



REPUBLIC OF KENYA



**Republic v Njuguna (Criminal Case E011 of 2024)
[2025] KEHC 8596 (KLR) (Crim) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8596 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE E011 OF 2024**

KW KIARIE, J

JUNE 19, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID KAMAU NJUGUNA ACCUSED

JUDGMENT

1. David Kamau Njuguna is charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of the offence are that on the 27th day of May 2024, at Matura area, Magumu location, in South Kinangop Sub County of Nyandarua County, murdered B.K., a child aged two and a half years.
3. According to the prosecution, the accused found F.N.W. (PW3) where she was tethering a cow. She was in the company of the deceased and another child. He beat her into unconsciousness. When she regained consciousness, she was in the house of the accused. The accused defiled her, badly injured M.W. and killed the deceased.
4. The accused denied any involvement in the death of the deceased. He maintained that the children had come to his home for assistance. When the father of the deceased discovered the children in his house, he (the deceased's father) assaulted him.
5. The issues for determination are:
 - a. Whether the accused caused the death of the deceased; and if so;
 - b. Whether the offence of murder was proven.



6. F.N.W. (PW3) is a sixteen-year-old girl. She was left at home with M.W. and the deceased. Her evidence was that when she went to tether a cow, the accused went where she was while armed with a knife. She enquired what he was doing with it. He said that he had picked it up at Mwenda Andu. He suddenly held her and warned her not to make any noise; he threatened to kill her. He knocked her down, and she was in a state of shock. She found herself in his house where he raped her.
7. The details of what transpired during her defilement and the killing of the deceased are truly heart-wrenching. F.N.W. (PW3) discovered that even the children she was with were in the accused's house. He hit her with a brazier and with a frying pan. At the time, the other children were crying. He went and picked the children and hit them on the walls. He took her to the next room. The children stopped crying. This is when he defiled her. When she attempted to escape, he strangled her, but she bit him on the right hand. She went under the bed, but he pulled her out. He placed her on the bed and started smoking. He then started laughing and told her he had killed the deceased.
8. When M.W. (3 years old) started to cry, the accused went and took her to another room. She went quiet. The accused returned where she was and informed her that he was going to kill her at 5 a.m.
9. At about 10 p.m., she heard her brother enquiring from the accused if he had seen them. Her evidence was that the accused went out armed with a knife. She alerted her brother that the accused was going to kill them. The deceased was found dead.
10. Nicholas Kamwaro (PW1) testified that when he went to the accused's house in search of the children, the accused informed them that Kamau had gone with them on a bicycle. This is when he heard the voice of F.N.W. (PW3) tell him to beware, from the accused's house. The accused sprang on him and hit him on the chest. A struggle ensued, and the accused managed to escape. They found W.M., who was injured and B.K. (2 years old), who was already dead. Both the deceased and W.M. were in the house of the accused.
11. Dr. Lucy Nyachae performed a post-mortem on the body of the deceased. She observed the following:
 - a. severe pallor, central cyanosis, clotted blood around the nose and mouth.
 - b. Several facial bruises on the right cheek, supraorbital area, maxillary and on the left periorbital region.
 - c. Bruises on the midline scalp and the frontal aspect.
 - d. Right lung superior lobe contusion, bloody effusion, and left posterior contusion.
 - e. Subdural haemorrhage, skull fracturesHer opinion was that the cause of death was due to severe head injuries secondary to force trauma.
12. David Kamau Njuguna, the accused, said that F.N.W. (PW3) went to borrow his phone to call her boyfriend. He denied that he killed B.K.
13. The medical evidence corroborated the testimony of F.N.W. (PW3). Her P3 form confirmed not only that she had been defiled, but also indicated the injuries she sustained, including a fracture of the right forearm. Her evidence was additionally supported by her brother Nicholas Kamwaro (PW1).
14. The defence presented by the accused is unconvincing. The evidence provided by the prosecution proved beyond any reasonable doubt that he was the one who killed B.K.



15. For a conviction for the offence of murder to be founded on the evidence on record, the prosecution must prove the existence of malice aforethought. In Black’s Law Dictionary, 10th Edition, malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called “abandoned and malignant heart”), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).

16. Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:

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.

17. The killing of the deceased was unwarranted. It seemed as though the accused took pleasure in every action he committed. Consequently, the prosecution established the offence of murder to the required standards. I find him guilty of murder and convict him accordingly.

DELIVERED AND SIGNED AT NYANDARUA THIS 19TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE

