



REPUBLIC OF KENYA



**Republic v Mungai (Criminal Case E033 of 2023)
[2025] KEHC 11010 (KLR) (22 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E033 OF 2023**

**JM NANG'EA, J
JULY 22, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

HARRISON MWATURI MUNGAI ACCUSED

JUDGMENT

Charge Facing the Accused Person

1. The above named (hereinafter referred to as “the Accused”) was on 19th September 2023 arraigned in this court on information and charge of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence state that on the 14th July 2023 at Njoro Town, Njoro Sub County, within Nakuru County he murdered Patrick Maina Ndirangu (hereinafter referred to as “the Deceased”).
2. The Accused denied the offence.

The Prosecution Case

3. Part of the prosecution evidence was recorded before my brother (Justice H. M Nyaga) who has since transferred to another work station. This court took over the case on 17th October 2024 and directed that hearing would continue from the point the previous court left off.

The Prosecution Evidence

4. The prosecution evidence is that on 14th July 2023 at around 7:00 pm. PW1, an Assistant Chief of Njoro Sub Location, was in an operation to arrest illicit liquor dealers in his area. He was accompanied by PW3, PW4 and PW5 who were “*boda boda*” motorcycle riders. They came upon a crowd near a road from whom they learnt of someone who had been stabbed by another. The victim was reportedly



taken to Njoro Hospital while the alleged assailant had gone to his home. There were two hats and blood at the scene of the assault.

5. PW1 told the court that he visited the victim at Njoro Sub County Hospital and found him unconscious. The doctor there referred him to the Nakuru County Teaching and Referral Hospital on the same day. Later, a village elder and other members of the public led him to the home of the suspect whose name was given as “Kibehe”. There was no response to knocks on his door upon which PW1 and his companions broke the window. This prompted the resident of the house to emerge. He allegedly wore blood-stained clothes. The police from Njoro Police Station were called and they came and apprehended the man. A blood-stained knife was also found in the house and confiscated by the police. According to PW1, the victim died a few days later.
6. PW2 is a Pathologist who examined the Deceased’s body on 16th August 2023. Two wounds were observed on the pelvic cavity. Slash wounds were on the knees and right iliac. There was a stab wound to the liver section. Signs of medical incisions during treatment were also noted. The Expert Witness reached the conclusion that the cause of death was sharp trauma in keeping with assault.
7. PW7 (Investigation Officer) confirmed the arrest of the accused and recovery of a knife suspected to have been used to attack the Deceased. According to the Officer, a different Officer actually investigated the case.
8. The Accused was put on his defence at the close of the prosecution evidence. Giving sworn evidence, he told the court that on the material date at around 6:00 pm. He and others including the Deceased went to drink in a Club. Earlier in the day, he and the Deceased had performed casual jobs together as loaders. A fight broke out in the Club which caused the Accused to flee outside. He saw the Deceased fall down in the Club as he got outside. He could not see the Deceased outside but the latter later emerged and reprimanded him for running away from the fight. The Deceased allegedly started assaulting him with fists. The Accused claims to have reacted by pushing him away and went home. The Accused said he was not armed with any objects. The court was told that both the Accused and the Deceased were drunk at the time.
9. While at home, the Accused states that he noticed he was bleeding from the face. Some of those that were in the Club allegedly followed him to his home and broke into his house. He maintains that he never killed the Deceased he called his great friend.

Analysis and Determination

10. The prosecution chose not make final submissions. I have perused the defence submissions as well as the prosecution and defence evidence on record in relation to the charge facing the Accused. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the Accused murdered the Deceased, actuated by malice aforethought.
11. There is no direct evidence linking the Accused to the killing as none of the witnesses testified to seeing the Accused commit the offence. Determination of the case therefore wholly depends on circumstantial evidence. In *Mwangi vs Republic* (Criminal Appeal No. E054 of 2023) [2024] KEHC 3113 (KLR) 15 March 2023 (Judgment) this court explained that for circumstantial evidence to be reliable it must be inconsistent with the accused person’s innocence.



12. In the case of *Abamad Abolfathi & Another vs Republic* (2018) eKLR , it was elaborated that;

“Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”
13. In a much older case (*Republic vs Taylor, Weaver & Donoram* (1928) Cr. Application R 21), it was observed that;

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that is circumstantial.”
14. In the often quoted case of *Sawe vs. Republic* (2003) KLR 364, it was stated that circumstantial evidence must satisfy three tests, namely;-

“The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
15. As in the case of *R vs Kipkering Arap Koskei* (1949) EACA 135, the prosecution must also show that there existed in-culpatory facts that were incompatible with the innocence of the accused and incapable of any explanation upon any other reasonable hypothesis other than that of guilt.
16. Section 206 of the *Penal Code* provides that malice aforethought is proven by one or more of the following circumstances;-
 - a. Intention to cause death or do grievous harm whether the death actually occurs or not.
 - b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.
 - c. An intention to commit a felony.
 - d. An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.
17. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive (see Case law in *Robert Onchiri Ogeto vs Republic* (2004) KLR (1a)
18. It is trite law that in homicide cases, death is presumed to have been unlawfully caused unless it is otherwise accidentally caused in circumstances that make it excusable (see *inter alia* case law in *Uganda vs Lydia Draru Alias Atim* HCT-00-CR-SC-0404 High Court of the Republic of Uganda , *Akol Patrick & Others vs Uganda* (2006) HCB (Vol. 1) 06 and the Court of Appeal for East Africa in *R vs Gusambiza s/o Wesonga* 1948 15 EACA 65).
19. In *Republic vs Gideon Wambua Kioko & 2 Others* (2019) eKLR three essential elements of the offence of murder were listed as hereunder;
 - i. The death and cause of death of the deceased.



- ii. That the accused caused the death through an unlawful act or omission.
 - iii. The accused possessed the intention to cause harm, or kill, or malice aforethought.
20. In *Republic vs Ali Suleiman Ali* (2021) eKLR it was held that circumstantial evidence must always be examined narrowly because it may be fabricated to unfairly cast suspicion on another person. According to this case law, before drawing an inference of guilt the court should be sure that there are no co-existing circumstances weakening or destroying that inference.
21. Having the relevant evidence and case law, I find the prosecution evidence not sufficient and credible to found a conviction. Those who witnessed the purported fight between the Accused and the Deceased were not called to testify. The owner or owners of two hats said to have been found at the scene were not identified, and the hats themselves were not produced in court. A blood-stained knife ostensibly taken from the Accused's house and suspected to have been the murder weapon was never exhibited in support of the prosecution case. Neither were the Accused's clothes also said to have been tainted with blood. No nexus has been established between the alleged blood on the knife and clothes, and the Deceased.
22. In the premises, the circumstantial evidence herein is not reliable. It is difficult to disbelieve the Accused's defence in the circumstances. It is evident that investigations into the crime were not properly and professionally conducted. As result, the prosecution has failed to prove the charge beyond reasonable doubt and the Accused is accordingly acquitted thereof pursuant to the provisions of section 215 of the *Criminal Procedure Code*.
23. Bond security deposited by and/or on behalf of the Accused is discharged for release to the owner.

JUDGEMENT DELIVERED THIS 22ND DAY OF JULY, 2025

J. M. NANG'EA

JUDGE

In the presence of:

Mr Wakasyaka for the Director of Public Prosecutions.

Ms Morande Advocate for the Accused.

Court Assistant (Jeniffer).

