



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Basweti (Criminal Case 2 of 2019)
[2025] KEHC 8575 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 2 OF 2019**

**PM MULWA, J
JUNE 16, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JARED ONDIEKI BASWETI ACCUSED

JUDGMENT

1. The accused Jared Ondieki Basweti faces a charge of murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the offense are that on the night of 24th and 25th day of December 2018, at Kagaa village, in Lari Sub-County within Kiambu County murdered Clinton Onyancha Ondieki.
2. The prosecution in discharging the burden of proof in consonant with Section 107 (1), 108 and 109 of the *Evidence Act* adduced evidence from 9 witnesses in support of their case.
3. Naomi Kerubo Ondieki (Pw1) the mother of the child and the wife of the accused testified that at about 6:30 pm on 23rd December 2018, she returned from the market with the deceased and learned from Mary Kagiri (Pw3) that the accused had allegedly stolen a torch and watch. The accused confronted the deceased, took him away, and later returned alone, claiming the deceased had escaped. The next day, John Kagiri (Pw2) and Pw3 brought the deceased back and instructed the accused not to punish him further. That despite Pw2 instructions, the accused locked the deceased in a bedroom and beat him for about an hour while the child screamed. Later, the deceased hands were tied with a rope, and he was denied food, only given drinking water. The accused padlocked the room overnight, claiming he wanted to prevent the deceased from escaping.
4. On 25th December 2018, the accused forced the deceased to lead them to where the stolen watch was, but the child collapsed multiple times from exhaustion and was assaulted again when the she tried to intervene. That after returning home, the deceased asked for water and expressed a need for hospital



- treatment. Together, with help from friends and Pw2, Pw1 said she took him to Githunguri Hospital, where he died shortly after arrival. That she reported the incident to the police and later found a broken walking stick (used in the assault) under the bed, which she handed over as evidence.
5. During cross-examination, Pw1 admitted that the deceased had a history of disciplinary issues and theft. She confirmed that the accused frequently assaulted the deceased, possibly due to resentment as he was not the deceased's biological father. She also acknowledged that the deceased had previously run away from home. In re-examination, Pw1 clarified that she saw the accused use a different stick during the assaults, not just the broken walking stick later recovered. She noted that the deceased hands were free when first taken to the bedroom but were tied later. That she recorded her statement with the police on 14th January 2019.
 6. Pw2 (Pastor Michael Kagiri) testified that Pw1 worked as a tea-plucker in his plantation and lived in his compound and was the mother of the deceased. The accused is the husband to Pw1 and they lived together. He testified that on the 23rd December 2018, his wife reported to him missing keys, which were later recovered from the deceased. When the accused went to pick milk, he was drunk but he was informed about the theft, he advised him against beating the child, citing past incidents where the deceased had been severely assaulted to the point of being unable to walk for weeks.
 7. On 24th December 2018, Pw2 together with Pw3 found the deceased on the road, claiming he had slept in the shamba without food. That the deceased led them to where he had allegedly hidden stolen items, though only a broken torch was recovered. That they then took the deceased home and again urged the parents to handle the matter gently and feed the child. Later, while watering his vegetables, he heard screams from the deceased but assumed the beating had stopped when it went silent. On 25th December 2018 early morning, Pw4 knocked at his door and informed him that Pw1 wanted to see him. At Pw1's house, he found Pw1 crying. That the deceased was on the bed. And the deceased faintly told him, "Guka, father has assaulted me severely." Pw1 and other women in the house arranged for the deceased to be taken to hospital using motorcycle. That he gave Pw1 Kshs. 1000/- for transport. That tragically, the deceased died from his injuries, and that he later assisted with funeral arrangements. Under cross-examination, he confirmed that the deceased had previously stolen from their home and had been brutally beaten by the accused. Despite this, he had advised the parents to discipline the child with patience.
 8. Pw3 Mary Wanjiku is wife to Pw2. She gave similar evidence to that of Pw2.
 9. Pw4 (Davine Kwamboka) aged 8 years, gave unsworn evidence. She said that on 23rd December 2018, she went to collect milk from Pw3's house but was told Pw1 should collect instead because the deceased had stolen a torch. The accused went and collected the milk. When the deceased and Pw1 returned home, the accused took the deceased away to "show him where the stolen items were," but only the accused returned. On 24th December 2018, the deceased was brought home by Pw2 and Pw3, who advised against punishing him. Ignoring this, the accused beat the deceased with a stick in a room, the deceased screamed, then fell silent. That night, deceased slept in the same room with her, and the father warned them not to open the door to prevent him from escaping. That the next morning, the deceased asked for water which he vomited after drinking. That the deceased asked to be taken to the hospital then Pw1 made arrangements and took him to the hospital. In cross examination, Pw4 stated that the deceased had a habit of taking things not belonging to him and that the accused used to punish him and he would run away from home because of fear of being punished.
 10. Pw5 - Dominic Okari, Vice Chairman, Nyumba Kumi testified that on 25th December 2018, he learned that the deceased had been hospitalized and later pronounced dead. Along with Nyangaresi, they assisted Pw1 in transporting the body to the mortuary. That, he reported the incident to Pw6. Upon



learning that the accused had fled, he joined a search party and located the accused at a shop in Rungure Centre, where they apprehended him and took him to Githunguri Police Station.

11. Pw6 - Samuel Mokaya, chairman of Nyumba Kumi of Kisii Tribesmen in the area and farmhand at Kagaa, testified that on 25th December 2018 at around 1:00 pm, Pw5 reported that the accused had assaulted his son who had died. He went to Githunguri Hospital and confirmed the report. Later, Pw5 informed him that they had arrested the accused to which he advised the them to take the accused to Githunguri Police Station.
12. PC Julius Githinji (Pw7) testified that on 26th December 2018 while at Lari Police Station, the OCS Lari informed him that the accused had been arrested. He proceeded to Githunguri Police Station where the accused was held. He said the post mortem was conducted on 11th January 2019 at Mukome.
13. Pw8 - Peter Muriuki Ndegwa the Pathologist who conducted the post mortem on the body of the deceased and produced the Post-Mortem form as P/Exhibit 2, stated that the cause of death was traumatic shock due to injuries due to blunt force trauma.
14. Pw9 - John Mutisya the Investigating Officer attached to DCI Lari testified that on 8th January 2019 he was assigned the matter and he took it over from PC Kethuyi and that the accused was in custody and post mortem had been conducted. That he visited the crime scene where he was shown by Pw1 where the assault occurred. At the scene, Pw1 showed him a broken walking stick which the accused used to punish the deceased. After investigations he caused accused to be charged with the present offence. He confirmed in cross-examination that the accused was arrested on 25th December 2018 by members of County Policing.
15. At the close of the prosecution's case, the court found that the accused had a case to answer. When placed on his defence the accused elected to give unsworn statement with no witnesses to call. He confirms that the deceased was his eldest son, and their relationship had been cordial before the incident. That on the evening of 23rd December 2018, he returned home to find the deceased and Pw1 absent. Upon inquiring from his other children if milk had been collected, he was informed that a parent was needed to collect it due to theft involving the deceased. That he went to collect the milk where he was told the deceased had broken in and stolen items, including wristwatches. When the deceased returned, he questioned him about the theft. The deceased showed him a hidden torch but then fled and did not return that night.
16. according to the accused on 24th December 2018, Pw2 and Pw3 took the deceased back home. The accused admitted to caning the deceased in an attempt to make him reveal where the stolen items were hidden, but the deceased refused to disclose anything. On 25th December 2018, he checked all his children and everyone appeared normal and he left for work. Later, he was informed by Pw3 that the deceased had fallen ill and been taken to the hospital. That he went to Githunguri Hospital, where he learned of the deceased's death. That he was subsequently arrested and taken to the police station.
17. The accused acknowledges disciplining the deceased with a cane but insists it was a normal parental correction, not an excessive or prolonged beating. He denied caning the deceased for two consecutive days, as alleged by the prosecution, and maintains that nothing unusual happened during the discipline. He argued that his actions were meant to correct the deceased's behavior, not harm him. In his closing statement, he requested the court to carefully examine the evidence and acquit him, allowing him to return to his family. He reiterates that the caning was not the cause of deceased death and that he had no intention of killing deceased. He seeks the court's mercy and a fair judgment based on the facts presented.



18. Mr. Mathenge, learned counsel for accused filed written submissions. Counsel began by reminding the court of the prosecution’s duty to prove its case beyond reasonable doubt. Counsel submitted that there was no malice aforethought in the murder by the accused and that the court should acquit the accused based on the fact that there is no sufficient evidence by the prosecution to sustain the charge against the accused.
19. In consideration of the evidence of the 9 prosecution witnesses and the accused’s unsworn statement and submissions filed, this court is to determine whether the ingredients of the offence of murder as provided for under Section 203 of the Penal Code Chapter 63 of the Laws of Kenya have been proved beyond reasonable doubt by the prosecution.
20. Section 203 of the Penal Code under which the accused person was charged provides as follows: -

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
21. The said provision creates elements of the offence of murder that must be proved by the prosecution beyond reasonable doubt as held in the case of Anthony Ndegwa Ngari v Republic [2014] eKLR to include:
 - i. That the deceased died;
 - ii. That the death was caused by an unlawful act or omission
 - iii. That the accused person directly or indirectly participated in the commission of the alleged offence; and
 - iv. That there was malice aforethought.
22. The fact of death of the deceased is not in dispute. Pw8 who performed the post mortem testified that the cause of death was traumatic shock due to injuries due to blunt force trauma.
23. The next question is whether the death was caused by an unlawful act or omission. Article 26 (1) of the Constitution guarantees every person the right to life. The postmortem report prepared by Pw8 revealed that the deceased’s cause of death was traumatic shock due to injuries due to blunt force trauma. In the circumstances, I am persuaded beyond reasonable doubt that the deceased died out of an unlawful act.
24. On the question of whether it was the accused person who caused the deceased’s unlawful death, Pw1 and Pw4 both testified that the accused assaulted the deceased. The accused also admitted caning the deceased using a cane. The broken walking stick (P/Exhibit 1A & 1B) corroborated the assault. Therefore, there is direct evidence linking the accused to the unlawful act that led to the death of the deceased.
25. Finally, on the question of whether there was malice aforethought on the part of the subject, Section 206 of the Penal Code defines ‘malice aforethought’ as follows:

“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.”

26. The Court of Appeal in the case of *Joseph Kimani Njau v R* (2014) eKLR, held as follows:

“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 subject;

- 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...”

27. In the instant case, malice aforethought can be inferred from the severity of the assault. The accused assaulted the deceased for about one hour with a stick, tying hands, denying food and the nature of injuries; multiple deep bruises, internal bleeding. Pw8 who carried out the postmortem on the deceased’s body testified that his examination revealed that the cause of death was traumatic shock due to injuries due to blunt force trauma. Forcing the weakened child to walk and beating him further when he collapsed, it is painfully clear that the accused’s conduct demonstrates reckless indifference to human life more so a child, satisfying the requirement for malice aforethought.
28. In the circumstances I am persuaded beyond reasonable doubt that the prosecution also proved this limb of the presence of malice aforethought on the part of the accused beyond reasonable doubt.
29. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of murder against the accused beyond reasonable doubt. I record and enter a finding of guilty against the accused as charged and convict him accordingly of murder contrary to section 203 of the [Penal Code](#).

JUDGMENT delivered, dated and signed at **KIAMBU**

This 16th day of **June** 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Magelo for The State

Mr. Mathenge for Accused



Accused – *present in court*

Court Assistant: *Julia*

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