



**Republic v Yator (Criminal Case E002 of 2023)
[2025] KEHC 10860 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E002 OF 2023
RB NGETICH, J
JULY 24, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JONATHAN KIPROP YATOR ACCUSED

JUDGMENT

1. The accused Jonathan Kiprop Yator 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 night of 22nd day of December, 2022 at Borowonin Sub-location Kapropita Location in Baringo Central Sub-County within Baringo County murdered William Kiptongony.
2. The accused denied the charge and the matter was set down for full trial where the prosecution summoned a total of 7 witnesses in support of the charge preferred against the accused.

Prosecution Evidence

3. PW 1 Jane Chepyator testified that on the 22nd December, 2022 at 10.00 a.m, she was at home when her son Kiprop arrived home with a cup and a knife and said he wanted blood. She said that he hugged her and requested her to bring the phone fast. He took the phone then removed the sim-card, gave her and left with the phone. She said she went to Kabarnet Police station immediately with her younger daughter Chepkorir. She said that they were referred to the chief and they left to look for the chief but they did not find him. They stayed at the Chief's office up to 6 p.m. when they went to their aunt Grace at Kapasis.
4. She said while at their Aunt's house, they received a call informing them that her husband had been killed and she went to record her statement with the police. She said that she did not witness her husband being killed and her son who hugged her that morning and said he wanted blood is accused in this case.



5. PW2 Harrison Kimaiyo Yator a step brother to accused testified that on 22nd December,2022 at around 4: 30 P.M, he was sitting under a mango tree at his home with his father the deceased herein William Cheboiywa Kiptongony when the accused Jonathan arrived with a panga to his father. Pw2 said that he moved away to a distance where he saw the accused approached his father and cut him with a panga on the right hand removing a lot of flesh and blood hoozed and his father fell down. His father became unconscious and the accused removed a stone from a fence and placed it on the floor and placed his father's head on the stone then he cut his father's head twice using a panga. He said that he was standing at a distance of about 20/30 metres away. He said the accused took the body and threw the body in a trench at the back of the grandmother's house.
6. He testified that accused took clothes and tied the panga and went to his house and placed the panga on top of the iron sheet. He said he called his cousin David Kiptoo and his brother Christopher Kiptoo who went with police after about one hour. He said Jonathan was inside his house when police took the body and that he was asked to come out of the house and was arrested and the body taken to Kabarnet mortuary.
7. Pw2 further stated that accused had threatened him with a knife in his house upon having entering his house through the window and hid under the bed. He said accused got hold of him and asked him about meat from a cow they had slaughtered but Pw2 sweet talked him until he left him. He said that he reported later at Kabarnet Police station in the year 2020 but no action was taken though they have not disagreed since then. He said that it was only him and the deceased present when accused attacked the deceased and that his grandmother Kobilo Kiptongony arrived after he screamed. He positively identified the panga with a black rubber in court.
8. PW3 Kobilo Cheboiwo Kiptongony testified that his son was killed by accused Kiprop. She said that she was inside the house when she heard noise and rushed to check and ongoing outside, she found the deceased had been cut and was hoozing blood. She said she saw the accused entering his house while carrying a panga. She said accused had beaten his father twice before but he was rescued. She positively identified the panga in court and said it belongs to William the deceased and that accused had another panga but the panga he used to kill the deceased is the one in court.
9. PW4 David Kibet Kiptoo a nephew to the deceased testified that together with Valentine Chepkemoi, they witnessed postmortem of the deceased William Kiptongony after identifying his body to the doctor. He confirmed that the deceased was cut with a panga.
10. When the matter came up before court on the 11th July,2024, the defence counsel Mr. Kipkulei informed the court that they do not dispute the cause of death and that the postmortem could be produced in court by consent and was marked prosecution Exhibit 2.
11. PW 5 Policarp Lutta Kweyu a principal chemist who has worked for the last 12 years at Kisumu Government chemist testified that he prepared report following request of IP Riongo Kimonge of DCI Baringo Central in respect to the following 4 samples submitted on the 6th January,2023.
 - a. Navy blue blazer/coat branded indicated as from Jonathan Kiprop Yator marked E1.
 - b. Blood sample stained on cotton wool and finger nail for William Kitongony indicated as deceased marked A.
 - c. Panga with black rubber handle marked B
 - d. Pair of red rubber shoes branded pistol size 46 indicated to belonging to Jonathan Kiprop Yator marked E2.



12. He stated that he was requested to carry out DNA analysis on the items to determine the presence and origin of biological evidential material. He said that upon doing analysis and he found that the blazer item E1, the panga item B and the shoes item E2 were all heavily stained with blood of a human being. He proceeded and generated DNA Profile from these items and from DNA Profile he was able to make the following conclusion and opinion:-
 - a. Based on the findings the DNA Profiles generated from the panga item B and a pair of shoes are identical and match DNA Profile of William Kiptongony the deceased.
 - b. DNA Profile generated from the blood stained on the blazer item E1 was mixed DNA Profile of William Kiptongony the deceased and other unknown person or persons. He prepared the report on the 22nd January,2024 and signed. He produced the report in court as Exh.3.
13. He further stated that the samples were forwarded through exhibit memo dated 5th January,2023 and submitted on 6th January,2023. He produced the exhibit memo form as Exh 3(b). He identified the samples given to him and a panga with red rubber handle in court, the navy- blue blazer and the red rubber shoes.
14. PW 6 Susan Chepkorir Yator testified that on the 21st December,2022, her brother the accused herein chased her together with her mother and they went to report at the police station after which, they went to their aunt Tarkok.
15. She said that the accused killed his father's goat before killing their father but she was not present when the accused killed her father. She said the accused chased them on Friday at 5 p.m and killed their father on Sunday.
16. She further stated that the accused killed a goat on Friday and fetched blood from the goat and went to drink. Pw6 said she went sleep in a neighbor's house. In the morning, she called her father who told them to go home and asked her to look for her mother and go with her so that Kiprop does not kill them. She said after reporting to police, they went to the chief but they did not find the chief. She said that they went back and, on the way, they were informed by Ambros that a person had been killed at her home. She confirmed that she did not see her father being killed.
17. PW 6 No.239267 IP Benjam Rioba Kimunge who was the Investigating Officer in this case testified that on the 22nd December,2022 at around 6:50P.M, his boss in Baringo Central called him and instructed him to visit the scene of crime reported at Kabarnet Police station at Borowonin Kapropita Baringo Central and together with other officers, they visited the scene at 8:00 p.m., where they found a crowd at the scene who informed them that a young man Jonathan Kiprop had killed his father by cutting him using a panga and that he had locked himself in his house.
18. He said at the scene, they saw a blood-stained panga on the roof of the house. They ordered him to open the door and come out and he obeyed. He said that accused's clothes and shoes were stained with blood. They arrested him and took him to a nearby police vehicle and later his family led them to where he committed the offence which was behind the house of the deceased. They saw the deceased lying down on a lot of blood and they saw injuries on the head and wrist joint(right). He said that they investigated and took the body to police and arrested the accused.
19. He further stated that the body was preserved at Baringo Hospital and they took the accused to the police station and before they placed the accused in custody, they inquired from him why he had killed his father and he said that it was his father who started by chasing him with a panga then he snatched from him and cut him. He said that the accused had worn a navy-blue coat and rubber shoes red in colour which he produced in court as exhibits. He positively identified the panga in court.



20. Upon the closure of the prosecution case, by ruling delivered on the 6th March,2025, the court found that accused had a case to answer and was placed on his defence.

Accused's Defence Case

21. The accused Jonathan Kiprop Yator testified as DW 1. He testified that he is 36 years old, that he is a mason and has a family and a child aged 4 years. He denied killing his father William Kiptongony on the 12th December,2022 in the morning at Kabesen village. He said he woke up at 6:00a.m, and went to the deceased and inquired whether his mother was in as he had given her charger and lantern lamp and he wanted to charge his phone to go to work but the deceased informed him that he using them. He said he told his father to tell her mother to call her when she returns and went back to his house which is 60m away and while on the way, he met the village elder Samson Kurgat who called him and went to his house which was nearby.
22. He said that he found him taking tea with his son Ian and he requested him to accompany him to Kapasis to take his boss to Koriema where Ruto was to sell goats. He said that he accompanied him to Kapasis centre where he left him and his son in the centre and went for a vehicle. He said that his son informed him that the vehicle would not be enough and he gave him 100/= and he went to mrefu's house to drink alcohol. He said after taking alcohol, he went back home and found his grandmother and he discussed with her his plans of building a house for his family then went to Kapter village to take alcohol at 11.00 a.m and found his father the deceased William at the house of Lucy Boswon taking alcohol. He said that he greeted his late father and requested for alcohol and drunk 3 bottles and left.
23. He said that he did not disagree with his father and that he went back to his house and slept up to 2P.M, when he heard his father calling him and he responded and his father requested him to go outside and on going out, he cut him with a panga on the head. He showed court a scar on his head. He said when he inquired from his father why he was cutting him, his father said that he wanted them to fight until he dies and that his father told him that he was asking for land yet he was not his son. He said when he tried to move to leave to his grandmother, his father cut him again. He showed court a scar on the forehead. He said when he saw his father raise the panga after pushing him to the wall of his father's house, he got hold of the panga and cut his father's right hand and stomach and pushed him. He said that his father was down while the he (accused) was up then suddenly, he got hold of the panga and cut his father and at the time of the incident he was so drunk and came back to his senses after about 20 minutes.
24. The accused further stated on 21st December,2022 he went home at around 11:00 a.m and his brother wanted a goat slaughtered but he was not able to slaughter the goat because he was drunk and feared he could cut himself but he went back and requested for goat blood to cook. He said he had not disagreed with his father over land and had not disagreed with his brother. He said that it was his father who started the fight and if he did not come with a panga/weapon he would have been peaceful. He sought for forgiveness from court for killing his father. He said that he did not intend to kill his father and that if he was not drunk, he would not have killed his father. He said that he had spoken to his family and has sent a letter. He said he normally calls his family through welfare asking for forgiveness.



Analysis and Determination

25. The accused faces a charge of murder contrary to Section 203 of the [Penal Code](#). Under that section murder is defined as follows:

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

26. The ingredients for the offence of murder are well settled. The prosecution has to establish the following ingredients: -

- i. Whether the deceased died.
- ii. Whether the accused person inflicted the injuries that caused the deceased death.
- iii. Whether the prosecution has established that at the time of the incident the accused actions were actuated by malice aforethought.

(i) Whether the deceased died

27. The prosecution evidence on this ingredient was mainly based on the evidence of PW1, PW2, PW3, PW4 and PW7 who said that the deceased died on the 22nd December, 2022 upon where sustaining cut wounds. The post mortem report was produced by consent in court and a look at the postmortem report reveals that the deceased died on the 22nd December, 2022 and the opinion of the pathologist is that the deceased died due to severe head injury secondary to assault by a sharp object.

(ii) Whether the accused person inflicted the injuries that caused the deceased death.

28. In his own defence, the accused admitted killing his father. He asked for forgiveness for killing his father and said that he did not intend to kill his father. There is therefore no doubt that it is the accused who inflicted injuries which led to the death of the deceased herein.

(iii) Whether the prosecution has established that at the time of the incident the accused actions were actuated by malice aforethought.

29. The accused admits that he killed his father the deceased herein but he alleges that the deceased was the aggressor. Malice aforethought is set out under Section 206 of the [Penal Code](#) as thus:-

“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.”
30. In the case of *Nzuki V Rep* 1993 KLR 171 the court of Appeal set out the principles of determining whether intention to commit murder is proved as follows:
- “1. Malice aforethought is a term of art and is either an express intention to kill or implied where by a voluntary act by a person intending to cause grievous bodily harm to his victim and the victim died as the result.
 2. Before an act can be murder, it must be aimed at someone and must be an act committed with one of the following intentions
 - (a) To cause death;
 - (b) Cause grievous bodily harm; and
 - (c) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits these acts deliberately.
 3. Without an intention of one of these three types, the mere fact that the accused’s conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder.
 4. ...
 5. ...
31. In the cited case of *Nzuki*, supra, the Court of Appeal held that even though the appellant’s conduct was done with the knowledge that the action is likely or highly likely to cause death or grievous harm, that in itself is not enough if there is no evidence to establish that the accused had formed an intention to cause death or to cause grievous harm, or knew his conduct may cause serious harm or death but committed the act deliberately any way.
32. Even though the accused said his father was the aggressor, pw2 who witnessed the incident stated how the accused cut the deceased’s hand and thereafter placed his head on the stone and cut the head with the panga into two. The deceased inflicted the fatal injuries in a very inhuman manner subjecting his late father to severe pain. His act was so cruel and, in my view, it cannot be equated to self defence. The acts of the accused as evidenced from the prosecution witnesses and the postmortem report is actuated by malice. It is evident that they knew the injuries would cause the death of the deceased and he therefore had the intention of killing the deceased.
33. It is trite law that anyone who uses such a lethal weapon and uses it to strike the deceased several times as accused did, ought to know that the injuries inflicted are likely to cause the death of that person. The accused’s choice of weapon and targeting the parts of the body that are very delicate all establish that he had premeditated his actions. From the foregoing, I find that the 3rd ingredient of malice aforethought has been proved beyond reasonable doubt. I therefore find that the prosecution has proved the three ingredients of the offence of murder against the accused beyond reasonable doubt and proceed to find accused guilty and convict him accordingly of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.



34. Final orders: -

1. Accused is convicted of the offence of murder contrary to section 203 as read with section 204 of the penal code.
2. 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.

Mr. Kipkulei for accused present.

Accused present.

CA, Elvis.

