was armed and he was the one who tried to assault the accused. According to Counsel therefore, the accused only acted in self defence as would anyone in similar circumstances. He also pointed out that the Prosecution did not also account for the position of the deceased’s friend at the time of the incident.

Determination

21. Section 203 and 204 of the [Penal Code](#) under which the accused is charged provide for the offence of murder and the punishment for it. Under these provisions, the prosecution has a duty to prove, beyond reasonable doubt, that the accused, by an unlawful act or omission caused the death of the deceased through “malice aforethought”. The sections read as follows:

203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.



204. Any person who is convicted of murder shall be sentenced to death.
22. For the Court to determine that an accused person committed the offence of murder, the prosecution must therefore establish the following elements;
- (a) the death of the deceased,
 - (b) proof that the accused person(s) committed the unlawful act which resulted in the death of the deceased: and,
 - (c) malice aforethought.
23. The above being the ingredients of the charge of murder was reiterated by the Court of Appeal, in the case of *Roba Galma Wario v. Republic* [2015] eKLR, as follows:
- “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.”
24. In this case, the death of the deceased and cause thereof are not disputed. The deceased died instantly and from the post mortem performed by PW8, the cause of death was established to be “severe head injury due to multiple deep cut wounds on the head”.
25. On whether there is proof that the accused is the person who committed the unlawful act which resulted in the death, PW1 narrated that on 4/4/2020 in the evening, the accused came to visit his (accused’s) uncle’s home and that they spent the night and, in the morning, (Sunday, 5/4/2020) the accused left for Majengo and returned at about 1.00 pm with a friend and they prepared food and ate, that shortly thereafter, the deceased joined them and asked who the person who had come with the accused was, upon which the accused answered that the house was his (accused’s) uncle’s and he could therefore do anything there. PW1 narrated that the deceased left but came back at around 7.00 pm with a rungu and a panga and was accompanied with another person, that the accused and the deceased then began fighting and, in the process, the accused snatched the panga from the deceased and cut him thrice on the head killing him instantly. PW1 was the only alleged eye-witness who testified.
26. On his part, PW6, the doctor who performed the post mortem on the body of the deceased, as aforesaid, testified that the cause of death was “severe head injury due to multiple deep cut wounds on the head”. He testified that the body of the deceased had multiple cut wounds on the head, the brain tissue was visible from the cracks on the skull, there were cut wounds on the left forearm just above the wrist attributed to defence marks, and he must have been fighting back against an attack. He stated further that the head had deep cut wounds, visible cut wound on the occiput on the left side, deep cut on the frontal left side, and deep cut on the cervical region and all that these regions had skull fractures exposing brain tissue. These injuries are no doubt consistent with the three cuts that PW1 testified to have seen the accused inflict on the deceased before he succumbed.
27. I also take into account the accused person’s conduct after the incident. PW1 stated that after he saw that the accused had cut the deceased in the manner described above, he (PW1) ran off and went and called a neighbour (PW2) and when they came back, they found the deceased lying down dead and the accused had already fled after padlocking the door. The Investigating Officer (PW7) also testified that on the following morning, he and his team of police officers returned to the scene to conduct further investigations and that while they were still at the scene, the accused arrived at about 12.00 pm looking disturbed, shocked and in panic surrendered to them and they arrested him. PW3 also stated that when



the accused resurfaced, he (PW3) asked him what had happened but he (accused) was in a kind of a shock. It is true that the reason for accused person being in a state of shock was never explained or explored or canvassed and it is also true that falling into a state of shock is not in any way an indicator of guilt. In the circumstances of this case however, looking at it in conjunction with the testimony of PW1 that the accused is the person who cut the deceased with the panga, the fact that the deceased disappeared overnight and only resurfaced towards mid-day the following late morning, while in a visibly state of a trance, shock and panic is, in my view, a strong pointer of his mental realization of the magnitude of what he had done – killing a person. It is also curious that despite all the accusations directed towards him at the scene implicating him in the killing, the accused is not recorded to have at that point even protested his innocence at all. This again appears to be abnormal conduct for a person falsely accused of murder.

28. In view of the foregoing, my observation is that the evidence of PW1, although a single eye-witness account, was consistent and cogent, the sequence of events he gave was credible and plausible and was to some extent, also corroborated by the evidence of PW3 and PW7. The testimony given by PW1 was also not shaken or contradicted during cross-examination. The nature of the assault alleged by PW1 was also corroborated by the findings made by the medical doctor (PW8). It has also not been alleged that any other person, rather than the accused, could be the one who committed the offence. No other person has therefore been implicated. No allegation of mistaken identity of the accused has also been alleged and no different account from the one narrated by PW1 was also alleged. Although Mr. Ngigi Mbugua put much emphasis on the allegation that the deceased, when he confronted the accused, was accompanied with another person, I find it to be “much ado about nothing” as there was no allegation whatsoever, that such other person, even if he was really there, which is not even conclusive, played any role on the attack on the deceased.
29. In view of the above, it is my considered view that the evidence on record sufficiently establishes that the accused person is the one who committed the act that resulted in the death of the deceased.
30. The prosecution having proved the actus reus, the next issue is whether “malice aforethought” can be inferred from the actions of the accused person. This is because the offence of “murder” is only complete when “malice aforethought” is established if, as prescribed in Section 206 of the Penal Code, the evidence proves 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.”
31. In the case of Hyam v DPP {1974} AC the Court held inter alia that:

“Malice aforethought in the crime of murder is established by proof beyond reasonable doubt when during the act which led to the death of another the accused knew that it was highly probable that, that act would result in death or serious bodily harm.”



32. The Court of Appeal, in the case of *Bonaya Tutu Ipu & Another v Republic* [2015] eKLR, stated as follows:

“..... In the persuasive decision of *Chesakit v Uganda*, CR App No 95 of 2004, the Court of Appeal of Uganda stated that in determining a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person.”

33. Further, the Court of Appeal, in the case of *Morris Aluoch v Republic* [1997] eKLR), quoted *Rex v Tubere S/O Ochen* (1945) 12 EACA 63 that:

“If repeated blows inflicted the injury then malice aforethought could well be presumed but in this case we have to contend with one single blow which caused perforation of the intestine which led to internal bleeding which did not become apparent until the death of the deceased some four days late.

34. In this case, from the evidence tendered in Court, it is clear that the accused person cut the deceased multiple times, using a panga, and the areas of the body targeted or cut, included, inter alia, the head.

35. As pointed out above, every case must depend on its own facts. In this instant case, from the evidence of the caretaker of the home (PW1) where the incident occurred. it is clear that from the time that the accused came visiting at his uncle’s home, the deceased kept on harassing him and did not want him around. It is not clear what grudge the deceased had with the accused this time since the evidence suggests that the accused had been a frequent visitor to the home. However. the evidence suggests that the parcel of land in which the accused’s uncle built the home was either purchased from the family of the deceased or from the deceased himself. It appears that this may have been one reason why the deceased felt that he still retained some authority to determine who came visiting the home. I gather that the deceased was also irked by the fact that the accused even brought along visitors of his own to the home. Be that as it may, PW1’s testimony is that after some altercation between the deceased and the accused earlier in the day and whereof the deceased gave the accused and/or his visitor, an ultimatum to leave before he returned, the deceased came back in the evening apparently drunk and armed with a panga and a rungu. It is not clear whether he, in fact, made any attempts to attack the deceased but according to PW1, the two started fighting and the accused, in a bout of immense anger, of course fed up with the constant harassment from the deceased, dispossessed the deceased of the panga and instead, viciously slashed the deceased with the panga three times on the head killing him instantly.

36. I note that Counsel for the accused raised the defence of self-defence. In respect to the burden of proof relating to such, the Court of Appeal, in the case of *Benson Mbugua Kariuki v. Republic* [1979] eKLR, guided as follows:

“The correct direction which a judge should give himself and the assessors in a criminal case is that it is for the prosecution to prove that the accused is guilty, such proof being beyond reasonable doubt. There is no onus whatsoever on the accused of establishing his innocence; and if in respect of any matter; the evidence raises a reasonable doubt, then the benefit of that doubt must go to the accused. This applies also to matters of defence such as alibi, provocation, self defence or accident. It is for the prosecution to establish that an accused was present when the crime was committed, or that he was not provoked, or that he was not acting in self defence, or that whatever happened was not accidental; and the prosecution must discharge this burden beyond all reasonable doubt. An accused, whether challenging



the case put forward by the prosecution or raising matters in his own defence, assumes no onus in these respects; and if any reasonable doubt arises in respect of any matter, the prosecution has failed to discharge the burden which it must discharge.”

37. From the account given by various witnesses, the deceased was a known alcoholic in the village and he was also known to become rowdy and unruly when drunk and even violent on occasions. He was what one would refer to as a “village-bully”. It is true that it is the deceased who was the initial aggressor in the incident the subject of this case that eventually led to his death. After harassing the accused for two days, he eventually armed himself and confronted the accused with a panga and a rungu. Looking at that situation, one may understandably conclude that the accused was provoked by the deceased and acted in self-defence as his Counsel has argued. However, taking the whole circumstances in totality, my finding is that the element of “malice aforethought” is reasonably inferred from the conduct of the accused. From the evidence of PW1, the accused managed to snatch the panga away from the deceased. The accused, after dispossessing the deceased of the panga, then used the same panga to viciously attack the deceased. He aimed his blows at the head - such a sensitive and vulnerable area of the body and he clearly knew, or ought to have known, that cutting a human being on the head repeatedly with a sharp weapon such as a panga could lead to the death of the person or at the least, cause him grievous bodily harm. PW1 stated that the deceased was drunk when he returned armed with the panga and rungu. That the deceased was drunk was also corroborated by the testimony of PW2 who stated that he, too, saw the deceased around the same time pass by looking visibly drunk. This drunken state of the deceased may explain why the accused was able to easily dispossess him of the panga. In his state of drunkenness, it seems he was incapable of putting up a serious fight-back. Having already disposed the deceased of the panga, did the accused still have to cut him so viciously in the manner he did? Did he have to aim the head and even so, did he have to cut the deceased several times in the manner he did? What threat did the deceased still pose to the accused yet he had already disarmed the deceased of the panga? In the first place, did the accused really have to face-off with the deceased in a fight? What reason informed his decision to fight the deceased rather than flee from the deceased? Weighing all the above determinants, I form the view that it was the intention of the accused to cause maximum injuries to, or grievous harm on the deceased since inflicting of the repeated panga cuts was completely unnecessary and excessive use of force in the circumstances. There is even no evidence that the deceased had aimed the panga at the accused before the accused snatched it from him. I therefore do not agree that the accused acted in self-defence or that he was under any reasonable threat of attack.
38. Anyone who uses a lethal weapon and uses it to strike the head several times of another, as the accused did in this case, ought to know that the injuries inflicted out of that act are likely to cause the death of that person. The fact that the accused targeted the head of the deceased, a delicate part of the body, which when attacked in that manner, could easily lead to death, establishes that the accused had, at least at that point, premeditated his actions. To my mind, the above facts and conduct of the accused easily establish the existence of “malice aforethought” on his part.
39. In this case, I am clear in my mind that the accused committed the act that resulted in the death of the deceased and further, that there was “malice aforethought” in his actions. In these circumstances, I am satisfied that the prosecution has through the facts and evidence, proved the charge beyond reasonable doubt. The evidence remained credible, cogent and irresistible to point at the accused as the culprit.
40. For the above reasons, I find the accused person guilty of the charge of murder contrary to Section 203 of the [Penal Code](#) and as a consequence, convict him accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 20TH DAY OF JUNE 2025

.....



WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Accused present

Mr. Ngigi Mbugua for the Accused

Ms. Muriithi for the State

Court Assistant: Edward Lotieng

