



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Mohamed alias Minai & 4 others (Criminal Case  
E002 of 2023) [2025] KEHC 10872 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10872 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E002 OF 2023**

**JN ONYIEGO, J  
JULY 25, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ABDIRIZAK ABDOW MOHAMED ALIAS MINAI ..... 1<sup>ST</sup> ACCUSED**

**MAHAT IBRAHIM TACHE ..... 2<sup>ND</sup> ACCUSED**

**MOHAMED ISSACK ALI ALIAS KADIR ..... 3<sup>RD</sup> ACCUSED**

**ABDULLAHI BULEE ABDOW ..... 4<sup>TH</sup> ACCUSED**

**ADAN MURSAL HASSAN ALIAS GENEY ..... 5<sup>TH</sup> ACCUSED**

**JUDGMENT**

1. The accused persons herein are jointly charged with the offence of murder contrary to section 203 as read with 204 of the *Penal Code*. The particulars of the offence are that on 05.01.2023 jointly at Mandera Township, in Mandera East Sub County within Mandera County they unlawfully murdered Farah Ibrahim Salat.
2. The accused persons pleaded not guilty to the charge and the prosecution summoned a total of seven witnesses in support of its case.
3. PW1, Abshir Mohamed Salat stated that on 05.01.2023, he was with the deceased who was also his cousin. That at about 6.00 p.m., while walking towards the cereal board, they met with his uncle Farah Ibrahim Salat. Upon reaching Mandera Bridge, they met people carrying runigus and pangas. He stated that some of the people they met were Minah, Mahat, Abdullahi, Qadir, Ganey. That they attacked them using runigus, knives and pangas leading to them sustaining injuries on the neck, stomach and head. The court was shown the healed scars on the neck, stomach and the head. He also stated that he



was whipped using canes in as much as he managed to run away. He testified that the accused persons killed the deceased person.

4. It was his evidence that the accused persons hit the deceased on the rear of his neck, the head and further, stabbed him with knives thus leading to his death. It was his testimony that the deceased had injuries around his kidneys and further three injuries on his head below his eyes. According to him, the accused persons were responsible for the attack that led to Farah's death as they are people well known to him. He stated that the accused persons are his neighbours and he has known them for about seven years.
5. On cross examination by Mr. Ondieki for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons, he stated that he has known the 1<sup>st</sup> accused one Adow for about 10 years. It was his evidence that the deceased was killed due to a land dispute between Degodia and Galle clans and that the assailants were in masks. He further stated that Ganey was wearing spotted shirt with red and white spots, the 4<sup>th</sup> accused was Mahat Ibrahim and he was in a white t-shirt. That in as much as the incident happened at 7.00 p.m., he was able to see the accused persons well as there was electricity light and further, it was not very dark. He stated that the incident drew many people and finally when the police arrived, they took the body of the deceased and equally photographed the scene.
6. On cross examination by Mr. Abuya for the 2<sup>nd</sup> accused person, he stated that in as much as he was previously charged with an offence of assault, in this case, he was able to see the accused persons during the attack that led to the death of the deceased. That when they were attacked, he hid somewhere from where he was able to see the attackers descend on the deceased.
7. On re-exam, he stated that he knew the accused persons very well. That accused 1 being Abdirizack Minai whom he has known for 3 years; accused 2, Mahat Tache, who also his neighbor; accused 3 Kator Yasano, who was known to him for a period of 4 years; accused 4 being Abdullahi alias Blackii, also his neighbour; that he also knew accused 5 by the name Mursal, who was also his neighbour.
8. PW2, Mohamed Salat Ahmed recalled that on 05.01.2023 at 4.00 p.m., he encountered three people seated near the mosque. They were Abdi Fatah, Farah and Abuchir. That he told them to go home as they were just idle. He recalled that previously, there existed a land dispute between the Degodia and Galle clans. That the trio left as he had directed them and so, he also left to go visit his sick uncle.
9. He stated that at 1.30 pm Abdullahi Jimale called him informing him that one of the three boys he had ordered to leave the mosque had been killed. It was his case that, when he went to the hospital, he found him in critical condition as he could not talk. That he had suffered multiple injuries to wit, a stab wound on the head, back and several parts which he was not keen to observe. He stated that Farah died after two days and that he managed to attend his post mortem examination.
10. On cross examination by Mr. Ondieki for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused persons, he said that he was not there at the time of the attack of the deceased in that he was simply informed by Abdullahi Jamale.
11. PW3, Dr. Abdiaziz Aden Hassan stated that he did a clinical autopsy on the body of the deceased on 09.01.2023 at 10.00 am. That he did post mortem at Mandera hospital and the general observation of the body was that there were multiple cut wounds near the head, chest and back; further, the deceased was of poor nutritional status. He stated that he did not open up the body given that he is not a pathologist. That there were 10 deep cuts on the head particularly on the back to the spinal code. The body was bluish meaning lack of oxygen. He thus reached a conclusion that the cause of death was cardiopulmonary arrest as a result of the internal bleeding.



12. PW4, Zamzam Ismail Aden stated that on the fateful day, she was at her shop when she heard noise and upon coming out, she saw many people running after one another while throwing stones. That she went back to the house and locked herself in. she could not identify any person at the scene and further, the deceased person was unknown to her.
13. PW5, Fatuma Abdi Samala testified that on the material day, she was at her shop when she received a call from Abdi Fatah, brother of the deceased informing her that he was at the referral hospital where the deceased's brother was. That he was requesting for some food and so, she bought some and made her way to the hospital where they found a dead man. It was her evidence that the body had injuries on the head and eyes and that it was generally disfigured. According to her, the deceased died as a result of land dispute. On cross examination, she stated that she did not know the people who killed the deceased.
14. PW6, Issow Hussein Mohamed, a police reservist stated that on 05.01.2023, he was with Mohamed Ali as they reported for work at 5.30 am. That at 5.00p.m., he left his place of work and that Mohamed Izaak Ali (accused 3) was off duty. At 5.30pm he was with Mohamed Izaak at the AP camp.
15. PW7, No. 236882 CIP Jackson Karai testified that on 05.01.2023, the DCIO was off duty and so, he was left as the in charge. That he received a call from the OCS Mandera informing him of an incident that had occurred at hillview where somebody had been injured by a mob of people. PC Maritim together with him proceeded to the scene where they found a male aged about 30 years lying on the road. He was unconscious with stab wounds on his face. Upon searching his body, they found a card written World food programme which bore the name Farah.
16. He further stated that there were marks of a struggle at the scene and in as much as the members of the public were around, no one was ready to give any information. They thus called for a vehicle that they used to take the deceased to Mandera referral hospital. The following day, he visited Mandera hospital but found the deceased still unable to talk as he was unconscious. Upon visiting the scene again, they met a lady by the name of Amina Ahmed who stated that on 5/1/23 at 5.30pm she saw 4 boys fighting.
17. That one of them was being beaten as others were shouting, 'kick him, kill him'. Amina could not identify the 3 boys. They also later met a lady known as Zamzam who pointed out two people she saw attack the deceased. That she named Paul and Bashir as those she saw attack the deceased. He stated that he looked for Alfah Khalif Mohamed alias Paul a taxi operator and took him to the office. That he told him that he was at the scene and that he saw the people who attacked the deceased. Unfortunately, the deceased died on 8/1/23. It was his evidence that Amina Ahmed witnessed the attack but she did not identify the attackers while Khalifa Abshir stated that he saw Minai Mahat and Gene attack the deceased as he knew them.
18. On cross examination he stated that during the second scene visit, Zamzam gave the names of 4 attackers and that none of the accused was arrested at the scene. That ID parade was not done as there were many people at the scene. On re-exam, he stated that ID parade was not done noting that the witnesses knew the accused persons before and further, the 5<sup>th</sup> accused disappeared after the incident.
19. In their defence, DW1, Abdirizak Adow Mohamed denied any involvement in the death of the deceased. He stated that he was at home on the day of the incident (5/1/23), caring for his brother. He claimed that the deceased was unknown to him and equally the location of the incident. He denied knowledge of his co-accused, whom he only met in police custody. He suggested it may be a case of mistaken identity and maintained his innocence throughout.
20. DW2, Mohamed Issack Ali alias Minai (3<sup>rd</sup> accused), a Kenya Police Reservist (KPR) for seven years, testified that he was on duty at Bulla Komor near the Somali-Kenya border on the day of the incident, about 5 km from the crime scene. He denied knowing the deceased or his co-accused and claimed he



was falsely implicated. He emphasized that no one saw him attack the deceased and that he only learned of the death the following day. He also denied knowing any of the prosecution witnesses and that PW1 lied about seeing him at the scene.

21. DW3, Mahat Ibrahim Tache (2<sup>nd</sup> accused), a casual laborer, stated he was in Bulla Garey on the day of the incident and not at the crime scene. He acknowledged knowing the deceased but denied any conflict with him. He said he voluntarily presented himself to the police after hearing his name mentioned. He stated that if he were guilty, he would have fled. He denied knowing the prosecution witnesses and that he was working elsewhere at the time.
22. DW4, Abdullahi Bulle Abdow, a former KPR officer, testified that he was on duty at Public Works on the day of the incident, armed and working a shift from 6:30 p.m. to 6:00 a.m. the next day. He denied knowing the deceased or his co-accused, including fellow KPR officer Mahat. He claimed he was falsely accused and that PW1 lied about identifying him. He explained that while KPR officers don't sign in daily, they follow their supervisor's instructions and sign for firearms when issued. On re-exam, he stated that he did not know why PW1 claimed that he identified him and further, that when issued with a gun, one signs at the armory and only return the same after 2 weeks.
23. DW5, Adan Musa Hassan (alias Gene) denied involvement in the incident. He stated that he was arrested while returning from town and had no prior knowledge of the deceased nor his co-accused. He emphasized that no identification parade was conducted. He claimed that the case was fabricated. He acknowledged that 'Gene' is his nickname but clarified that he has all his teeth, countering any identification based on physical appearance or lack of teeth.
24. Upon close of the defence case, parties were directed to file their respective submissions. Mr. Ondieki for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons filed his submissions dated 23<sup>rd</sup> May 2025. Mr Abuya for the 2<sup>nd</sup> accused and Mr. Bosire associated themselves with Ondieki's submissions. Prosecution equally filed their submissions dated 22<sup>nd</sup> May 2025.

#### **Prosecution's submissions.**

25. Mr. Owuor prosecution counsel submitted that prosecution had established the first and second elements of murder to the effect that the deceased died out of unlawful injuries sustained after an attack by known persons.
26. Counsel submitted that PW1, PW2 and PW4 witnessed the commission of the offence and that they identified the accused persons as the perpetrators. Counsel contended that there was sufficient circumstantial evidence to justify safe conviction. According to Mr. Owuor, there were people who saw the accused commit the offence.
27. As to whether the death was unlawful and caused with malice, counsel referred the court to the case of *Tubere s/o Ochen vs Republic* (1945)EACA63 where the court outlined circumstances under which malice can be inferred as; The nature of the weapon used against the deceased to inflict the injuries; the part of the body targeted by the attacker whether vulnerable or not; the manner in which the lethal weapon was used and whether in furtherance to cause the grievous harm the assailant used the weapon repeatedly and the conduct of the accused before and after the attack of the deceased. Counsel contended that in view of the severity of the injuries inflicted, it was obvious that they were unlawful and intended to cause grievous harm leading to death.



### Submissions by the defence

28. As stated above, the defence adopted submissions filed by Mr. Ondieki. Mr. Ondieki submitted that there was no physical nor direct evidence linking the accused with the offence. That there was no proof that there was shared common intention by the accused to murder the deceased. Further, learned counsel contended that there was no forensic evidence e.g DNA to corroborate the testimony of the PW1.
29. It was Mr. Ondieki's contention that the scene of crime was not preserved nor secured thus rendering the prosecution's evidence weak. On the possible alternative cause of death, counsel advanced the theory of a possible fall by the deceased thus sustaining fatal injuries. Lastly, learned counsel opined that the defence tendered by the accused persons was plausible and unshakable. That the case is hinged on mere suspicion which however strong it may be cannot lead to a conviction. In that regard, the court was referred to the case of *Mary Wanjiku Gichira v Republic* (1998)eKLR.

### Analysis and determination.

30. I have considered the evidence adduced by the prosecution witnesses and the defense proffered by the accused persons. In my view, the main issue for determination is whether the prosecution has proved its case against the accused persons beyond any reasonable doubt to sustain a conviction for the offence of murder as charged.
31. The accused persons herein are facing the offence of murder C/S to Section 203 of the *Penal Code* which provides that:

" Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."

Article 26(2) of the *Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by the Constitution or written law.

32. To establish the offence of murder to the required degree, prosecution's evidence must prove beyond reasonable doubt the following elements: that the death of the deceased occurred; the cause of the said death; the death was caused by unlawful act or omission; that the accused committed the unlawful act which caused the death of the deceased and; that the accused had malice afore thought.
33. In the case of *Republic v W.O.O.* [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) the elements of murder were restated, as guided by the Court of Appeal in the case of *Anthony Ndegwa Ngari v Republic* [2014] eKLR, as follows:

" For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are:

- (a) the death of the deceased and the cause of that death;
- (b) that the accused committed the unlawful act which caused the death of the deceased and
- (c) that the Accused had the malice aforethought."

34. On whether there is proof of death and the cause of the said death, it was not controverted that indeed the deceased died. The foregoing was corroborated by PW3 who conducted clinical autopsy on the body of the deceased. According to his evidence, the cause of death was cardiopulmonary arrest as a



result of the internal bleeding. Besides, the investigating officer who visited the scene and picked the body confirmed that the deceased's body had multiple cuts and stab wounds. In my view, therefore, the first element on the occurrence of death was thus proved by the prosecution.

35. Was the cause of death unlawful? The evidence before this Court irresistibly points to an unlawful act that led to the death of the deceased as it was established that the cause of death was cardiopulmonary arrest as a result of the internal bleeding secondary to multiple injuries sustained. Nobody has justified the infliction of the injuries that led to the death of the deceased. Obviously, the injuries sustained were unlawful.
36. The next question which is critical, is whether the prosecution has proved beyond any reasonable doubt that it was the accused persons and not somebody else who committed the unlawful act which caused the death of the deceased. From the evidence tendered before this Court, only PW1 alleged that he saw the accused persons attack the deceased. Contrary to the submission of the prosecution counsel PW2 and PW4 did not say that they identified the attackers. In fact, on his cross examination by Mr. Ondieki, he stated that he was not present at the time of the attack and that he last saw the deceased in hospital after the attack.
37. PW4 one Zam Zam in her examination in-chief denied ever identifying the assailants in as much as she saw the injured body of the deceased lying on the ground. It is therefore misleading for counsel to state that PW2 and PW4 identified the accused attack the deceased.
38. PW1 who was a cousin to the deceased is the only eye witness who claimed to have witnessed the accused persons attack him and the deceased. The rest of the witnesses denied identifying the assailants. The other two eye witnesses one ZamZam and Paul Khalif aka tax operator who allegedly named the accused to the investigating officer refused to attend court. The defence submitted that the evidence of PW1 was not corroborated despite the offence having been committed allegedly in the presence of many people.
39. The question is whether the evidence of PW1 alone is sufficient to convict. It is trite that a court can convict based on the evidence of a single witness if it is satisfied that such witness is truthful and that it has cautioned itself on the dangers of convicting on such evidence alone. See the case of *Abdalla Bin Wendo & Another vs Reg* (1953) 20 EACA 166 followed in *Roria v Rep* (1967) EA 583, where it was held that;  

“Subject to well-known exceptions it is trite law that a fact may be proved by the testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error.
40. In the instant case, the investigating officers stated that when he visited the scene, he found the body lying there with many people but none was willing to give information. That it was until they made a second visit to the scene that they found Zam Zam and Khalif who named the accused. I am quite curious that PW1 was not anywhere near to assist the police with information as to who had attacked his cousin.
41. PW1's testimony was that when they were attacked he ran into hiding and watched as his cousin was being attacked. According to him, the attack took place at about 7.00pm and there were many people



present. That electricity lights were on implying that there was some darkness. None of those people came to court to corroborate his testimony. He did not even name any of the eye witnesses besides himself. He did not tell the court how far he was from the scene as he watched his cousin being attacked from his hide out.

42. Considering that there was a dispute over land between the victim's clan and the accused persons' clan which is admitted by PW1 and PW5 and in view of this admission that the two groups had a dispute, it would be safer to be cautious on the possibility of a frame up to revenge. In the circumstances, corroboration is necessary although lacking.
43. Why were the other eye witnesses not availed? The only reasonable inference to be drawn is that their evidence was most likely to be inconsistent with the prosecution case. Withdrawal of witnesses or failure to call witnesses who purportedly witnessed the offence being committed is prejudicial to the prosecution's case. See *Bukenya and another v Republic* (1972) EA 549.
44. In the absence of any corroboration of the evidence of PW1, the prosecution case is left bare and cannot sustain a conviction. As it is now, it is word of the accused against that of PW1. Whom should the court believe. Where there is doubt even the slightest, the same must be given to the benefit of the accused person.
45. Having held as above, it will not be necessary to delve on the issue of malice. Accordingly, I do not find sufficient evidence to warrant a conviction. Accordingly, the accused persons are hereby acquitted under section 215 of the [CPC](#). They are set free unless otherwise lawfully held.

ROA 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 25<sup>TH</sup> DAY OF JULY 2025**

.....

**J. N. ONYIEGO**

**JUDGE.**

