



**Republic v Nyabari alias Sai alias Saitoti (Criminal Case
E092 of 2021) [2025] KEHC 10861 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10861 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CRIMINAL CASE E092 OF 2021**

**JR KARANJA, J
JULY 25, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK NYABARI ALIAS SAI ALIAS SAITOTI ACCUSED

JUDGMENT

1. The information filed herein by the Office of the Director of Public Prosecutions [ODPP] on the 18th November 2021, charges the Accused, Patrick Nyabari also known as Sai or Saitoti with the offence of murder, Contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. It is alleged that on the 9th November 2021 and the 10th November 2021 at Chepis Village, Kapkerer – Nandi South within Nandi County, the Accused murdered Eligi Ruyari Memba alias Elly Ruyari [deceased] by assaulting him.
3. It was the prosecution case that the deceased was the father of the Accused and husband to Everlyne Emenza [PW1] and that on the material date at about 6:00pm an angry Accused proceeded to the kitchen of their house and pulled away his 2½ and 3 years old children whom he took to the sitting room and began beating them despite his mother’s attempt to restrain him. Fearing for her life the mother [PW1] escaped into a neighbour’s home where she was followed and threatened by the Accused with death together with her husband.
4. The mother retreated to her home and remained indoors upto the time of arrival of the deceased at about 8:00pm. The deceased then entered the bedroom after which the Accused arrived forcefully and angered. He again started to beat up his children amid the intervention of the deceased.
5. The Accused forcefully entered the bedroom and confronted the deceased with whom he engaged in a physical confrontation. The machete [panga] in possession of the deceased was snatched from him by



the Accused who then forcefully pulled the deceased into the sitting room and jumped up and down on his legs onto the deceased's abdomen while the deceased was down on the ground.

6. In the process, the deceased was injured and wailed aloud in pain. The accused did not relent and instead pulled the deceased out of the house and continued assaulting him using kicks and sticks thereby causing him grave injuries. Some neighbours including Patrick Odiego Onamo [PW2] and Hellen Chebitok [PW3], rushed to the rescue of the deceased and found him being fiercely assaulted by the Accused who was holding the panga with which he threatened the neighbours. The deceased was thereafter taken to hospital where he succumbed to his injuries.
7. An autopsy conducted by Dr. Masika Collins Were [PW4], revealed that the deceased died from intracranial haemorrhage secondary to trauma and that the probable weapon or object used in assaulting him was blunt. A post-mortem report was accordingly produced [P. Exhibit 2].
8. Sergeant Cosmas Kipruto Kiptoo [PW5], carried out the necessary police investigations after the matter was reported at Kapkere Police Post. In the process he proceeded to see the deceased at the hospital and found him undergoing treatment for the injuries he sustained on his head, chest, abdomen and back. He could not communicate and was to be referred to a larger hospital, but unfortunately passed away while undergoing treatment.

The machete [panga] recovered from the scene by the officer [PW5] was produced [P. Exhibit 1].

9. After his apprehension by villagers, the Accused was handed over to the police and arraigned in court with the present offence which he denied and continued to do so when he was placed on his defence in which he indicated that his parents [i.e the deceased and PW1] quarreled on the material date and his father [deceased] who was intoxicated attacked him with the machete [panga] when he attempted to intervene.
10. The Accused further indicated that he got hold of the panga, but his father still slashed him on the head with it before falling down. He [Accused] fainted while his father was falling down.

The Accused contended that what happened on the material date and time was accidental. He therefore had no intention of killing his deceased father.

11. This court's total consideration of the evidence reveals that there is no particular dispute that the deceased died as a result of an unlawful act of assault committed against him by no other than his own son, the Accused herein did not really deny the fact, but implied that he acted in self defence without any intention of causing death to his father. He portrayed his father as having been the aggressor.
12. However, the prosecution evidence through the Accused's mother [PW1] and their neighbours [PW2 and PW3] clearly and credibly indicated that the Accused was the aggressor from the very beginning and appears to have been in a foul mood on the material date as manifested by his conduct of arriving home seething with anger, pulling his children away from their grandmother [PW1] while she was cooking in the kitchen, beating up the children and eventually turning to and assaulting his father mercilessly using his fists and legs.
13. The Accused's mother [PW1] clearly indicated that it was the deceased who actually acted in self defence when he hit the Accused on the head with the panga.

In totality, the evidence showed that even if the Accused was said to have acted in self defence he certainly used vicious force against his father and did so repeatedly and relentlessly such that his supposed act of self defence was somehow vitiated by his subsequent over-reaction to the perceived threat from his father which in any event, was insignificant.



14. Section 17 of the *Penal Code* does provide for the defence of self-defence as follows: -

“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.”

Such Common Law Principles were laid down by the Privy Council in the English Case of *Palmer Vs. Republic* [1971] A/C 814 which was cited herein by the prosecution.

15. The existence of the defence did not however, shift from the prosecution its burden of proving the offence of murder against the Accused. In that regard the prosecution was required to prove beyond reasonable doubt that the Accused, despite raising the element of self defence in his defence, acted of malice aforethought when he assaulted and fatally injured his father.

16. Section 206 of the *Penal Code* provides that

“Malice aforethought shall be deemed to be established by evidence pulling 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 death or grievous harm to some person, whether the 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 basic element of murder being malice – aforethought, the prosecution case was clearly geared towards clause [a] of the aforementioned Section 206 of the *Penal Code*. And, the evidence establishing such circumstances came from the Accused’s mother [PW1] and his neighbours [PW2 and PW3].

Their evidence as a whole was credible in establishing and proving that the Accused attacked and assaulted his father with a view to causing him grievous harm.

18. He [Accused] acted viciously, unreasonably, mercilessly and threateningly despite efforts made by his mother and neighbours to restrain him from inflicting further and serious injuries on his father even if it was the father who provoked the unfortunate state of affairs. Because of his violent action against the father leading to his suffering fatal injuries it may safely be held herein that the Accused caused the death of his father of malice aforethought. He must therefore be held responsible for the consequences of his unlawful act.

19. Consequently, this court finds that the prosecution has proved the offence of murder against the Accused beyond any reasonable doubt. He is hereby found guilty as charged and convicted accordingly.

DELIVERED AND DATED THIS 25TH DAY OF JULY 2025

J. R. KARANJAH,

JUDGE

