



REPUBLIC OF KENYA



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**Republic v Kipngetch (Criminal Case E001 of 2023)
[2025] KEHC 10401 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E001 OF 2023
RN NYAKUNDI, J
JULY 18, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

BRIAN KIPKOSGEI KIPNGETICH ACCUSED

JUDGMENT

1. The Accused was charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on 26th December, 2022 at unknown time at Ainabkoi Centre, Ainabkoi location, Ainabkoi sub-county within Uasin Gishu County in the Republic of Kenya murdered Emmanuel Kiptanui Langat. The accused pleaded not guilty to the particulars of the offence vesting the duty upon the prosecution to prove each of the elements of the offence beyond reasonable doubt. In this quest, he was represented by legal counsel Mr. Sonkule and the prosecution under Art. 157(6) & (7) was led by Mr. Mugun. As a consequence of the legal duty vested in the state, four witnesses were bonded to adduce evidence on oath on the existence or non-existence of the facts in issue as outlined in Section 107(1), 108 and 109 of the *Evidence Act* to secure judgment in favor of the prosecution in the criminal charge facing the accused person.

Brief summary of the prosecution case

2. PW1- Nickson Kipkorir, a resident of Ainabkoi told this court that on 26th December, 2022 while he was coming from Burnt forest, he entered into a starehe bar to take some alcoholic drinks. This was about 8pm in the night. According to PW1 he knocked the door of starehe bar and immediately he saw the accused standing at the door as other people were seated. He got hold of him and to him it appeared like a joke but a vicious fight ensued as the accused threatened to stab him with a knife. The witness further told the court that at that moment he was able to notice the knife but apparently the deceased clearly saw it in possession of the accused. It was at that juncture the accused inquired to PW1 keeps on following into some social places. There was some of words between them with threats of stabbing



and escalation of the fight and this prompted the deceased to jump into the conflict to restore peace and calm that is when the accused person using the same knife to stab the deceased and the members of the public in starehe bar took flight for their own security. The witness PW1 was left alone with the deceased and the accused person. In the cause of threat confusion went to search and secured a motorcycle to escort the victim to the hospital. With that intervention the victim was escorted to the Living Room hospital as an emergency case.

3. It was also the evidence of PW2, one Leity Chepkorir who works as a nurse at Living Room hospital narrated the events of 26th December, 2023 when somebody knocked at the door seeking assistance for the victim who had been stabbed. She arrived at the scene and saw the victim with streams of blood. She however on observation made a decision that she needed more some specialized equipment to manage the injuries which had been sustained by the victim. On the cause of making a decision PW2 thought it wise to have the victim referred to Moi Teaching and Referral hospital. However before that could happen she stitched the thigh of the deceased so as to contain some loss of blood. She further called for an ambulance but there was no response from the driver.
4. It was also the case of the prosecution as supported by the evidence of PW3, PC Douglas Waswa who also happened to be the investigating officer in the matter. His role was to visit the scene and to record the witness statements to have a better view on what transpired resulting in the deceased's injuries. He also recovered the murder weapon, being a pen-knife which he produced as an exhibit 1 in support of the prosecution case. It was also the prosecution case from the testimony of PW3 that the following samples and exhibits collected in connection with this offence being: "A" is blood sample taken from deceased Emmanuel Kiptanui Lagat (deceased) "B" is a blood

This is what was expected by the investigating officer to be done by the Government Analyst to ascertain:

Whether the blood stains on the exhibit marked "B" is human blood stains and if human stains to ascertain. Whether the blood stains on the exhibit marked "B" matches with blood sample marked "A".

The Government Analyst Report dated 1st October, 2024 concludes as follows on the examination of the exhibits and blood samples the DNA profile generated from the blood stains on the pen-knife (item B) matches the DNA profiles of Emmanuel Kiptanui Lagat (deceased).

5. Given this background on the evidential material for the state was placed on his defence and on his narrative had this tapestry touching on the events of 26th December 2022. The accused told the court that on the material day during the late hours he spent sometimes with his friends to have fun in attending disco. He recalled the chain of events are traceable to on or about 3pm. The accused told the court the social evening involved taking of alcoholic drinks and one of his friends by the name Peter was intoxicated demanded to be escorted to his house. On their way home the accused told the court that they stopped at starehe bar where they met Caleb, Obama, Eliud and Cynthia. He however decided to escort his friend Peter home which he did and came back to the said bar to continue having alcoholic drinks. In a short while their was a knock at the door and the person was identified as Nickson who was apparently not welcomed to join them that evening at starehe bar. According to the accused person it did not take long when a fight ensued with Nickson and when the deceased stood up to intervene and separate them from escalating the conflict he reiterated by knocking Nickson against the electric switch. It did not take long before he saw Emmanuel lying on the ground as the fight continued with his assailant. When accused made further observations he saw Emmanuel's right leg oozing blood that when they decided to escort him to the hospital to seek medical attention.
6. The accused also called in the defence witnesses who included Kennedy Chibole. In the evidence by PW2 on 26th December 2022 he went to Ainabkoi center where he met the deceased at starehe bar.



The all enjoyed taking alcoholic drinks in the congregation of many other patrons. In that same night one Nickson forced himself into the same room and this caused an altercation with the accused. In that struggle the electric switch went off and temporarily they had no lights. This facilitated full blown fight between Nickson and the accused. That is when the deceased stood up to separate the two but he was so intoxicated he could only recall seeing him fall on the ground. It was also the witness's testimony that he saw blood streams from the body of the deceased. There was some form of first aid to save the life of the deceased but that was never to be the case. He was however reluctant to confirm to the court whether he saw the accused stab the deceased.

7. Next witness in support of the accused case was Abraham Kiplagat who told the court that the accused is his nephew and that he was aware about the offence. In his testimony there was a family meeting which he described as victim offender mediation. It is thought this mediation that their family paid 9 herds of cattle in conformity with the Nandi culture and customs. In his assessment the two families now enjoy cordial relationships.
8. The last witness for the defense was Isaac Serem whose evidence was more similar with PW3 on the reconciliation carried out between the family of the deceased and that of the accused in compliance with known guidelines on such cases within the scope of the Nandi culture and customs.

Analysis and determination

9. The provisions of section 203 and 204 of the *Penal Code* under which the accused is charged provide for the offence of murder and the punishment for it. They require that the prosecution prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought.
10. Section 203 of the *Penal Code* defines murder and establishes the essential elements that must be proved beyond reasonable doubt: first, proof of death of the deceased; second, that the death was caused by an unlawful act or omission; third, that such unlawful act or omission was committed by the accused; and fourth, that the killing was done with malice aforethought. Each of these elements must be established independently and cumulatively to sustain a conviction for murder.
11. The first element requiring consideration is proof of death. In the present case, there is no dispute that Emmanuel Kiptanui Langat died on the material date. This fact was established through the evidence of PW1 Nickson Kipkorir who witnessed the stabbing incident and assisted in transporting the victim to the hospital. The death was further confirmed by the evidence of PW2 Leity Chepkorir, the nurse at Living Room hospital who attended to the victim upon arrival and observed the severity of his injuries. The prosecution has therefore satisfied this element beyond reasonable doubt.
12. The second element concerns whether the death resulted from an unlawful act or omission. Article 26(1) of *the Constitution* guarantees every person the right to life. The evidence before this court establishes that the deceased sustained fatal stab wounds during the altercation at Starehe bar. PW2's testimony revealed that the victim arrived at the hospital with severe injuries requiring specialized medical intervention, and despite efforts to contain the bleeding through stitching, the victim's condition necessitated referral to Moi Teaching and Referral Hospital. The circumstances surrounding the deceased's death clearly demonstrate that it resulted from an unlawful act of violence, not from any natural cause or lawful intervention.
13. The third element requires proof that the unlawful act was committed by the accused person. The prosecution's case rests primarily on the testimony of PW1 Nickson Kipkorir, who was present at the scene and witnessed the events that led to the deceased's death. According to PW1's evidence, he entered Starehe bar where he encountered the accused standing at the door. A confrontation



ensued during which the accused threatened to stab PW1 with a knife. When the deceased Emmanuel Kiptanui Langat intervened to restore peace, the accused used the same knife to stab the deceased.

14. This testimony is corroborated by the physical evidence recovered by PW3 PC Douglas Waswa, the investigating officer, who retrieved the murder weapon described as a pen-knife, which was produced as Exhibit 1. More significantly, the Government Analyst Report dated 1st October 2024 provided crucial forensic evidence establishing that the DNA profile generated from blood stains on the pen-knife matched the DNA profile of the deceased Emmanuel Kiptanui Langat. This forensic evidence creates an unbroken link between the accused, the murder weapon, and the victim.
15. The accused's defence presents a different version of events. According to his testimony, he was socializing with friends at Starehe bar when Nickson forced entry and was unwelcome. A fight ensued between himself and Nickson, during which the deceased intervened. The accused claims that in the struggle, the deceased was knocked against an electric switch, causing the lights to go out, and subsequently the deceased fell to the ground with blood oozing from his right leg.
16. The defence witnesses, Kennedy Chibole and others, provided testimony supporting the accused's version that the deceased's injury occurred during a general altercation when the lights went out. However, Kennedy Chibole, despite being present at the scene, was notably reluctant to confirm whether he actually saw the accused stab the deceased, which undermines the credibility of the defence narrative.
17. The court must evaluate these competing versions against the standard of proof required in criminal cases. While the defence version attempts to portray the incident as an accidental injury during a scuffle, this explanation is inconsistent with the forensic evidence, particularly the DNA analysis confirming that the deceased's blood was found on the pen-knife recovered from the scene and linked to the accused.
18. The fourth element requiring proof is malice aforethought. Section 206 of the *Penal Code* defines malice aforethought as being established by evidence proving any one or more of the following circumstances: an intention to cause death or grievous harm to any person; knowledge that the act or omission will probably cause death or grievous harm; an intent to commit a felony; or an intention to facilitate escape from custody.
19. The case of *Rex v Tubere s/o Ochen* 1945 12 EACA 63 lays down the guidelines for trial judges in consideration of Malice aforethought where the court held that:

“To determine whether malice aforethought has been established to consider the weapon used, how it is used, the part of the body targeted, the nature of injuries inflicted, the Accused's conduct before, during and after the incident.”
20. In addition, the Court of Appeal in the case of *Joseph Kimani Njau v R* [2014] eKLR held as follows:

“Before an act can be murder, it must be aimed at someone, and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

 - i. The intention to cause death;
 - ii. The intention to cause grievous bodily harm;



- iii. Where the Accused knows that there is a severe risk that death or grievous bodily harm will ensue from his acts and commits those acts deliberately and without lawful excuse to expose a victim to that risk as the result of those acts.

It does not matter in such circumstances whether the Accused desires those consequences to ensue. None of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed....."

21. The evidence demonstrates that the accused was armed with a pen-knife during the confrontation at Starehe bar. PW1's testimony indicates that the accused threatened to stab him with the knife, showing a clear intention to use the weapon to cause harm. When the deceased intervened in the altercation, the accused deliberately used the same knife to stab him. The deliberate use of a dangerous weapon in the circumstances reveals an intention to cause at least grievous bodily harm, if not death.
22. The nature of the injuries inflicted and the circumstances of their infliction support the inference of malice aforethought. A reasonable person wielding a knife in the manner described would have known that such an act would likely cause death or grievous bodily harm to the victim.
23. Nonetheless, the court acknowledges the evidence presented regarding the victim-offender mediation conducted between the families of the deceased and the accused in accordance with Nandi culture and customs. Abraham Kiplagat and Isaac Serem testified that the accused's family paid nine head of cattle as compensation, and that the two families now enjoy cordial relationships following this traditional reconciliation process.
24. While the court recognizes the importance of traditional dispute resolution mechanisms and their role in promoting community healing and reconciliation, it must be emphasized that such arrangements, however culturally significant, do not extinguish criminal liability for serious offences such as murder. The state's duty to prosecute criminal conduct in the public interest remains paramount, regardless of private arrangements between parties.
25. Having carefully considered all the evidence presented by both the prosecution and the defence, I am satisfied that the prosecution has proved beyond reasonable doubt all the essential elements of the offence of murder as charged. The evidence establishes that Emmanuel Kiptanui Langat died as a result of stab wounds inflicted by the accused Brian Kipkosgei Kipngetich using a pen-knife, and that the accused acted with malice aforethought in causing the deceased's death.
26. The forensic evidence, particularly the DNA analysis linking the accused to the murder weapon and the victim's blood, provides compelling corroboration of the prosecution's case. While the traditional reconciliation process demonstrates the accused's acknowledgment of responsibility and the families' commitment to peace, it does not alter the legal consequences of the criminal conduct.
27. The facts and evidence of this case satisfies the criteria of culpable homicide which comprises of the following elements.
 - a. If the offender means to cause the death of the person killed.
 - (b) If the offender means to cause to the person killed any bodily injury which is known to be likely to cause death, and if the offender, whether he does or does not mean to cause death, is reckless whether death is caused or not.
 - (c) If the offender means to cause death, or such bodily injury as aforesaid, to one person, so that if that person be killed the offender would be guilty of murder, and by accident or mistake the offender kills another person, though he does not mean to hurt the person killed.



- (d) If the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting anyone.
28. The accused defense failed the test of justification of self defense as explained in the case of *Selemani v Republic* (1963) E.A at p 46 in which the court held: “Under English law there is a broad distinction made where questions of self defence arise. If a person against whom a forcible and violent felony is being attempted repels force by force and in so doing kills the attacker the killing is justifiable, provided there was a reasonable necessity for the killing or an honest belief based on reasonable grounds that it was necessary and the violence attempted by or reasonably apprehended from the attacker is really serious. It would appear that in such a case there is no duty in law to retreat, though no doubt questions of opportunity of avoidance of disengagement would be relevant to the question of reasonable necessity for the killing. In other cases of self defence where no violent felony is attempted a person is entitled to use reasonable force against an assault, and if he is reasonably in apprehension of serious injury, provided he does all that he is able in the circumstances, by retreat or otherwise break off the fight or avoid the assault, he may use such force, including deadly force, as is reasonable in the circumstances. In either case if the force used is excessive, but if the other elements of self defence are present there may be a conviction of manslaughter.”
29. Essentially the accused person was not able to avail himself the defense of self under Section 17 of the penal code or provocation under Section 207 as read with 208 of the *Penal Code* to persuade this court to reduce the aggravated homicide and have it substituted with manslaughter under Section 202 of the *Penal Code*.
30. Accordingly, I find the accused Brian Kipkosgei Kipngetich guilty of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* as charged in the particulars of the offence.

Sentencing

31. The accused person was charged, tried and convicted for the offence of murder contrary to section 203 as punishable under section 204 of the *Penal Code*. This stage of the trial marks the culmination of the criminal trial and is perceived as symbolic of what the offender deserves as a punishment for his or her crime. The parties were then invited to submit on the question of sentencing and the same has been captured as hereunder and the same has been covered majorly under a victim-offender mediation arrangement.
32. Learned Counsel Mr. Sonkule on mitigation strongly invited this court to consider various mitigation factors as advanced by the accused person largely covered under victim-offender mediation. The deceased’s father filed an affidavit in which he deposed as follow:
- a. That I am the father of the late Emmanuel Kiptanui Lagat who was the victim and person of interest in HCCR 1 of 2023.
 - b. The accused person, Brian Kipkosgei Kipngetich is my relative and that of the deceased.
 - c. The incident took place on 26th December, 2022 at Ainabkoi centre in one of the rooms of the bar.
 - d. I have come to learn that the incident took place when the victim and the accused were both drunk and that the deceased was fatally stabbed when he was trying to separate a fight between the accused and a 3rd party known as Edwin Kirui Kimutai alias Teketeke.



- e. Immediately after the incident, Brian Kipkosgei Kipngetich, the accused in an attempt to save the deceased life, rushed to get his motorbike to take him to the hospital, unfortunately, upon his return, the deceased had already passed on.
 - f. He then surrendered himself to the police and assisted the investigating officer in conducting the investigation.
 - g. Prior to this incident, the two cousins. The deceased and the accused, used to live harmoniously together.
 - h. After my late Emmanuel Kiptanui Lagat was murdered by Brian Kipkosgei Kipngetich, both families have conducted a cleansing and reconciliation ceremony known as ‘KWEETAPMET’ which entails for family of the accused delivering nice cows to the deceased family and also drinking milk poured in a single container by both families.
 - i. We have now conclude the family meetings and I do confirm that I have received all the cattle.
 - j. As a family, we have no objection to leniency being extended the way of the accused for his crime.
 - k. Should the court deem it just, we would not have any reservations to the accused being granted a non-custodial sentence.
 - l. That I do confirm that there is no animosity between my family and that of the accused person as we have fully reconciled.
 - m. From the time that he was remanded at Eldoret G.K. Prison and thereafter released on bond, I have noted a change in mannerism from the accused as he has already learnt his lesson, leading me to believe that he is remorseful and ditched his drinking habits.
 - n. That he genuinely and sincerely regrets the offence where his family went further
33. The accused further in his mitigating factors through his advocate filed mitigating factors pointing out that he has no prior criminal record, genuine remorse, saved precious judicial time, ready and willing to reform and that they have made a successful attempt at victim-offender mediation.
34. The state on its part urged the court to consider the seriousness of the offence and sentence the accused person accordingly.
35. While victim perspectives have gained recognition as important components of the sentencing process, they cannot and should not be determinative of the ultimate sentence imposed by the court. The criminal justice system operates on the fundamental principle that crimes are offenses against the state and society as a whole, not merely private wrongs between individuals. (see *Victims’ Mitigating Views in Sentencing Decisions: A Comparative Analysis* by Annette van der Merwe & Ann Skelton). In the present case, where traditional reconciliation ceremonies have been conducted between the families of the deceased Emmanuel Kiptanui Langat and the accused Brian Kipkosgei Kipngetich, including the payment of nine head of cattle according to Nandi customs, this demonstrates genuine remorse and community healing. However, such traditional dispute resolution mechanisms, while culturally significant and valuable for family reconciliation, cannot extinguish the state’s obligation to prosecute serious crimes in the public interest.
36. The court must carefully balance the expressed wishes of victims and their families against broader societal interests and established sentencing principles. When victims express preferences for leniency, as evidenced by the deceased’s father’s affidavit supporting a non-custodial sentence for the accused,



such views may serve as mitigating factors that can influence the severity of punishment within established parameters. However, allowing victim preferences to entirely determine sentences would undermine the principles of consistency, proportionality, and equal treatment before the law. In serious offenses such as murder, the court has a duty to ensure that sentences reflect the gravity of the offense and maintain public confidence in the justice system, while also considering the deterrent effect on potential offenders and the protection of society.

37. I therefore share the view that Courts must be vigilant against creating a precedent that could be perceived as allowing serious crimes to be "bought off" through traditional compensation or victim forgiveness. While the traditional reconciliation process in this case demonstrates cultural sensitivity and genuine attempts at restorative justice, the law cannot permit a situation where the severity of punishment is primarily determined by the victim's financial dependence on the offender or their willingness to accept traditional compensation. Such an approach would create dangerous inequality in the justice system, where the outcome of criminal cases could vary based on economic relationships or cultural practices rather than legal principles. For emphasis purposed, the court can acknowledge the value of traditional reconciliation and victim preferences as mitigating factors that may reduce the severity of punishment, but the ultimate sentence must still reflect the seriousness of taking a human life and serve the broader purposes of criminal law, including deterrence, retribution, and the protection of society.
38. Let me then move to the principles guiding our sentencing regime. In deciding whether to impose a custodial or non-custodial sentence, the court is required to take into account the following factors: -
- "a) Gravity of the offence: - sentence of imprisonment should be avoided for misdemeanor.
 - b) Criminal history of the offender. Taking into account the seriousness of the offences, first offenders should be considered for non-custodial sentence.
 - c) Character of the offender: - non-custodial sentence are best suited for offenders who are already remorseful and receptive to rehabilitative measures.
 - d) Protection of the community: - where the offender is likely to pose a threat to the community.
 - e) Offender's responsibility to third parties:- where there are people depending on the offender.
 - f) Children in conflict with the law:- non- custodial orders should be imposed as a matter of course in cases of children in conflict with law, except in circumstances where, in light of the seriousness of the offence coupled with other factors, the court is satisfied that a custodial order is the most appropriate.
39. The Supreme court in the Francis Muruatetu amended the guidelines in respect of re-hearing sentence for the conviction of murder charge to include: -
- "a) Age of the offender.
 - b) Being a first offender.
 - c) Whether the offender pleaded guilty.
 - d) Character and record of the offender.



- e) Commission of the offence in response to gender-based violence.
- f) Remorsefulness of the offender.
- g) The possibility of reform and social re-adaptation of the offender.
- h) Any other factor that the court considers relevant.”

40. Having carefully considered all the mitigating factors advanced by the parties, the victim's family's expressed views, and the traditional reconciliation process that has taken place between the families, this court is satisfied that substantial and compelling circumstances exist to justify a departure from the maximum penalty. While the offense of murder ordinarily attracts the death sentence under section 204 of the *Penal Code*, the accused's lack of prior criminal record, his genuine remorse as demonstrated through his cooperation with the investigation and participation in traditional reconciliation ceremonies, the successful victim-offender mediation resulting in the payment of compensation according to Nandi customs, and his demonstrated change in behavior since the incident all constitute significant mitigating factors.

41. Taking into account all the circumstances of this case, including the aggravating factors and the mitigating factors outlined above, I sentence the accused Brian Kipkosgei Kipngetich to ten (10) years imprisonment. This sentence shall take into account the pre-trial detention period served by the accused pursuant to the provisions of section 333(2) of the *Criminal Procedure Code*.

42. 14 days right to appeal explained.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 18TH DAY OF JULY 2025.

In the Presence of:

Sidi for the State

Accused

.....

R. NYAKUNDI

JUDGE

