



REPUBLIC OF KENYA



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**Republic v Barasa (Criminal Case 36 of 2019)
[2025] KEHC 8779 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8779 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE 36 OF 2019**

AC MRIMA, J

JUNE 20, 2025

BETWEEN

REPUBLIC STATE

AND

JAMES WAFULA BARASA ALIAS ARNOLD ACCUSED

JUDGMENT

1. James Wafula Barasa alias Arnold, the accused herein, was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars were that on 7th day of December 2019 at Weonia in Kiminini Sub County within Trans-Nzoia county murdered Zakayo Wanyonyi Soita (hereinafter referred to as ‘the deceased’).
2. The accused pleaded not guilty and he was tried. At the close of the prosecution’s case, a prima facie case was made out against the accused and he was placed on his defence thereby resulting to this judgment.

The Prosecution’s case:

3. The Prosecution called 7 witnesses in a bid to prove its case against the accused. Calvin Wanyonyi, a 14-year-old boy testified as PW1. He recalled that on 7th December 2019, he had gone to look after cows at his uncle Juma’s place. A girl named Nelly came to where she was, took the cow and led it to a farm owned by the accused which was planted with beans and the cow began to graze on the beans. PW1 was grazing 4 cows, Nelly took only one of them. The accused’s wife informed the accused of what had happened. The accused went to the farm and saw the cow, he returned to his home and entered into his house then came out with a panga and a file. He sharpened the panga and returned to the farm where he led the cow out of the farm and using the panga, he cut the cow on the head and the back. He then led the cow to his home and tied it at the compound.



4. PW1 further stated that the accused then chased after him and one Kevin. The two ran to their home and PW1 informed his grandfather, Mzee Zakayo, the deceased herein, of what had happened. The deceased was the owner of the cows. Hurriedly, the deceased went to the accused's home as PW1 and Kevin followed him. Other people followed the deceased to the home of the accused including the deceased's wife and PW1's grandmother one Florence. On arriving at the accused homestead, the deceased asked the accused of what had happened, but instead the accused picked up a hoe/jembe and hit the deceased on one of the shoulders. The accused then entered his house, but immediately the accused's father one Makuphake, locked the door from outside. Determined to get out, the accused came out of his house through a window armed with a panga as Kevin untied and drove the cow.
5. The accused then charged towards the deceased as Florence shielded the deceased. According to PW1, the accused said he had wanted the two of them, that is, the deceased and his wife, and that he was going to kill them and that nothing would happen to him. The accused then cut the deceased on the hand and he bled profusely for around 5 minutes before the deceased collapsed. PW1 and Kelvin administered first aid by tying tied the deceased's injured hand with a sweater as PW1's uncle one Juma rushed the deceased to hospital. PW1 clarified that his uncle Juma had arrived at the scene after the deceased had been hit with the jembe but before he was cut with a panga. He stated that there was another person by the name Wakhisi who also injured uncle Juma.
6. PW1 clarified that it was Juma who pulled away the deceased from the accused's home and as they left towards the deceased's home, one of the accused's sister, Joy, hurled stones to them. In the process, Juma was also injured. PW1 identified the jembe used to hit the deceased and affirmed that he personally witnessed the entire episode as it unfolded to the end. On cross-examination, PW1 stated that he was the deceased's grandson and that the accused was his uncle. He confirmed that the accused hit the deceased with the jembe on his right shoulder. It was PW1's evidence that the beans were planted on a farm belonging to the accused's father and the dispute was ignited by the cow that fed on the beans. He confirmed that his uncle Juma was also cut and he was the one who took the deceased to hospital. PW1 stated that the deceased did nothing to defend himself when the accused attacked him.
7. PW1's evidence was corroborated by that of Kelvin Wanyonyi Juma who testified as PW6. He was with his brother PW1 when the ordeal unfolded. He stated that he was 17 years old and that the deceased was also his grandfather. It was his evidence that on 7th December 2019, he was grazing cows with PW1 in the farm of his uncle Moses Juma [PW4] when two ladies came and hit their cows. As a consequence, they ran into the farm with beans. He claimed that the ladies forced the cows to graze on the beans. It was his evidence that by that time the accused's wife was near the field. She saw what happened. She called the accused. He emerged armed with a panga and a jembe and arrested one cow by tying it on a tree. He then cut it in the head and the back. The cow fell and he [PW6] rushed to inform the deceased.
8. The deceased came to the scene and upon asking what had happened, the accused, without answering, hit him with the jembe on the right shoulder and cut him in the other arm with a panga. The deceased fell down. He was bleeding. It was his evidence that the deceased was rushed to hospital but he died that night. He identified the accused in the dock and stated that he is his uncle. He also identified the jembe used to hit the deceased.
9. On cross-examination, he stated that the jembe and panga had no blood stains and had not seen any photographs of the injured cow. It was his evidence that Lina and Joy are the ones who caused the cows to graze on the beans for under twenty minutes. He stated that the two ladies were elderly to him and that it was PW1 who ran home to inform the deceased of what had happened.



10. It was his position that his Uncle Juma [PW4] was not at the scene when the incident happened. He claimed that it is not true that the deceased attacked the accused and it was Dennis who used a sweater to tie where the deceased had been injured.
11. Florence Nasike was PW2. She was the deceased's wife. She recalled that on 7th December 2019, PW1 and Kevin came home running stating that one of their cows had been cut by the accused. The deceased then hurriedly went to find out what had happened and she followed closely. She then followed the deceased shortly thereafter and that she was with the deceased when he was injured by the deceased. The accused had a jembe and a panga. She claimed that the accused did not even talk to the deceased, but attacked him outrightly. It was her position that when the deceased was hit with the jembe, he fell down. The accused then said that it was better for him to finish the deceased and that is when he attacked him with a panga. She stated that the neighbours took the deceased to the hospital. To PW2, there was no land dispute between their family and that of the accused. She identified the accused in the dock.
12. On cross-examination, it was her evidence that there was no fracas at the deceased's home. She stated that she had gone to the accused's home to peacefully find out what had happened, but were faced with hostility. PW2 confirmed that the accused hit the deceased on the ribs and the back with the jembe before he used a panga to further cut him.
13. Emma Wakhukwanga testified as PW3. She was the wife of one Moses Juma Wanyonyi who testified as PW4. She recalled that they lived within the neighbourhood and that the deceased was her grandfather. She stated that on 7th December 2019, she was called by her daughter with the information that the deceased's bull had been cut. PW3 rushed to the accused's home where she found a bull tied in the homestead having been cut on the head and at the back. She also saw the deceased holding his hand and on asking him of what had happened, the deceased told her that he had been cut by the accused using a jembe. PW3 then engaged the accused and forcefully disarmed him of the jembe after which the accused ran into his house and took the panga and came running towards the deceased. The deceased raised his hand to shield himself and the accused cut it so badly he bled profusely. That, she then used a sweater to administer first aid and organized to have the deceased taken to hospital. She stated that the homes of the accused and the deceased were next to each other and that the deceased was attacked in his homestead and that it was the accused who followed the deceased to his home while armed with the panga. PW3 also stated that the accused was her in-law and a close neighbour as well.
14. PW3 clarified that when the accused returned with a panga, the deceased was kneeling on the ground as he had already been injured by a jembe. PW3 identified the jembe used and the accused in the dock. On cross-examination, it was her evidence that the deceased told him that he had been cut with a jembe by the accused. She stated that her husband, PW4, was at work when the incident happened. She denied that he was at a funeral as her statement indicated.
15. Moses Juma Wanyonyi who was the husband of PW3 and a son of the deceased testified as PW4. He recalled that on 7th December 2019 at about 4pm, he was from a funeral of one of his clients. He then was working for One Acre Fund Organization. He came across people from his home's direction who told him 'pole'. Concerned, he rushed home but first passed by his father's home. He met the neighbours who told him of what had transpired. PW4 stated the he then went to his father's home to see him and found many people gathered. He saw his father lying down with a deep cut on the left hand and part of the skin was hanging. He was bleeding profusely. They managed to take him to hospital. He recalled seeing Jonathan Barasa, Bridgit Nakhumicha, Jam Wafula alias Arnold (the accused) Peter Khisa Barasa, the deceased among others, at the homesteads of the accused and the deceased.



16. PW4 also testified that he was met with hostility at the homestead of the accused. That, Bridgit [the accused's mother] and Peter Khisa attacked him and that Peter Khisa cut him with a panga on the head. As he rushed to his house, PW4 stated that the accused also hit him in the back with a stone. It was his case that as his father was rushed to the hospital, he proceeded to report the matter to the Police then went to hospital for treatment as well. He stated that upon arriving at the hospital, the nurses were on strike and took the deceased to Kiminini Cottage Hospital but he passed on at 11pm. PW4 also witnessed the post mortem examination of the deceased on 14th December 2019 where he confirmed the injuries on the deceased hands and chest.
17. On cross-examination, he stated that her wife [PW3] disarmed the accused of the jembe. It was his evidence that he was injured on the forehead and the ankle and had a P3 form to that end. PW4 claimed to have inherited his portion of land from his father the deceased. He denied there having been any transaction regarding the land. He agreed that he had been charged of assaulting Bridgit Nakhumicha and was convicted to one-year probation. He further stated that the issue at hand had nothing to do with his land and that the land did not belong to the father of Jonathan who is also his grandfather.
18. Dr. Alex Wanyonyi Barasa who conducted the post mortem examination on the body of the deceased testified as PW5. He was a Senior Medical Officer attached to Mount Elgon County Hospital having graduated from Moi University in the year 2014 with MBChB. He conducted the post mortem on 14th December 2019 after the body was identified by PW4 (Moses Juma) and Patrick Wakhungu. Externally, the deceased had bruised right forearm measuring 2cm x 2cm and injury to the left forearm measuring 16cm x 8cm. Internally, a cut of forearm was confirmed. It was deep and, in his opinion, the cause of death was massive external hemorrhage from cut from a sharp object from assault. He produced the Post Mortem Report in evidence.
19. On cross-examination, it was his testimony that the Post Mortem Report had no reference number. He stated that it was important to document every medical procedure and that the deceased's body had been embalmed but could not tell when that was done. He claimed that it could not be ruled out that the injury on the hand was a defence injury. He, however, agreed that post death injuries may occur during embalming.
20. No. 78491 PC Zaddock Wafula was the Investigating Officer. He stated that on 8th December 2019 as PW7. He stated that a murder case was reported to Kiminini Police Station by PW4 vide OB No. 2/08/12/2019 which case was later assigned to him for investigations. It was his evidence that he also found out that earlier on the 7th December 2019, PW4 had reported an assault at Kiminini Police Station vide OB No. 09/07/12/2019. PW7 visited the scene, took witness statements and visited the deceased where he confirmed that his left elbow had been chopped off. On 14th December 2019, he attended a post mortem of the deceased's body. PW7 testified that he recovered the murder weapon, a jembe, and produced it in evidence and subsequently arrested and charged the accused after conducting a mental assessment. He identified the accused in the dock and stated that he could not establish the motive for the attack.
21. On being cross-examined, PW7 stated that there were no photos that were taken. It was his evidence that the cut bull is not in Court but did not charge him with maiming the cow. It was his evidence that he recovered the jembe used but did not take it for forensic examination because there were three other eye-witnesses who confirmed the attack.
22. It was on the above evidence that the accused was placed on his defence where he gave a sworn defence.



The Defence:

23. The accused testified that on 7th December 2019, he had gone to the market when he was called from home and told that the deceased's family had invaded their home and that the deceased, who was his uncle, was armed with a spear and that PW4 had a panga. He immediately tried to reach the police and the Chief in vain. He then walked home and on approaching, he heard a commotion. He found PW4 to have attacked his parents. On seeing him, PW4 charged towards him with the panga where they wrestled and fought. He claimed that there were so many people in the house and there was fighting all over.
24. It was his further evidence that it was PW4 who cut the deceased, who was his father, since there had been a long-standing land dispute between their family and his uncle's. He claimed the PW4 irregularly registered the land in his name. He testified that PW4 had been charged in Kitale Chief Magistrates Court Criminal Case No. 6214 of 1029 for assaulting the deceased. He produced the charge sheet as an exhibit. He further stated that PW4 wanted the land so that he could disinherit them and this case was aimed at intimidating him so that he could not pursue the land case. He denied killing the deceased. He stated that when the incident occurred many people had gathered. He referred to a Probation Officer's Report which indicated that PW4 had assaulted his father and also produced the Bond to attend Court for Bridgit Nakhumicha, her mother, related to PW4, in support of PW4's ill intentions in the family. He further produced the official search of the land Saboti/Sikhendu/Block 4/49 dated 27th November 2013 which indicated that PW4 was the registered as the owner thereby confirming fraud and disinheriting all others. It was his evidence that when the deceased was killed, his family attacked his family and had to run away.
25. On cross-examination, the accused admitted that PW4 was registered as owner on 27th July 2007 and that the incident occurred in 2019. He conceded that PW4 had owned it for 12 years. He stated that by 2007 he was 13 years old and cannot tell in what circumstances the land was registered in PW4's name. It was his evidence that when the incident took place, he was in the market. He claimed to have sold his cow and had gone to collect the balance of the sale price. He stated that the receipt for the cow got burnt when PW4 attacked their home and evicted them. He also claimed that the prosecution witnesses who testified in Court were not truthful.
26. On re-examination, the accused stated that in the 2019, his parents and him used to live on the disputed land peacefully. However, PW4 used to tell them that they shall leave the land.
27. Jonathan Barasa Soita testified as one of the two of the accused's witnesses. He was DW1. He recalled that on 7th December 2019 while at home, his brother [the deceased] came home with his wife and children while armed with a spear and his wife had a stick while PW4 had a panga. The rest of the children were armed variously. It was his evidence that PW4 was his immediate neighbour and when the deceased came to his home, he demanded to kill him and his family due to land dispute. It was his testimony that the deceased was his brother and they would both inherit from their father. He claimed that the deceased and PW4 had fraudulently registered the land in their names. When he came home, he was told he was a squatter and they had to evict him. He claimed that PW4 had attacked him and cut him with a panga and that he reported the matter to the police and was issued with a P3 Form dated 9th December 2019 which he referred to in Court.
28. It was his further case that when the deceased and his accomplices attacked him, he fell down and that since there were so many attackers, he did not witness how the deceased died. He stated that the case against the accused is aimed at fixing him because of the land. He produced the Grant of Letters of Administration issued to him in Succession Cause No. 25 of 2013 The Estate of Jonathan Soita



deceased, who was his father in Court as well as the Kenya Gazette Notice No. 1894 dated 22nd March 2013 carried out in respect to Notice in Succession Cause No. 25 of 2103.

29. Upon cross-examination, he stated that his father died in 2001 and that he filed a Succession Cause in 2013 and that he agreed with all family members on the administration of the estate and they all took part in the succession cause. He also stated that his family was attacked by the deceased and his family. There were many people. He recalled the deceased armed with a spear and he wanted to pierce him. He evaded it and PW4 cut him with a jembe which he carried. He further stated that when he was cut, he fell unconscious. He did not recognize all the people at the scene and by the time he regained consciousness people had disappeared. He did not see the deceased when he woke up and did not know who killed him. He acknowledged that the accused was at home when the attackers had already arrived. He did not witness who injured him.
30. Bridgit Nakhumicha was the second witness to the accused. She testified as DW2. It was her evidence that on 7th December 2019, the deceased, his wife and children charged towards their family while armed. Upon asking them what was the issue, the deceased refused to discuss anything demanding that he sees PW4 and his son. As the deceased passed him, he hit her on the head. She fell down and recovered later. She reported to police later and went to hospital and produced a P3 Form. It was her evidence that PW4 was the one who assaulted her and that the accused was not at home when the attackers arrived. On cross-examination, she stated that the accused had left home in the morning of the fateful day. She claimed that she did not know if the accused had harvested his beans. It was her position that the family of the deceased had released their cows which ate the beans of the accused.
31. With the foregoing evidence, the accused closed his defence.

The submissions:

32. On the directions of this Court, both parties filed written submissions in support of their rival cases. The prosecution's submissions were dated 9th December 2024. It was its case that the elements that constitute murder were proved to the required standard in that the fact of death was proved when the deceased's body was identified and autopsy conducted by PW5. As regards the person that caused the death, it was its case that PW1 and PW6 were eye witnesses to the incident. Their evidence proved beyond reasonable doubt that the accused caused the death of the deceased. Lastly, on the aspect of malice aforethought, the prosecution submitted that the manner the deceased was murdered targeting main blood vessels proved that he intended and had knowledge that his actions would either cause death or grievous harm to the deceased.
33. The prosecution urged this Court to find the accused culpable as charged and to convict him accordingly.
34. The accused urged his case through written submissions dated 6th December 2024. It was his case that the element of actus reus was not established since there was contradictory evidence on where the accused was cut by the panga and jembe. Regarding the element of malice aforethought, it was submitted that it was not established since PW7, the investigating officer, said that he did not establish any motive why the deceased was attacked.
35. The accused submitted further that PW7 stated that there was no fracas, the accused decided to injure the deceased without any reason or provocation. However, in reference to the evidence of PW1, it was submitted that there was fracas and, in such instances, someone can get injured. It was his case that malice aforethought was not established to the required standard.



36. The accused, while relying on the case of Philip Nzaka Watu -vs- Republic (2016) eKLR, submitted that there were material contradictions on whether there was fracas or not all of which ought to be resolved in favour of the accused person.
37. The accused submitted that the case was not proved and urged that he be acquitted accordingly.

Analysis:

38. Having carefully considered the parties' cases, the submissions and the decisions referred to, the only issue for determination is whether the prosecution established the offence of murder to the required standard.
39. The offence of murder is provided for by section 203 of the *Penal Code* and its sentence in Section 204 of the *Penal Code* as follows;

203. Murder:

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

204. Punishment of murder:

Any person convicted of murder shall be sentenced to death.

40. In Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari -vs- Republic [2014] eKLR, the Court of Appeal reiterated the provision of Sections 203 and 204 of the *Penal Code* on the elements which must be proved beyond reasonable doubt in order to sustain the charge of murder. The Court delineated the elements as follows: -
 - (a) The death of the deceased and its cause;
 - (b) That the accused committed the unlawful act which caused the death of the deceased; and
 - (c) That the accused had malice aforethought.
41. An interrogation of the above elements follows.

The fact of death and its cause:

42. It is not in dispute that the deceased died. PW4 was with the deceased until he died. When he was injured, PW4 rushed to report the matter at the police station and thereafter followed him to hospital. As a result of Nurses' strike, he moved the deceased to Kiminini Cottage Hospital where he passed on at 11pm.
43. Upon the death of the deceased, it was again PW4 who witnessed the autopsy as conducted by PW5 who established that the deceased died as a result of external hemorrhage from cut radial and ulnar arteries with a sharp object from assault.



44. PW5 produced the Post Mortem Report in evidence and since it was challenged in any way, this Court finds it as conclusive proof of the fact of death and its cause. This Court is, therefore, satisfied that the first ingredient of the offence of murder was proved to the required standard.

Whether the accused committed the unlawful act which caused the death of the deceased:

45. There were three eye witnesses in this matter. They were PW1, PW2 and PW6. PW1 and PW6 narrated how they had gone to graze cows at PW4's land when one Nelly led one of the cows to graze on the accused's beans. They narrated the rest of the events with clarity and conviction. The sequence of events as elaborated by PW1 and PW6 were corroborated further by the evidence of PW2 who accompanied the deceased to the accused's place when they were informed by PW1 and PW6 that the accused had cut the deceased's cow. PW2 saw the accused hit the deceased with the jembe and cut him with a panga. When PW4 arrived at the scene, the deceased was already injured and was bleeding profusely from a wound on the hand.
46. The defense's bid to steer away the accused's culpability emanated from the claim that he was not at the scene. He claimed he had gone to collect his balance from a bull he sold and that he only arrived home when people had gathered and that his parents had been attacked by PW4. The accused's claim of alibi as at the point the deceased was cut in the hand was not corroborated. His evidence was also at variance with the evidence of his witnesses; DW1 and DW2 since none of them spoke to the fact the accused was not at the scene.
47. DW1's evidence did not exonerate the accused in any way whatsoever. He predominantly dwelt on the land dispute that was in existence which was did not add value to the question whether the accused did the act that caused the death of the deceased. DW1 only stated that there were many people at the scene and that he was cut in the hand and lost consciousness and when he regained consciousness, he did not see who had cut the deceased. Similarly, DW2 stated that there was fracas in the scene of crime. She was hit on the head and lost consciousness and recovered later.
48. It is concerning that although DW1 and DW2 claimed to have been at the scene at the same time when the incident ensued, their evidence was not mutually corroborative. They hid behind the land dispute, previous criminal record of PW4 and the fact that there were many people and adduced evidence to that end which did not in any way whatsoever contribute to the innocence of the accused. It is curious that DW1 and DW2 witnessed the events in dispute only to be 'unconscious' to speak to the cause of the deceased's death.
49. By juxtaposing the prosecution's evidence against the defence, there is no doubt whatsoever that the accused committed the unlawful act which caused the death of the deceased. The prosecution evidence was well corroborated and did not create any meaningful doubt to absolve the accused from committing the killing. Further, this Court observed the demeanors of the prosecution witnesses and found them truthful.
50. This Court, hence, answers the second issue in the affirmative.

Whether the accused had malice aforethought:

51. The offence of Murder is not complete without proof of the ingredient of 'malice aforethought'. Section 206 of the *Penal Code* defines 'malice aforethought' as follows: -

206. Malice aforethought shall be deemed to be established by evidence proving 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.

52. In *Joseph Kimani Njau vs Republic* (2014) eKLR, Court Appeal embellished the foregoing ingredients in the following fashion;

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).

53. From the evidence, the accused not only hit the deceased with a jembe on his right shoulder, but also cut him using a panga. The deceased, in a bid to shield his body, must have raised his left forearm. He ended up with a deep cut thereon measuring 16cm x 8cm that turned fatal due to excessive hemorrhage.

54. In *Lucy Mueni Mutava –vs- Republic* (2019) eKLR, the Court of Appeal, while remarking on malice aforethought observed thus;

.... All in all, we, like the trial Court are satisfied that the Appellant's actions and more specifically the vicious nature she attacked the deceased and the resulting injuries are indicative of malice aforethought on her part as defined under section 206 of the [Penal Code](#).

55. Deriving from the foregoing, the determination of the accused to finish off the deceased is discernible from the fact that when he was locked in his house, he jumped through the window and exclaimed that he wanted the deceased and his wife dead and nothing would happen to him. His intention is also discernible from the fact that he sharpened his panga and used it mercilessly on the cow and then turned it against the deceased. Even if it were to be said that he acted in the heat of passion, such loss of



control could not have been sustained as to transcend cutting cow, hitting the deceased with a jembe and eventually cutting the deceased using a panga. He ought to at some point regained control. The accused must have had it in mind to kill the deceased when an opportunity arose. It was a long-borne plan.

56. This Court finds no difficulty in making the assessment that the element of malice aforethought was established beyond reasonable doubt.
57. It is this Court finding that all the three ingredients of murder were established in this matter.

Disposition:

58. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that when I was transferred from Nairobi to Kitale, I continued handling matters from the Constitutional & Human Rights Division as well as those in Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. I was subsequently transferred back to Nairobi. Apologies galore.
59. Drawing from the foregoing, this Court finds and hold that the prosecution proved its case on the charge of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
60. The accused herein, James Wafula Barasa alias Arnold, is accordingly convicted of murder pursuant to Section 322(2) of the *Criminal Procedure Code*.
61. Orders accordingly.

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

A. C. MRIMA

JUDGE

Judgment delivered in open Court in the presence of:

Mr. Bikundo, Learned Counsel for the Accused.

Mr. Mukun, Learned Prosecutor instructed by the Director of Public Prosecutions for the State.

Chemosop/Duke – Court Assistants.

