



**Republic v Manyara (Criminal Case 66 of 2013)
[2025] KEHC 8703 (KLR) (20 June 2025) (Judgment)**

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**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 66 OF 2013
JRA WANANDA, J
JUNE 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ISAAC MUNGA MANYARA ACCUSED

JUDGMENT

1. As I stated in my Ruling on the issue of case to answer, it is regrettable and unacceptable that this case has been in Court since 2013. A period of 12 years now.
2. The Accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 15/07/2013, at Moi's Bridge trading centre, Moi's Bridge location in Eldoret West District, within Uasin Gishu County, jointly with others not before Court, he murdered one Samuel Gitau Njoroge.
3. The Accused was represented by Ms. Karuga Advocate while several successive Prosecution Counsels have handled the case on behalf of the State over the years, including Ms. Mumu, Ms. Mokuu, Mr. Chacha, Ms. Okok, Ms. Limo, and eventually, Mr. Okaka.
4. The accused pleaded not guilty and the matter proceeded to trial. The prosecution called 5 witnesses all who testified before Hon. O. Sewe J before she was transferred. The trial was then taken over by Hon. E. Ogola J, who however was also transferred before he could take the evidence of any witness. It is then that I took over the matter. As stated in my earlier Ruling, initially, the Prosecution intended to call more witnesses but abandoned that quest after what Ms. Okok described as challenges in tracing the witnesses. The Prosecution therefore closed its case on 12/10/2023. Only the accused therefore testified before me after being put on his defence.
5. I therefore did not see or hear of any of the Prosecution witnesses and I am only relying on the record. For avoidance of doubt however, I confirm that since the case was part-heard when I took it over,



directions were taken under Section 200(3) of the Criminal Procedure Act and pursuant thereto, the parties agreed, by consent, to proceed with the trial before me from where it stopped. There was therefore no demand to recall any witnesses or begin the case “de novo”.

6. I will now recount the testimonies given by the respective witnesses.
7. PW1, Corporal Simon Likonyi testified on 8/04/2019. Led by Prosecution Counsel Ms. Mumu, he stated that he was previously attached to the Uasin Gishu County and is a gazetted Crime Scenes Officer. He stated that he was on standby duties on 15/07/2013 when at around 2.00 am, he was raised by the duty controller and instructed to proceed to Moi’s Bridge where a murder had occurred, that he proceeded there and on arrival, he met a doctor and police officers from Moi’s Bridge Police Station and was shown a Bar where the murder had occurred known as “Farmer’s Bar and Restaurant” and where he found the body of the deceased lying down inside. He testified that when he examined the body which was lying in a pool of blood near the pool table, he noted that it was a male person and it had injuries on the right side of the ribs and the left arm and that when he walked through to the adjacent rooms, he noted that one had bloodstains on the floor and that he then took photographs of the scene. He then took the Court through the photographs, 8 in total, and stated that they were printed under his supervision and have never been retouched or interfered with in any way. He stated that he prepared and signed the Certificate dated 3/04/2014 which he then produced, together with the respective photographs and which were marked as Exhibits 1 and 2, respectively. Under cross-examination by Ms. Karuga, he stated that the body was still fresh but he did not find the murder weapon at the scene.
8. PW2, Dr. Soita Francis, testified on 17/10/2019. Led by Prosecution Counsel Ms. Mokuu, he stated that he was a Senior Medical Officer at Kimilili sub-County Hospital and held a Bachelors Degree in Medicine and Surgery. He then referred to the Medical Report prepared by one Dr. Odhiambo whom, he stated, was away on further studies and with whom he had previously worked in Nairobi and Kitale for a cumulative period aggregating to about 6-8 months in total, and with whose handwriting and signature he was familiar. There being no objection from Defence Counsel, he was allowed to testify on behalf of the said Dr. Odhiambo. He then stated that the body was found at Moi’s Bridge on 15/07/2013, the death occurred at about 1.30 am, and that the Post Mortem was conducted on 15/07/2013. He stated that the body was of a deceased of about 36 years old, it had a penetrating stab wound on the right side of the abdomen and a cut wound on the left arm, that internally, no significant changes was noted except for hemoperitoneum in the abdominal cavity and faecal matter and that Dr. Odhiambo came to the conclusion that the cause of death was severe internal haemorrhage in the abdominal cavity. He testified that Dr. Odhiambo filled and signed the Post Mortem Form which the witness then produced as Exhibit 3.
9. PW3, Stanley Mwangi Chege, also testified on 17/10/2019. He stated that in 2013 he was residing in Moi’s Bridge where he used to run the Bar wing of the establishment known as “Farmer’s Bar and Restaurant”. He recalled that on 15/07/2013 at 12.30 am, he was at the Restaurant and there was a young man by the name Munga in the club who had passed by the hotel from the club with another young man and a young lady whose names he did not know, while on their way out, that they boarded a boda boda (motorcycle taxi) but were followed closely by one Gitau who pushed the motor-cycle and the 3 fell down upon which a fight ensued among the people. He stated that the place was well lit, that the fight occurred outside the Bar, that security lights were on and that he could see them. He stated that Gitau was fighting Munga and the other young man using kicks and fists, that people gathered and as a result, he moved closer and noted that Munga was bleeding from his face and that Gitau was holding a knife, that they had moved to the kitchen of the Restaurant and the owner of the club was called and who came and suggested that Gitau be arrested and the two were then separated. He stated



that Munga was bleeding and attempts were made to assist him by way of first aid, that the club owner by the name Mwangi called the police and he advised Munga to go to hospital for treatment, that Gitau had been confined near the pool area but after some time, they were shocked to find him dead. He testified further that the police and also Gitau's relatives later came to the scene at around 1.00-2.00 am and the police officers took photographs of the scene. He stated that he had not seen Gitau's injuries and had not even noticed that he had been injured, and that he was wearing a red t-shirt and a jacket. He then identified Munga seated in the dock in Court and whom, he stated, he had known for 4 years before the incident and that he also knew Gitau.

10. In cross-examination, he testified that he did not know the reason of the quarrel between Gitau and Munga, that they started fighting outside then moved inside to the kitchen where Gitau picked the knife from, and that people gathered and tried to separate them. He stated that he did not see Gitau bleeding and he did not see Gitau stab Munga but Munga was bleeding and he was holding Gitau's hand that was holding the knife and that Gitau was disarmed and the two were then separated by the watchmen and Mwangi, and Gitau was then taken to the pool room where he was confined. He reiterated that he did not also see Munga stab Gitau and that it is Gitau he saw with the knife. In conclusion, he stated that he did not know where the knife went and that Gitau was well when he was escorted to the pool room. In re-examination, he stated that he did not see any injury on the Gitau's body even after the death but then stated that he did not see the body to confirm whether it had injuries and also that the deceased was wearing a t-shirt.
11. PW4, John Kariuki Kuria, too, testified on 17/10/2019. He stated that he is a welder and that on 15/07/2013 at about 12.40 am, he was at "Farmers" club as his employer had asked him to stand in for him at the club. He stated that the watchman told him that some people were fighting outside the club and when he (PW4) went to check, he found some young men fighting, and that since there were security lights, he was able to recognize Munga (accused) whom he identified seated in the dock in Court, and Gitau (deceased) and also a certain young lady who was standing aside. He testified further that Gitau and Munga continued fighting and moved into the kitchen, many people gathered and he saw Munga bleeding on the head and chest, that Gitau was taken to the pool room and he (PW4) personally escorted Munga outside and advised him to go to hospital. He stated that when he returned to the pool room, he found Gitau lying on his back, PW4's employer (Mwangi) also came, they tried calling Gitau and even touched him but he did not respond, that when he turned him over, he noted that he was bleeding. He stated further that Gitau was wearing a red t-shirt which he then identified in Court. He also stated that he did not check to see where the injury was, that his employer then called the police who came and took away Gitau's body after confirming that he was already dead. In cross-examination, he, too, stated that he did not see any injuries on Gitau, that by the time he reached the kitchen, the two had already been separated and Gitau had been taken to the pool room and a bench had been put against the door to restrain entry, that he did not see any knife and that the two fought using fists and kicks and that he escorted Munga out of the kitchen by which time Gitau had already been taken to the pool room. In conclusion, he stated that he does not know who injured Gitau and that both Gitau and Munga were regular customers at the club but this was the first time that he had seen them fighting.
12. PW5, Corporal Samson Muriithi, testified on 19/02/2020. Led by Prosecution Counsel Mr. Chacha, he stated that on 14/07/2013 he was on duty as crime standby with a colleague, they had parked their vehicle near a hotel within Moi's Bridge Trading Centre when at around 12.30 am, their attention was drawn to some noise from a nightclub within the Centre and at the same time, his colleague received a phone call from another police officer informing him that there was a fight at "Farmers" Nightclub and one person had died. He stated that they rushed there, which was not far, where they found a dead body lying in a pool of blood in a room where there was a pool table and the body had a stab wound



- on the right side of the body. He stated that the club owner (Samuel Mwangi) told them that the fight had been between the accused person and the deceased and that the accused was with another person by the name Esau who was still at large and the fight had taken place at the kitchen.
13. He testified further that they called the Scene of Crime personnel who came and took photographs of the body and the scene, and the body was later taken to the morgue and that the Post Mortem was conducted by one Dr. Odhiambo.
 14. He stated that he recorded witness statements, later the accused presented himself to the police station and was arrested, that the accused then led police officers to the home of the said Esau but who was not found there, and that the accused was later charged in Court with the offence of murder. He testified that from his investigations, the accused, together with another who is still at large caused the death of the deceased by stabbing him on his right abdomen. He then identified the accused seated in Court and stated that it is the accused who stabbed the deceased before running away. He stated further that, from his investigations, the deceased was drinking in the same bar when he was approached by the accused and asked to give out his ignition key for the motorbike and that was when the fight started. He stated that he was unable to recover the knife that was used as the accused had already run away with it by the time they arrived at the scene. Under cross-examination by Mr. Miyenda Advocate, who was holding brief for Ms. Karuga, he stated that he was the Investigating Officer in the case. Regarding the information that the fight involved the accused and Esau against the deceased and that it is the accused who stabbed the deceased, he stated that he got it from the proprietor of “Farmer’s” club, one Samuel Mwangi who is one of the witnesses in this case and who told him that he was present when the fight took place. He stated that Esau was yet to be arrested and that he could not tell whether the accused, the deceased and Esau were all drunk at the time of the incident. In re-examination, he testified that when the accused presented himself at the police station on 16/07/2013, he had a treatment chit indicating that he had been treated but PW4 stated that he could not confirm whether they were stab wounds. He also stated that the accused had some injury on the forehead and claimed to have been injured by the deceased, and that he had been treated in a clinic in Moi’s Bridge.
 15. By the Ruling delivered on 1/03/2024 after the Prosecution closed its case, this Court found the accused person to have a case to answer and placed him on his defence. The accused then testified before me on 17/09/2024 as DW1, by giving a sworn statement and he did not call any other witness.
 16. Led by Ms. Karuga, the accused (DW1) stated that on 14/7/2023, a Sunday, he went to “Farmer’s” club around 2.00 pm with a boda boda (motor-cycle taxi) operator by the name Esau using the latter’s motor-cycle, that they took alcohol in the bar until about 12.00-1.00 am when the accused told Esau that he wanted to go home so he asked Esau to go and collect the motor-cycle and the accused remained inside, that Esau went outside and then “flushed” him on phone so the accused went out to him. He stated that there were many people inside and outside as the building had a bar and a veranda, and also a hotel with a kitchen, and that the bar is at the back. He stated that when he reached the outside, he found Esau in an altercation with another person, that he asked them to stop the same and they did so and the other person returned inside the bar and that Esau told him that the other person (the deceased) had grabbed the motor-cycle key. He stated that he did not know the other person and he also did not know whether Esau knew him, that Esau then went inside the bar and as the accused was sitting in the hotel, the same person (deceased) appeared and stabbed the accused with a knife on his forehead and shoulder. He displayed the scars to the Court. He stated that one of the hotel workers rushed him (accused) outside on the stairs and gave him first aid as he was bleeding and he was then taken to a clinic nearby where he was treated and discharged and he went home at about 2.00 am. He stated further that in the morning, he went to the Kitale District Hospital where he was x-rayed and he later went to Moi’s Bridge Clinic where the police came and arrested him claiming that he and his



colleagues had murdered the deceased the night before. He testified that he gave the police the medical documents which had not been returned to him, that he learnt from the Charge Sheet that the name of the deceased was Gitau and that at some point, the police asked him to take them to Esau's house which he did, but they did not find him. He stated that after the first aid, he never saw Esau again and he heard that he had fled, and that about 3 years later, he heard that Esau had also died. He also reiterated that he never knew the deceased before the incident.

17. Under cross-examination by Mr. Okaka, he stated that he and Esau had been in several clubs on that afternoon and at night, before they eventually went to "Farmer's". He reiterated that he did not know the deceased earlier. He also denied that at "Farmer's", they, at any time, sat together with the deceased and also denied that during the altercation, he followed the deceased inside the club. He insisted that he only sat in the hotel to wait. He agreed that the owner, Mwangi, knew him well as he was a regular customer, that when seated he never told anyone about the motor-cycle key-snatching story and he agreed that he never witnessed the alleged key-snatching and that he never saw the deceased with the key. He conceded that in his Statement (which he was shown), he had stated that he followed the deceased inside the club and that Esau told him that he did not know where the key was. He also conceded that the key-snatching account does not appear in the Statement. He however insisted that he was not part of the altercation between the deceased and Esau and he did not know why the deceased attacked him. In re-examination, he pointed out that the Statement he was referred to by Mr. Okaka was a typed version and thus he could not confirm whether its contents tallied with what was in the original.
18. At this point, I asked Mr. Okaka to show the accused the handwritten version of his Statement upon which Mr. Okaka informed the Court that he was not in possession of the original.
19. Upon close of the Defence case, I gave the parties leave to file written Submissions. Pursuant thereto, Ms. Karuga filed her Submissions dated 24/09/2024. However, until the conclusion of this Judgment, I had not come across any Submissions filed by or on behalf of the Prosecution, whether in the physical Court file or in the Judiciary Case Tracking System (CTS) online portal. I therefore presume that the Prosecution will still be relying on its earlier Submissions filed in respect to the issue of case to answer, dated 22/01/2024.

Prosecution's Submissions

20. Prosecution Counsel Mr. Okaka, in his said Submissions in respect to the issue of case to answer, and which as aforesaid, I presume that he is still relying on herein as well, had cited Section 203 of the [Penal Code](#) and set out the ingredients of the charge of murder. He urged that the death of the deceased is not disputed, that PW1, PW2, PW4 and PW5 all saw the body of the deceased and PW1, PW2 and PW5 saw the injuries on the body, that the cause of death was proved by way of medical evidence adduced by PW2, that the accused was placed at the scene of the crime and is also well known by PW3 and PW4, and that they were properly identified as there was sufficient light emanating from the security lights at the scene. He submitted further that both PW3 and PW4 confirmed that the accused and the deceased were engaged in a fight, that according to PW4 and the deceased was armed with a knife, and that PW3 also testified that he saw the accused bleeding and holding the hand of the deceased who was holding a knife. Counsel submitted further that PW3 and PW4 testified that shortly after the accused and the deceased were separated, they went to the pool table room and found the deceased lying dead, that PW4 noted that the deceased was bleeding, and that when PW5 arrived, he noted that the deceased had a stab wound on the right side. He argued further that granted, none of the witnesses saw the accused stabbing the deceased, however, it may be safe to conclude that the accused did indeed stab the deceased during the fight, that the accused used excessive force and that it is that unlawful act of the accused – assault - that caused the death of the deceased. Counsel argued further that the question that needs to



be answered is whether the accused had malice aforethought as explained in Section 206 of the [Penal Code](#) and submitted that it is the act committed by the accused that led to the deceased's death and that it was intended to cause grievous harm to the deceased.

Defence Submissions

21. In respect to the ingredients to be proved in a charge of murder and the standard of proof, Ms. Karuga, Counsel for the accused person, cited the case of R.T. Bhatt versus Republic, the case of Republic versus Alex Mwanzia Mutangili, and also the case of Republic v Dorothy Awuor Juma and submitted that in this case, the death and the commission of an unlawful act is not disputed but the cause was not proved to the required standards. She urged that although the Post Mortem Report indicated that the cause of death was a stab wound, the murder weapon was not recovered or identified, and it is not clear what weapon was used to kill the deceased as no witnesses saw the accused with the murder weapon. Regarding the actus reus, she submitted that the Prosecution relied on the testimony of the witnesses that the accused killed the deceased yet they did not see the incident and that therefore, how the Prosecution came to this conclusion is questionable as none of the witnesses testified that they saw the accused person stabbing the deceased. She posed the following questions; could be that the deceased was stabbed by a third party from the crowd or during the separation of the fight? If indeed the accused had injured the deceased, why was the first aid being administered to the accused person only and not the deceased as well. She submitted that there was probability that the deceased was stabbed by someone else after the accused had been taken outside by PW3 and PW4 for medical attention, that the murder could have been committed by any another person since there were many people at the club considering the evidence of PW3 and PW4 that they left the deceased at the pool room in the company of a few others while they took the accused out of the club for the first aid.
22. According to Counsel, all that is seen in the Prosecution case is mere suspicion of the accused as none of the testimonies links the accused to the death of the deceased except for suspicion, which does not hold water. She cited the case of *Sawe v Republic* [2003] KLR 364 and submitted that the Prosecution witnesses testified that there was a fight but none testified that they actually saw the accused murder the deceased and that the actus reus has therefore not been established. According to her, the accused was maliciously charged. In regard to mens rea, Counsel submitted that there is no proof that the accused had premeditated to kill the deceased and neither is there any solid evidence that the accused indeed killed the deceased. Regarding motive, she cited the case of *Libambula vs Republic* [2003] and submitted that no motive to kill the deceased was established against the accused hence there is no proof of malice aforethought.
23. On circumstantial evidence, she submitted that for such evidence to form the basis for a conviction, the State must satisfy conditions designed to ensure it unerringly points to the accused and no other person as the perpetrator of the offence. She posed the question, if at all the murder was committed by the accused, how come no one heard noise or screams from the deceased? She also submitted that the testimony was that of witnesses who were intoxicated and could have had impaired judgment of the happenings. She cited the case of *Mwangi & Another vs Republic* [2021]. She also urged that the Prosecution established the time of death to be at 1.30 am yet the alleged fight as per the testimony of PW3 occurred at 12.40 am, the time that they escorted the accused out of the club. Counsel also recounted the defence testimony which, according to her, also exonerated the accused.

Determination

24. 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.

25. 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.

26. 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.”

27. In this case, the death of the deceased and cause thereof are not disputed. According to the Post Mortem Report dated 15/07/2013 produced by PW2, the deceased had a “penetrating stab wound on the right side of the abdomen” and also a “cut wound on the right side forearm at 1 cm in length”. The cause of death was then established to be “cardio-respiratory arrest” due to “severe internal and external haemorrhage with peritomotis”. This, PW3 described, in simpler terms, as “severe internal haemorrhage in the abdominal cavity”.

28. On whether there is proof that the accused is the person who committed the unlawful act which resulted in the death, there were two eye-witnesses to the fight, PW3 and PW4.

29. PW3, Stanley Mwangi Chege, testified that in 2013, he used to run the hotel section of the establishment in Moi’s Bridge known as “Farmer’s Bar and Restaurant”. He recalled that on 15/07/2013 at 12.30 am, he was at the hotel and the accused was in the club but had passed by the hotel with another young man and a young lady whose names he did not know, on their way out, that they boarded a boda boda (motorcycle taxi) but were followed closely by the deceased who then pushed the motor-cycle and the 3 fell down upon which a fight ensued outside the Bar among the group. He stated that the scene was well lit as the security lights were on and so he could see them. He stated that the deceased was fighting the accused and the other young man using kicks and fists, that people gathered and as a result, he moved closer and noted that the accused was bleeding from his face and the deceased was holding a knife, that they had moved to the kitchen of the hotel and the owner of the club was called and when he came, he suggested that the deceased be arrested and that the protagonists were then separated. He stated that the accused was bleeding and he was given first aid, that the club owner called the police and he advised the accused to go to hospital for treatment, that that the deceased had been confined in the pool area but after some time, they were shocked to find him dead in the same pool room. He stated that he had not seen the injuries suffered by the deceased and had not even noticed that he had been injured, although the deceased was wearing a t-shirt and a jacket. He also stated that he knew both the accused and the deceased before the incident. In cross-examination, he testified that he did not know the reason for the quarrel between the two, that they started fighting outside then moved inside to the kitchen where the deceased picked the knife from, and that people gathered and tried to separate them. He stated that he did not see the deceased bleeding and he did not see him stab the accused but the accused was bleeding and he was holding the deceased’s hand that was holding the



- knife and that the deceased was disarmed and the two were separated by the watchmen and the club owner and the deceased was then taken to the pool room where he was restrained and confined.
30. He reiterated that he did not see the accused stab the deceased and that it is in fact the deceased he saw with the knife. He also stated that he did not know where the knife went and that the deceased was still well when he was escorted to the pool room. In re-examination, he stated that he did not see any injury on the body of the deceased even after the death but then stated that he did not see the body to confirm whether it had injuries, and also that the deceased was wearing a t-shirt.
 31. PW4, John Kariuki Kuria, testified that on 15/07/2013 at about 12.40 am, he was at “Farmers” club as his employer had asked him to stand in for him at the club. He stated that the watchman told him that some people were fighting outside the club and when he (PW4) went to check, he found some young men fighting, and that since there were security lights, he was able to recognize the accused the deceased and also a certain young lady who was standing aside. He testified further that the deceased and the accused continued fighting and moved into the kitchen, many people gathered and he saw the accused bleeding on the head and chest, that the deceased was taken to the pool room and he (PW4) personally escorted the accused outside and advised him to go to hospital. He stated that when he returned to the pool room, he found the deceased lying on his back, PW4’s employer also came, they tried calling the deceased and even touched him but he did not respond, and when he turned him over, he noted that he was bleeding. He stated further that the deceased was wearing a t-shirt. He also stated that he did not check to see where the injury was. He also stated that he does not know who injured the deceased. In cross-examination, he stated that he did not see any injuries on the deceased, that by the time he reached the kitchen, the two had already been separated and the deceased had been taken to the pool room and a bench had been put against the door to restrain entry, that he did not see any knife and that the two fought using fists and kicks, and that he escorted the accused out of the kitchen by which time the deceased had already been taken to the pool room.
 32. From the above testimonies, what can be deduced is that the accused and the deceased were involved in a fight which started outside the club before moved into the hotel kitchen. According to both witnesses, the fight was by way of fists and kicks and initially, neither the deceased nor the accused were armed. According to PW3 however, at some point when the two reached the hotel kitchen, he saw the deceased holding a knife and the accused was bleeding from the forehead and the accused was holding the hand of the deceased which was holding the knife. According to PW3, the deceased picked the knife from the hotel kitchen. On his part, PW4 did not see any knife at all.
 33. What is therefore clear is that neither of the witnesses saw the accused with a knife, let alone seeing him stab the deceased. The testimonies also indicate that by the time that the two were separated, and the accused escorted outside and the deceased taken to the pool room, the deceased was still well and had no noticeable injury and he was not even bleeding. However, when the witnesses and other people returned to the pool room, they were surprised to find the deceased lying down dead in a pool of blood. None of the witnesses could explain what could have happened to the deceased between the time that he was separated from the fight and the time he was found dead. No one could also explain at what point, the deceased was stabbed and by whom. What could have happened is therefore still a mystery and there being no one who could explain, any theory on what happened can only be mere speculation.
 34. In his defence, the accused (DW1) stated that on the fateful day, he went to “Farmer’s” club around 2.00 pm with a boda boda operator by the name Esau using the latter’s motor-cycle, that they took alcohol in the bar until about 12.00-1.00 am when the accused told Esau that he wanted to go home so he asked Esau to go and collect the motor-cycle and the accused remained inside, that Esau went then “flushed” him on phone so the accused went out to check on him and when he reached the outside, he found Esau in an altercation with another person and he asked them to stop the commotion and



- they did so and the other person returned inside the bar and that Esau told him that the other person (the deceased) had grabbed the motor-cycle key. He stated that Esau then went inside the bar and that as the accused was sitting in the hotel waiting, the same person (deceased) appeared and stabbed the accused with a knife on his forehead and shoulder. He stated that one of the hotel workers rushed him (accused) outside on the stairs and gave him first aid as he was bleeding and he was then taken to a clinic nearby where he was treated and discharged and he went home at about 2.00 am.
35. There are various possibilities of what could have happened to the deceased. There is also the possibility that there were more than two people involved in the fight. This is because there is indication that there was a third person, one Esau, who also involved in the fight but who could not be traced for arrest after the incident and because, according to the witnesses, the fight took place in the presence of a crowd which eventually separated the protagonists. Could the deceased have been stabbed by the accused or by any third person outside the bar at the start of the fight or commotion, long before the fight moved into the hotel kitchen? Could he have been stabbed by the accused or by a third person in the kitchen during the fight or commotion? Could he have been stabbed at the point when he was being separated from the accused? Since there is indication that the deceased was seen holding a knife which PW3 suggested that the deceased picked from the kitchen, could the accused have also perhaps dispossessed or disarmed the deceased of the knife and stabbed the deceased instead?
36. All the above are possibilities although remote because the bleeding would have started immediately after the stabbing, and since there is indication that a crowd had gathered at the club and the hotel were full, at least some of the people would have noticed the knife, its holder, the person who stabbed the deceased, and also the bleeding. Somebody in the crowd would also have seen if the accused had managed to disarm or seize the knife from the deceased and stabbed the deceased instead. It is not probable that not even a single person noticed any of these acts. The fact that the witnesses state that the deceased was well when he was separated from the accused and even when he was escorted to the pool room and restrained in there, that he was still not even bleeding at that point, that he had no obvious or visible injury, and that did not complain of any injury or pain only complicates the matter and leaves many questions unanswered. It gets even more complicated because the witnesses state that when they returned to the pool room, I believe only a few minutes later, they were surprised to find the deceased lying down already dead, and in a pool of blood. At what point did all this bleeding start and at what point was the deceased therefore stabbed? Is it possible that despite the door to the pool room being reinforced with a bench to block entry into or exit out of the pool room, a third person still managed to sneak into the pool room, stabbed the deceased and fled without being noticed? Could there have been any other entry or exit point in the pool room? Unfortunately, none of the witnesses could answer all these glaring questions.
37. Will all the questions posed above remaining unanswered, it is clear that there are many gaps in the Prosecution case. As stated above, initially, the Prosecution intended to call more witnesses but abandoned that quest after what Ms. Okok described as challenges in tracing the witnesses. The Prosecution therefore closed its case without calling these other witnesses. Could it be that the Prosecution realized the existence of these gaps and it is these other witnesses whom it was hoped would come and fill in the gaps? I suspect so. Be that as it may, these other witnesses never testified and as such, the many questions raised above remained unanswered. With the above observations, it is clear that what remains in the Prosecution's case is mere suspicion that it is the accused who stabbed the deceased to death. In other words, the Prosecution case is hinged on "circumstantial evidence"
38. Regarding "circumstantial evidence", in the case of *Sawe –v- Republic* [2003] KLR 364, the Court of Appeal guided as follows:



- i. In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt.
 - ii. Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on.
 - iii. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.
39. Further, the Court of Appeal, in the case of P.O.N. v Republic [2019] eKLR reiterated the following caution in respect to a charge founded on “suspicion” that an accused person committed an offence:
- “..... no amount of evidence based on suspicion, no matter how strong may be a basis for a conviction. Suspicion, even reasonable suspicion is a legal standard of proof not known in our criminal law. Either a fact is proved beyond reasonable doubt or it is not”
40. In this case, the Prosecution, no doubt, proved that indeed the deceased died as a result of a stab wound to the left side of the abdomen which death was caused by an unlawful act. However, I am not convinced that the Prosecution proved beyond reasonable doubt that the accused is the person who in fact caused the death of the deceased by that act of stabbing.
41. I may also say that the accused in his defence, did not impress me as a truthful witness and his testimony was obviously full of lies. He denied that he was involved in the fight yet cogent and credible eye-witnesses accounts indicate otherwise. He also lied that he was simply seated in the hotel waiting when the deceased came from nowhere and stabbed him on the forehead when the testimonies demonstrated that he was stabbed by the deceased during the fight which started from outside the club and moved into the hotel kitchen. However, his lack of credibility cannot be interpreted to be a sign of guilt since nonetheless, the burden to prove its case beyond reasonable doubt never shifts from the Prosecution.
42. In view of the above, it is my considered view that although the testimonies adequately placed the accused at the scene of crime and proved that he was indeed involved in the fight with the deceased during which he (accused) was in fact stabbed by the deceased on the forehead, the evidence on record does not sufficiently establish that the accused person, in turn, also stabbed the deceased and that he is therefore the one who committed the act that resulted in the death of the deceased.
43. There are many loose ends in the Prosecution case and I find it unsafe to convict the accused on the basis of the insufficient evidence on record. Granted, the accused could as well have been the one who stabbed the deceased during the fight leading to the death. However, under criminal law, this is mere suspicion which must be moved to the next level of being proved beyond reasonable doubt. Again, under criminal law, the benefit of the doubts demonstrated herein must be interpreted in favour of the accused.
44. Having found that the prosecution has failed to prove the actus reus, the next issue of whether “malice aforethought” can be inferred from the actions of the accused person does not arise.

Final Orders

45. In the end, I rule and order as follows:
- i. I find the accused person not guilty of the charge of murder and I acquit him under Section 215 of the [Criminal Procedure Code](#).



- ii. Accordingly, unless otherwise lawfully held, the accused person is hereby set at liberty forthwith.

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

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Accused present

Ms. Kemboi h/b for Ms. Wanjiku Karuga for the Accused

Ms. Muriithi for the State

Court Assistant: Edwin Lotieng

