



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Waweru (Criminal Case 55 of 2023)  
[2025] KEHC 8484 (KLR) (Crim) (18 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYANDARUA  
CRIMINAL  
CRIMINAL CASE 55 OF 2023  
KW KIARIE, J  
JUNE 18, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SAMSON KARWENDO WAWERU ..... ACCUSED**

**JUDGMENT**

1. Samson Karwendo Waweru 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 30<sup>th</sup> day of September 2021, at Rwanyambo village, in Kinangop South Sub-County of Nyandarua County, murdered Benson Wanjau Waweru.
3. The deceased and the accused were siblings. The accused was weeding his kale while the deceased was supervising the ploughing of his adjacent portion. The deceased instructed the tractor driver to extend the ploughing to the portion with the kale. When the accused stopped the tractor driver from extending to his portion, the deceased, who was nearby, confronted him, and after an argument, the two started fighting. The deceased cut the accused on the face with a machete. The accused, in turn, used the hoe he had, and the deceased fell.
4. Samson Karwendo Waweru, the accused, in his defence, argued that when he prevented the tractor driver from extending into his portion, the deceased approached him and an argument ensued. The deceased then cut him with the machete he had, and when he (the accused) sensed danger, he used the hoe he had against the deceased.
5. The issues to be determined are:
  - a) Whether the accused acted in self-defence.



- b) Whether the accused can be held liable for the death of the deceased; and
- c) Whether the offence of murder was proven against any or all of the accused.
6. The prosecution and the defence depict the deceased as the aggressor. Joel Mwaura Moses (PW2), the tractor driver, testified that the deceased engaged his ploughing services and directed him where to plough. Before he had finished, the deceased ordered him to plough further than initially instructed, which included an area with some kale. The accused was weeding in that location. When the accused prevented him from ploughing where the kale was growing, the deceased approached the accused, armed with a machete. An argument broke out, and the witness observed them fighting. The deceased struck the accused on the forehead, prompting the accused to hit the deceased with a hoe, causing him to fall.
7. This was the gist of the accused's defence. The other prosecution witnesses went to the scene after the fact.
8. What emerges from the narration of the accused is self-defence. Section 17 of the *Penal Code* provides:
- Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.
9. The Common Law Principles on self-defence were articulated by the Court of Appeal in *R v McINNES*, 55 Cr. App. R. 551. Lord Morris, delivering the judgment of the Board, stated:
- “It is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, but may only do, what is reasonably necessary. But everything will depend upon the particular facts and circumstances. ....Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in immediate danger, he may have to avert the danger by some instant reaction. If the attack is over and no sort of peril remains, then the employment of force may be way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may be no longer any link with a necessity of defence. .... The defence of self-defence either succeeds so as to result in an acquittal, or it is disproved, in which case, as a defence, it is rejected. In a homicide case the circumstances may be such that it will become an issue as to whether there was provocation so that the verdict might be one of manslaughter. Any other possible issues will remain. If, in any case, the view is possible that the intent necessary to constitute the crime of murder was lacking, then the matter would be left to the jury.”
10. When the deceased cut the accused and attempted to strike again, the accused raised his injured hand, which placed him in immediate peril. His reaction was natural; he was defending himself. The defence of self-defence is available to the accused.
11. The deceased was the aggressor; although his death is regrettable, it cannot be blamed on the accused at all.
12. I find that the prosecution has not proven the offence of murder against the accused. Therefore, I acquit him and set him free unless he is lawfully held.



**DELIVERED AND SIGNED AT NYANDARUA THIS 18<sup>TH</sup> DAY OF JUNE 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

