



**Republic v Kandie (Criminal Case E011 of 2023)
[2025] KEHC 10970 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10970 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E011 OF 2023
RB NGETICH, J
JULY 24, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

FANUEL KANDIE ALIAS FANO ACCUSED

JUDGMENT

1. The accused Fanuel Kandie alias Fano has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge were that the accused person on the 24th day of September, 2022 at K2 Choma Base Koriema club, Koriema sub-location, Marigat Sub- County within Baringo County murdered Benard Kiprono Sang alias Ainamoi super star.
2. The accused denied the charge and the matter was set down for full trial where the prosecution summoned a total of 5 witnesses in support of the charge preferred against the accused.

Prosecution Evidence

3. PW 1 Ivan Komen Sergon testified that on 24th September,2022, he was in Kimalel to attend a show at Koriema K2 resort and the deceased herein who was an also known as Ainamoi superstar had been invited. He said he met the deceased in the evening and he informed him that he was going to attend the show. He said the show was to start at 9:00p.m of 24th September 2022 up to morning of 25th September 2022.He said met the deceased in the evening upon arriving from Eldama Ravine and he appeared to be in good condition. He said the deceased performed at 2.00 a.m. and that he was the last to perform. PW1 said he left for his house at 2.30 a.m. and on reaching his house, he realized he had booked food but he did not take and he went back to for the food.



4. He testified that on reaching the gate, he saw the deceased seated down crying and on asking him why he was crying, he said he was beaten by a person called Fanuel whom he later came to know. He said the deceased informed him that the accused beat him because he performed well and that he broke his tooth which had been filled and his tooth was paining. He said he advised him to report at the police station.
5. He further stated that a person called Chombero, Kosgei and a lady he has not identified to date took the deceased to hospital. He testified that he went to the restaurant to inquire what happened and he was informed the fight was outside the gate and they did not know. He said the next day at around 10a.m, he tried calling the deceased who informed him that his tooth was paining and asked pw1 to add Kshs 800 and he but he gave him Kshs.500 and on 26th April 2022, he called the deceased but he did not find him but he later saw the deceased had tried to call him. He said later one Kosgey received his call and informed him that he wanted to take the deceased to Marigat hospital. In the evening, he went to District hospital and found the deceased had been discharged and he was informed that the deceased had said he had ulcers.
6. That the next day on the 27th September 2022,he received a call informing him that the deceased went back to hospital and he was referred to Kabarnet Hospital and later his wife called and said that they were at Marigat as he was waiting for them at Kabarnet and later the wife informed him they had decided that he be taken to Nakuru instead of Kabarnet Hospital and he prepared to follow them but he was later called and informed that he had passed on.
7. PW2 Markson Kemboi Keitany testified that on 24th September,2022, he was at Koriema K2 Resort where there was a dancing performance. He said he arrived at 8:40 p.m and he started drinking at around 10p.m, when he saw the deceased who was called Ainamoi superstar and other people drinking. He said that he could hear people saying Ainamoi superstar and there were many artists and he did not know the rest but he knew artist Ainamoi.
8. He said that he drank and then went to shade where he fell asleep and when he woke up at 1:00 a.m, he realized there had been black out and a generator was on and he saw people pushing each other but he did not identify them as there was no sufficient light. He said he met the deceased standing aside at around 2.00 a.m and he spoke to him and the deceased asked if he could get a motor bike to take him to Marigat. He said the deceased was so drunk and he shouted asking for a motor bike and a person who was unknown to him appeared. He said he conversed with the deceased who took his number and flushed him and said that they would talk the next day and left with the motor bike. He said that he left K2 Resort, met a friend then went to his house. He said that he recorded statement on what he saw that day and what he said was used to arrest someone. He said that he was called to police station but he was drunk and he did not know what he was recording.
9. The prosecution applied to have the witness stood down so as to have a conversation with him. Counsel informed the court that there was a warrant of arrest that had been issued against him for failing to attend court. She prayed that he be stood down and to have another date to see whether the case will proceed as it is. Counsel for the accused opposed the application stating that the witness had given his testimony. The court ordered that PW2 be stood down and fixed the matter for mention. PW2 was not recalled recalled to complete his testimony.
10. PW3 Benard Kipkoskei Rono a boda boda taxi in Eldama Ravine testified that on 24th September,2022, they were in Eldama Ravine with the late Benard Kiprono sang who was his neighbour and in the morning of 24th September,2022, the deceased requested him to prepare to take him to Marigat K2 resort where they reached at about 6p.m and he drunk soda. While the deceased Benard also known as Ainamoi superstar was taking alcohol and at 9:30 p.m, someone went and tried to overturn the table



- and he was informed that he was called Fano and he requested him not to overturn and invited him to go and drink with them. He said the accused Fano got angry abused them and left and after 10 minutes, he went back again and was told not to overturn the table and that if he wanted the drinks, he could join them.
11. He said that he got someone to talk to him and they were asked to move from the table and Fano was advised not to disturb them. Pw3 said he heard Fano saying Ainamoi superstar wanted to kill artist from Marigat. He said they stayed on the table they were in until the deceased was called to perform. He said that there were other artists including Bruni star. He said the deceased performed but as he performed the accused Fano kept going to pull him calling him a foreigner in Marigat. PW3 said he advised the deceased to move to Marigat for his security.
 12. He said the deceased boarded motor bike and on reaching Kimalel, his motor bike run out of fuel and they decided to go back to K2 Resort. He said that he requested for a place to park the motor bike and parked and stayed on top of the motor bike and after 2 to 5 minutes, the accused Fano went and pulled the deceased's dread logs. He said a person called Torois went to separate them and Torois went with Fano while PW3 went with the deceased to a verandah in a corner. He said shortly after, Fano went again and said the deceased had a knife which he wanted to stab Torois with but the deceased raised his hand saying that he did not have a knife. Pw3 said he left to look for security and on coming back, the deceased informed him that the accused Fano had beaten him and hit his teeth and stomach. He said that when he went to look for security, the accused Fano was searching for a knife from the deceased Benard and that he did not find security. He said that he looked for another motor bike to take them to Marigat.
 13. He said they slept in Marigat and on Saturday, the deceased said he was okay. He said that on the 26th September,2022 at 11:30a,m, the deceased told him he had pain in the stomach and he took him to Marigat hospital and he was informed that it was ulcers and was treated and discharged and they continued staying in Marigat and on the 27th September,2022 at around 5:00a.m, the deceased requested him to give him a basin as he wanted to vomit and he saw something like blood clot-black and he took him to Marigat hospital and at Marigat, he was transferred to Nakuru where he went with him to Nakuru using ambulance and was taken to emergency room and the deceased died while undergoing treatment. He said he called deceased's relatives Erick as he stayed with him in hospital until his wife arrived when he handed over everything to them and went to Marigat to collect his motor bike.
 14. He said that he witnessed postmortem together with deceased's relatives and the doctor said that abdominal injury caused deceased's death. He said that the deceased was a neighbour and friend and identified accused herein as the who disturbed them that evening. He said that he stayed with the deceased throughout save for the time he went to look for security..
 15. PW4 Dr. Titus Ngulungu a pathologist working at Nakuru County teaching and referral hospital performed postmortem on the body of the deceased Bernard Kiprono Sang on the 1st October,2024 at Nakuru County teaching and Referral Hospital following request from Sgt Joshua Tobulei from Marigat Police station upon the body being identified by the deceased's Philip Koskei and a colleague Paul Rotich.
 16. He said that on examination, there was swelling on the upper limbs due to blood trauma and Hematoma on the surface of the upper limb. On internal examination, the lungs collapsed meaning he was not breathing well, the abdomen had yellowish fluid mixed digested food material (3litres), intestines were covered (PVS), tender inflammation of the intestines, perforation on the bilovic area of the stomach, there was a bruise at the area where there was perforation and was discharging contents of the stomach which had hydrochloric acid, the inner side of perforation was fibroses (healing) but the



outside had a laceration and a bruise meaning there was attack from inside and outside. From inside was stomach ulcers and the outside was trauma. He said they had pre-existing duodenal ulcer and the trauma made it give way. He concluded that the cause of death was acute peritonitis due to perforated duodenal ulcer due to trauma to the abdomen. He produced the report as exhibit 1 in court.

17. PW 5 No. 76478 Sgt. Joshua Tobulei from DCI Marigat Sub- County testified that on 29th September,2022, he was minuted to investigate the death of Benard Kiprono Sang who died while undergoing treatment at Nakuru PGH. He said the deceased died from being beaten and injured at Koriema Club KG Choma base. He looked for witnesses and also visited the scene and recorded statements from witnesses. He said he learnt that the suspect was Fanuel Kandie alias Fano and that on the night of 24th and morning of 25th September 2022, there was a disco where artists had been invited to entertain fans and the deceased Benard Kiprono Sang was one of the artists invited and the show started at 9:30 p.m, and ended at 3:00 a.m on the 25th September,2022.
18. He said from his investigations, conflict arose between the accused and the deceased after the artist sang and the accused beat up the artist and injured him on the chest and one witness said that the deceased fell on a construction stone. He said after recording the statement, he went to attend the postmortem together with the relatives of the deceased and his singers and the suspect had not been found. He compiled the file and sent to OCPD who recommended the suspect be charged if found arrested.
19. He said the suspect was arrested on the 7th June,2023 at Marigat town and was arraigned in court the next day. He also swore an affidavit for the accused to be denied bond as he had been on the run for long and there was threat to interfere with witnesses.
20. Upon the closure of the prosecution case, the court by ruling delivered on the 31st October,2024, the court found that accused had a case to answer.

Accused's Defence Case

21. The accused Fanuel Kandie gave a sworn statement and called 3 witnesses. The accused testified as DW 1. He stated that he is 27 years old and that he understands the charges against him. He denied killing the deceased Benard Kiprono Sang on the 24th September,2022 at K2 Choma Base Koriema. He said that on the 24th September,2022, he was at home Kipkaech village and that he left at 8: 00p.m to K2 Koriema where there was a disco and arrived at 9: 00p.m.He said that he found people celebrating and he also started taking alcohol and while seated, the master of ceremony(MC) called him as there was scuffle between fans and MC Jamlick called him to separate them.
22. He said that he woke and moved there and spoke to them then went back to continue drinking where he was. He said at around 11p.m, he did not know where the deceased Ainamoi superstar was and only heard him performing at the stage and at around 1:00 p.m, there was power blackout and people left and he also left. He said there was no light outside and he did not meet the deceased outside. He said it is not true that he beat up the deceased since he did not meet him and he only learnt from the TV news that the deceased had died while at his home in Marigat. He said it is not true that he had run away and he had not received information that police were looking for him.
23. DW2 Enock Kiprotich Kipngetch testified that he resides at Kipkaech and that he is a caregiver at Kabarnet District Hospital and on the 24th September,2022 at around 8:00 p.m, he was with the accused when they went to disco at K2 Club and on reaching, he started taking soda and a scuffle started. He said that they were on another table and the MC called the accused to stop the scuffle. That he moved to the table where there was a scuffle and intervened then he came back and at 1:00p.m there was power black-out and he left with the accused. He said that the accused did not meet Ainamoi



- superstar outside and that he only intervened in the scuffle inside the club and that all through he was with the accused.
24. DW3 Dr. Mabonga Cyprian testified that he is a holder of Bachelor of Clinical Medicine from Egerton University, Bachelor of Laws Moi University and Masters in Clinical Medical specializing in medical psychology from JKUAT, PHD Clinical medical major medical psychology JKUAT, Post graduate Diploma in Law from KSL. He said that he currently works at Kaimosi University as lecturer in school of health science and a consultant in clinical medicine, medical law and forensic medicine. He said that he has postmortem report for Benard Kiprono Sang and that Peritonitis inflammation of the peritoneum is like a cavity as it houses many organs inside it.
 25. He said that the cause of death from the postmortem could be infection which could be arising because there were some infections within the intestines. He said that he could see peritonitis due to duodenal ulcer. That an ulcer is a wound that majorly affects the stomach and it is called gastric ulcer (ulcer within the stomach). He said that on the lower side of the stomach is the duodenum which is the first part of the small intestines. That the ulcer from the stomach can extend to the upper part of the small intestines which is known as duodenal ulcer.
 26. That acute ulcer can have complication of severe pain and it is called acute abdomen which can progress and become a chronic ulcer which has complications one of them being bleedings and what is experienced is vomiting of blood which is called upper gastrointestinal bleeding. That the second most complication is the gastric outlet obstruction which means the lower part of the stomach is called bilorus which particular part gets to be obstructed.
 27. That the 4th complication of ulcers is malignancy cancer (stomach cancer) where there is an obstruction which can make one get what is called intestinal obstruction where the intestines become obstructed and one cannot go for a long call. That the obstruction can fracture and one can bleed and die. That obstruction can lead to perforation and duodenal ulcer on its own can cause perforation when there is continuous injury. He said the wound can be small and progress and all of a sudden it raptures depending on what is causing the injury. That one of the causes of ulcer is ulcer and that alcohol irritates the walls of the stomach then it can rapture it.
 28. He said that blunt trauma is a visible injury and there will be bruises. That it will have obvious injury that can be seen with naked eye. That looking at the postmortem, the lower limbs show no injury and if there were blunt trauma one could see. He said that blunt trauma is a force not penetrating injury but it is very forceful to cause damage to internal organ and it can be seen on the surface, it will be tender, swollen or might change the colour of the part. He said that the organs adjacent to the stomach are liver, pancreas, gallbladder and diaphragm and more often if there is blunt trauma there would be injury to the other organs if there is a force blunt trauma.
 29. That from the postmortem, one cannot conclusively say the cause of death but it can only pick peritonitis that could have come from contents of the stomach that could have perforated and went into the intestines causing infection and other complications. That for lack of external trauma, the most probable cause is the perforation from complication from the ulcer. That if there were external injury other organs would have also been damaged.
 30. DW4 Jamlick Kiptoon testified that he knows the accused Fanuel Kandie and that on the 24th September, 2022, they were at K2 Resort where they had a function and he was the Master of Ceremony that day. That it was a kalenjin festival which was bringing together artists from different counties. That there were many artists and fans and at around 11:30p.m, while the event was on and artists were performing, the venue was fully packed and a small scuffle emerged. He said that he stopped the event to deal with the situation and the accused was among the people in front and whom he took among



others to provide security and have scuffle resolved and the accused acted to stop the scuffle. He said that he could not tell who started the scuffle as there were many people. He said he knows the deceased Benard Kiprono Sang alias Ainamoi superstar and confirmed that he was one of the artists who were in the club and that all the artists were seated in one place. He said that when the scuffle started, the deceased was performing at the stage and he went back to sit. He said he did not meet with the accused as he was at the stage.

31. He said that the event did not end as the lights went off at 1:45a.m and that they did not have backup electricity and people left. He said that he had all the artists before the function started and drinks were on the table and he could not tell which drink was for the deceased. He said that the artists were 9 and they had friends on the table also and there were over 10 bottles of drinks. He said there was water, soda, alcohol though he cannot recall all the types of drinks.

Analysis And Determination

32. The accused has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The essential elements the prosecution must prove beyond reasonable doubt are:-

1. Proof of death
2. That the death was caused by an unlawful act or omission by the accused;
3. That the accused committed the unlawful act with malice aforethought as defined under Section 206 of the *Penal Code*.

(i) Proof of Death

32. The death of the deceased Benard Kiprono Sang alias Ainamoi Superstar, is not disputed. PW1, PW3, PW4 (the pathologist), and PW5 all confirmed that the deceased died on 27th September 2022 while undergoing treatment at Nakuru Provincial General Hospital. PW4, Dr. Titus Ngulungu, conducted the postmortem and established the cause of death as acute peritonitis due to perforated duodenal ulcer precipitated by trauma to the abdomen. He produced the postmortem report in court as Exhibit 1.

(ii) Whether the Accused Unlawfully Caused the Death

33. On whether the accused unlawfully caused the death, the sequence of events as per evidence adduced is that on the evening of 24th September 2022, the deceased, Benard Kiprono Sang alias Ainamoi Superstar, arrived at K2 Resort in Koriema to perform at a scheduled music event. According to PW3, he was in good health and spirits. At the venue, a disagreement began to brew between the deceased and the accused, Fanuel Kandie. Around 9:00 to 10:00 p.m., the accused was seen by pw3 approach the table where the deceased was seated in an aggressive manner. Tensions escalated at the venue and at around 1:30 to 2:00 a.m. while the deceased was performing, the accused tried to pull the deceased from the stage and shortly after, around 2:30 a.m., PW1 found the deceased crying by the gate, complaining that he had been beaten by the accused, pointing to pain in his mouth and abdomen.
34. In the days that followed, on 25th and 26th September 2022, the deceased remained in Marigat where he sought treatment at for abdominal discomfort and painful tooth. He was treated for ulcers and discharged. However, his condition deteriorated. On the morning of 27th September 2022, he vomited blood and was rushed to Marigat Sub-County Hospital, where he was referred to Nakuru Provincial General Hospital. Unfortunately, he succumbed while undergoing treatment. A postmortem conducted on 1st October 2022 by PW4, Dr. Titus Ngulungu, revealed the cause of death



as acute peritonitis due to a perforated duodenal ulcer precipitated by abdominal trauma. The accused was subsequently arrested on 7th June 2023 and charged with murder.

35. PW1 testified that the deceased was in good health before the performance. After the show, he found him outside the club crying, with the deceased reporting he had been assaulted by the accused, particularly in the tooth and abdomen. PW3, who had taken the deceased to the event, gave detailed evidence of an ongoing confrontation between the accused and the deceased during the event. He saw the accused pull the deceased's hair and, after a brief separation, later found the deceased injured, complaining that the accused had hit him in the stomach. The chain of events linking the accused to the injuries is cogent and unbroken. It is corroborated by the testimonies of PW1 and PW3, and by the findings in the postmortem report (PW4).
36. I now wish to consider and reconcile evidence adduced by the two doctors PW4 availed by the prosecution and DW3 availed by the accused. PW4, Dr. Titus Ngulungu, conducted the postmortem and directly observed both external trauma (bruise and laceration on the abdominal wall) and internal signs of peritonitis resulting from a perforated duodenal ulcer. He concluded that the trauma triggered the rupture, leading to peritonitis and death.
37. On the other hand DW3, Dr. Mabonga Cyprian, a medical doctor and forensic expert, did not perform the postmortem but reviewed the report. He opined that the perforation could have resulted from disease progression of the ulcer, noting that absence of widespread external injuries suggested a non-traumatic cause. However, DW3 conceded that trauma can precipitate perforation in a pre-existing ulcer, especially when the stomach lining is already weakened.
38. In view of the above, there is no doubt that evidence of PW4 is persuasive on the ground that he conducted postmortem and his evidence to court was from first hand involvement in the process of establishing the cause of death of the deceased. He also saw external trauma consistent with assault and his conclusion is therefore based on direct observation, as opposed to a secondary review by DW3. From the foregoing, I find that the accused inflicted the trauma that caused or accelerated the ulcer's rupture.

iii. Proof of Malice Aforethought

39. Under Section 206 of the *Penal Code*, malice aforethought is deemed established where there is:- Intent to cause death or grievous harm; Knowledge that the act will probably cause death or grievous harm; Intent to commit a felony.
40. In *Nzuki v Republic* [1993] KLR 171, the Court of Appeal emphasized that malice can be implied from circumstances showing deliberate conduct or targeting of vulnerable parts of the body.
41. In the present case the accused had multiple confrontations with the deceased during the event. He was seen pulling the deceased from the stage and later pulling his hair. He targeted the abdomen and face, both sensitive areas. There was no provocation and the aggression appeared rooted in hostility towards the deceased's popularity and performance. The above in my view support an inference of malice aforethought under Section 206(b)—the accused knew that his actions were likely to cause grievous harm, yet acted with indifference to the consequences.
42. From the foregoing, the prosecution proved beyond reasonable doubt that the deceased died from peritonitis due to trauma-induced ulcer perforation, that the accused inflicted the injuries that triggered the fatal outcome and the attack was deliberate and actuated by malice aforethought.



43. I find that the prosecution proved the three ingredients for the offence of murder beyond reasonable doubt. I therefore proceed to find accused guilty of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code and is hereby convicted.

Final Orders: -

- a. Accused is hereby convicted of the offence of murder contrary to section 203 as read with section 204 of the penal code.
- b. Right of appeal 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET, THIS 24TH DAY OF JULY, 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Nganga for State.

Ms. Kogo for accused.

Accused present.

CA, Elvis.

