



Republic v Kaloki (Criminal Case 2 of 2018) [2025] KEHC 7956 (KLR) (9 June 2025) (Judgment)

Neutral citation: [2025] KEHC 7956 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE 2 OF 2018
AN ONGERI, J
JUNE 9, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

FRED MUIYA KALOKI ACCUSED

JUDGMENT

1. The Accused Person in this case, Fred Muiya Kaloki is facing a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the charge were that on 17th February 2018 at Timbila village along Holili – Voi bypass in Taveta Sub-County within Taita Taveta County, the Accused Person murdered Halifa Kimathi Hassan.
3. The Accused Person pleaded not guilty to the charge. The prosecution called a total of ten (10) witnesses.
4. The prosecution evidence was that PW1 INNocent Daniel Masawe was at his home on 17th February 2018 when the deceased Halifa went and told him that someone had stolen his three rabbits.
5. The deceased told PW1 that his banda was broken and the rabbits were stolen. He said they followed the footprints on the path from the banda which was outside the deceased’s fence to the home of Mbindyo (PW3).
6. They found Mbindyo (PW3) had ran away. PW1 said Mbindyo took off his shoes and locked himself in the house. PW1 said they talked to the Aunty of Mbindyo and Mbindyo told them that they had taken the rabbits with Barnabas and they threw them in the forest.
7. PW1 said they went with Mbindyo to the home of Barnabas. They asked Mbindyo to show them where they had thrown the rabbits. They did not find Barnabas at his home. They were told he had gone to church.



8. When they were going to the home of the village elder, they met the Accused Person on a motorcycle. The Accused Person pulled a panga and cut the deceased.
9. PW1 said the deceased was cut on the forearm. He said the deceased asked the Accused Person why he wanted to kill him. He said the Accused Person then slashed him again on his neck/throat. The deceased fell on his back.
10. PW1 said he raised the alarm and the Accused Person chased him with a panga. He hid at the miraa place and later returned when many people had gathered.
11. PW1 said he went to the home of the Accused where they recovered the panga. The Accused Person presented himself to the police.
12. In cross examination, PW1 said Mbindyo confessed that he had stolen the rabbits with Barnabas.
13. PW1 also said the deceased was walking with a stick. He was holding Mbindyo with one hand and the stick with the other hand. He said the deceased did not hit the Accused person.
14. PW2 Mbindyo Denis said on 17th February 2018 at 9a.m, he woke up and his Aunt gave him clothes to wash. After that Barnabas asked him to go with him to graze on goats.
15. PW2 Barnabas left him with the goats and went to drink water. He returned with one rabbit and PW2 told him to return the rabbit where he had taken it from.
16. PW2 said Barnabas told him he had stolen the rabbit. He went and returned with money Kshs. 1,500/= and he told him he had stolen the money.
17. PW2 said Barnabas did not return. PW2 took the goats to take water and went back home. He learnt Barnabas had gone home, changed clothes and had gone to church.
18. After sometime the deceased came to PW2's home with another person carrying a pair of shoes. The deceased asked PW2 whose shoes they were and PW2 said they belonged to Barnabas. The 3 of them left home to go to the home of Barnabas.
19. At the home of Barnabas, they were told Barnabas had gone to church. The deceased told PW2 that he had stolen the rabbit and Kshs. 1,500/= He told PW2 that he was going to kill him in Tanzania.
20. PW2 said that while they were at the home of the deceased, the Accused Person went there and asked what was happening. The Accused Person told the deceased to report the matter to the police but the deceased refused.
21. The deceased told the Accused Person to proceed to the home of the village elder and he would follow him there.
22. The deceased and PW2 followed another route to the home of the village elder. At the tarmac road, they saw a mzee grazing goats. The deceased told the mzee that PW2 had stolen a rabbit and money. The mzee hit PW2 with the side of a panga.
23. The mzee said PW2 should have been slashed into pieces instead of being taken to the village elder's home.
24. The deceased said he was going to take PW2 to Tanzania. PW2 screamed and some 4 people came and told the deceased to take PW2 to the police station but he declined.
25. At that point the Accused Person came with a motor cycle. The deceased said he was also going to kill the Accused Person. PW2 said the deceased and the Accused Person exchanged words.



26. PW2 he saw the Accused Person removing a panga with which he slashed the deceased. PW2 said he left the scene with the Accused person on the motor cycle.
27. PW2 said they went to the home of the Accused Person. The Accused Person left the motor cycle outside and left. PW2 took the motor cycle inside. He said the Accused Person is his Uncle.
28. PW2 said after sometime police came and asked the whereabouts of the Accused Person.
29. In cross-examination, PW2 said the route they took was leading to Tanzania, not to the village elder or the police station.
30. PW3 Juma Kichikiro who is 67 years old and lives at Timbila said while grazing his goats, he saw the deceased, Mbindyo(PW2) and Innocent Daniel Masewe (PW1) passing by. They told PW3 that Mbindyo(PW2) had stolen the deceased's rabbit. They were going to the home of the village elder.
31. A few minutes later, PW3 heard screams. He went to the scene which was 200metres from the place he was grazing his goats and he saw the deceased lying down dead.
32. PW4 Fadhilai Nzuki Mustafa said the deceased was a son to his elder brother. He was called to the scene where he saw the body of the deceased.
33. PW5 Mulinge Mutungi who is a cousin to the deceased said he identified the body of the deceased at Taveta mortuary.
34. PW6 Joseph Iddi Savai was also called to the scene where he saw the body of the deceased. He said his son was married to the sister of the deceased.
35. PW7 Mwadadi Omar who is a Government Analyst was given a panga and trousers belonging to the Accused Person for DNA tests.
36. PW7 said the panga and trousers had blood samples that matched DNA profile from the blood samples of the deceased.
37. PW8 DR. Charity Kimathi conducted the post mortem on the body of the deceased.
38. She said the cause of death was severe head injury and cut wound on the throat.
39. PW9 Chief Inspector Josephine Bii investigated this case and charged the Accused Person with this offence.
40. PW10 Chief Inspector Richard Kirui took pictures at the scene which he produced as exhibits in this case.
41. The court ruled that the Accused Person had a case to answer. This court took over this case at this stage and after complying with Section 200 of the CPC, the Accused Person opted to continue from where the previous court had reached.
42. In his sworn testimony, the Accused Person said he stays at Timbila at Taita Taveta.
43. He said on 17th February 2018 he was at his shamba at Mukine Mbogon ward weeding vegetables. At 3p.m he finished the work and went home to assist his wife who had a small child.
44. While on the way home, his wife called him and told him that his nephew Denis Mbindyo (PW2) had gone to the home of the deceased Halifa and stole his rabbits.
45. The Accused Person said his wife told him that the deceased had taken away with him Denis Mbindyo (PW2).



46. The Accused Person said he took it upon himself to go to the home of the deceased to sort out the issue.
47. The Accused person said upon reaching the home of the deceased, he greeted the deceased person but the deceased did not answer. The Accused Person said his nephew Denis Mbindyo was there with a man the Accused Person did not know and also with the deceased.
48. The deceased told the Accused Person that Denis was a thief. That he had stolen 3 rabbits and Kshs. 1,500/= . The Accused Person said the deceased was angry. He said Denis was crying.
49. The Accused Person said that Denis denied that he stole the rabbits. He said that Barnabas is the one who stole the rabbits.
50. The Accused Person said he went to the home of the deceased to find a solution.
51. He said the deceased refused to take the deceased to the village elder or to the police station and said he would take him to Tanzania to kill him.
52. The Accused Person said the deceased told him to go and wait for him at the home of the village elder.
53. He said he waited until it was dark and the deceased did not turn up with his nephew.
54. The Accused Person said he followed them and found them at the by-pass on the way to Tanzania.
55. The Accused Person said the deceased attacked him with a panga as he shielded himself. The Accused Person said he had a panga and a jembe which he used to defend himself.
56. He said he took Denis after the fight and went to his home and he passed the bushes to go to the police station where he reported the matter and he was arrested.
57. The Accused Person said Denis (PW2) is an orphan he has been looking after. He said he is his late brother's child and a slow learner.
58. In cross-examination, the Accused Person said Denis Mbindyo (PW2) is a slow learner and his state of mind is not good.
59. The parties filed written submissions as follows;
60. The prosecution submitted that the accused, Fred Muya, is guilty of murdering Halifa Kimathi Hassan on February 17, 2018, in Timbila Village, Taita Taveta County.
61. That the prosecution presented eleven witnesses to establish its case, while the accused testified in his defence without calling additional witnesses.
62. That the burden of proof rests entirely on the prosecution, requiring proof beyond reasonable doubt, as affirmed in legal precedents such as Republic v Silas Magongo Onzere and Miller v Minister of Pensions.
63. The prosecution asserts that all elements of murder—death of the deceased, unlawful act by the accused, and malice aforethought—have been proved.
64. Further, that the post-mortem report by PW8 (Dr. Charity Kimathi) confirmed the deceased died from severe head injuries and a cut on the throat, supported by photographic evidence (P.ex.4a-r) and testimony from PW5 (Mulinge Mutungi).
65. That the Forensic analysis (PW7, Mwidadi Omar) matched the blood on the accused's trousers and panga to the deceased's (P.ex.6-7).



66. That the eyewitnesses (PW1, PW2, and PW3) testified that the accused attacked the deceased with a panga while on a motorbike, striking him three times—twice on the neck and once on the arm—despite the deceased’s plea, “You want to kill me?” The accused’s actions, including chasing PW2 with the panga, demonstrated intent.
67. The prosecution argued that the accused acted with malice aforethought (per Section 206 of the [Penal Code](#)), citing his deliberate use of a lethal weapon, lack of provocation, and premeditation, as he followed the deceased before the attack.
68. The defense’s claim of provocation is dismissed as an afterthought, unsupported by early evidence or cross-examination. Legal precedents (*Iraqia v Republic*, *Peter King’ori Mwangi v Republic*) emphasize that provocation requires a sudden loss of self-control, incompatible with the accused’s deliberate actions.
69. The prosecution concluded that the evidence overwhelmingly proves the guilt of the Accused person beyond reasonable doubt and urged the court to convict him accordingly.
70. The Learned defence counseil submitted that the accused, Fred Muiya Kaloki, was charged with the murder of Halifa Kimathi Hassan on the night of 17th February 2018 in Timbila Village, Taveta Sub-County.
71. That the prosecution called 11 witnesses and produced exhibits, while the accused testified as the sole defense witness.
72. That the key issue for determination is whether the prosecution has proved the charge of murder beyond reasonable doubt, as required by law.
73. That the offense of murder under Section 203 of the [Penal Code](#) requires proof of three essential elements: the death of the deceased and its cause, the accused’s unlawful act or omission leading to death, and the presence of malice aforethought.
74. That while it is undisputed that the deceased died from severe head injuries and a cut on the throat, and that the accused struck the deceased with a panga, the critical question is whether the prosecution established malice aforethought.
75. The defence counsel further submitted that the accused acted in self-defense and under provocation, not with premeditated intent.
76. That the accused had initially sought an amicable resolution to a dispute involving his foster son, Denis Mbindyo, and the deceased.
77. That after agreeing to settle the matter at the home of a local elder, the accused left, only to later find the deceased and a crowd assaulting the minor.
78. That a violent altercation ensued, during which the deceased attacked the accused with a rungu, prompting the accused to retaliate with the panga in self-defense.
79. The defence emphasized that the accused, a farmer, had the panga in his possession for lawful purposes and only used it when provoked.
80. The defence further relied on case law to argue that where provocation deprives an accused of self-control, the appropriate charge should be manslaughter, not murder.
81. That the prosecution has failed to demonstrate malice aforethought, as the accused’s actions were reactive rather than premeditated.



82. The defence urged the court to consider the circumstances—including the accused’s peaceful demeanor prior to the incident, the sudden nature of the altercation, and the lack of intent to kill—in concluding that this was a case of manslaughter, not murder.
83. In light of the evidence and legal principles, the defence submitted that the prosecution has not met the burden of proof required for a murder conviction and requests that the court acquit the accused of the charge or, alternatively, find him guilty of the lesser offense of manslaughter.
84. I have considered the evidence adduced by the prosecution in this case together with the defence by the Accused person and the submissions by both parties.
85. It is the duty of the prosecution to prove the guilt of the Accused Person to the required standard in criminal cases which is beyond reasonable doubt.
86. The issues for determination in this case are as follows:-
- i. Whether the prosecution proved that the Accused Person murdered the deceased.
 - ii. Whether the prosecution proved the elements of murder.
 - iii. Whether the Accused Person has a valid defence.
87. On the issue as to whether the prosecution proved the guilt of the Accused Person to the required standard, in a charge of murder, the prosecution is duty bound to prove the following elements.
- i. Death of the Deceased
The prosecution must establish that the person alleged to have been murdered is indeed dead. This is usually proved through Post-mortem reports (e.g., testimony of a pathologist, as seen in the case where PW8 confirmed the deceased died from severe head injuries and a cut throat) and eyewitness accounts (e.g., PW1, PW2, and PW3 in the case above).
 - ii. Unlawful Act or Omission Causing Death- The prosecution must prove that the accused person’s intentional act or reckless omission caused the death. The act must be unlawful, meaning it was not legally justified (e.g., not in self-defence, not accidental, and not legally excusable).
 - iii. Malice Aforethought- This is the mental element required for murder. Under Section 206 of the *Penal Code*, malice aforethought is established if any of the following is proved:
 - a. Intention to kill (e.g., deliberate slashing of the throat).
 - b. Intention to cause grievous bodily harm (e.g., striking with lethal force knowing it could cause death).
 - c. Knowledge that the act would likely cause death (e.g., attacking a vulnerable person with a deadly weapon).
 - d. Death occurring in the commission of a felony (e.g., killing during a robbery).
88. I find that the prosecution established all the essential elements of murder: the death of Halifa Kimathi Hassan, the unlawful act by the Accused Person causing that death, and the presence of malice aforethought.



89. The post-mortem report by PW8 (Dr. Charity Kimathi) confirmed that the deceased died from severe head injuries and a cut wound on the throat, corroborated by photographic evidence (P.ex.4a-r) and the testimony of PW5 (Mulinge Mutungi).
90. The Forensic analysis by PW7 (Mwadadi Omar) conclusively linked the blood on the Accused Person's panga and trousers to the deceased's DNA profile (P.ex.6-7).
91. The eyewitness accounts from PW1, PW2, and PW3 consistently described how the Accused Person attacked the deceased with a panga, striking him on the neck and arm, even as the deceased pleaded, "You want to kill me?"
92. This deliberate use of lethal force, coupled with the Accused Person's pursuit of PW1 after the attack, demonstrates a clear intent to kill, satisfying the requirement of malice aforethought under Section 206 of the *Penal Code*.
93. The defence of provocation and self-defence raised by the Accused Person is unsustainable.
94. As held in *Iraqia v Republic* and *Peter King'ori Mwangi v Republic*, provocation requires a sudden and temporary loss of self-control, which is incompatible with the Accused Person's deliberate actions.
95. The evidence in this case shows that the Accused Person had time to follow the deceased, retrieve a panga, and launch a fatal attack, negating any claim of impulsive reaction.
96. Moreover, the deceased was unarmed save for a walking stick due to his physical disability, and there was no evidence that he posed an imminent threat to justify self-defence.
97. The Accused Person's conduct—fleeing the scene with his nephew (PW2) and only surrendering to police later—further undermines his defence.
98. The prosecution has discharged its burden of proof, and the Accused Person's actions were not only unlawful but also premeditated.
99. As emphasized in *Republic v Silas Magongo Onzere*, the court must be guided by the totality of the evidence, which in this case overwhelmingly points to the guilt of the Accused person.
100. Consequently, I find the Accused Person guilty of the murder of Halifa Kimathi Hassan and convict him accordingly under Section 203 of the *Penal Code*.
101. In conclusion, the Accused Person, Fred Muiya Kaloki, is hereby convicted of the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF JUNE, 2025 IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent

