



**Republic v Wanyeki (Criminal Case 15 of 2019)  
[2025] KEHC 9594 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9594 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 15 OF 2019**

**JM NANG'EA, J**

**JULY 3, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DOUGLAS NDEGWA WANYEKI ..... ACCUSED**

**JUDGMENT**

**The Charge facing the Accused person and the Prosecution Evidence in support thereof**

1. The Accused person 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 state that on 18/2/2018 at Menengai Crater area, Nakuru North Sub County, within Nakuru County, he murdered Patrick Muchiri Githaiga ( hereinafter referred to as “the Deceased”). He denied the charge.
2. 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 8<sup>th</sup> October 2024 and directed that hearing would continue from the point the previous court left off. The court then proceeded to set down the case for defence hearing, the Accused having already been put on his defence.
3. The prosecution case is that on the material date at about 6:00 p.m. PW1, the Deceased’s brother, was informed by his neighbour that the Deceased had been stabbed and seriously injured. PW1 rushed to the scene but found out that his brother had been taken to Nakuru County Teaching & Referral Hospital. He proceeded to the Hospital where he learnt that the Deceased had been admitted and was receiving blood transfusion. PW1 noticed that he had a cut wound to the stomach. He was thereafter taken into theatre for an operation.
4. PW1 reported the incident to Bahati Police Station and recorded a statement. About 12 days later the Deceased was discharged from Hospital. He was, however, very weak and unable to eat or support



himself. PW1 further testified that the Deceased told him 3 days after leaving the hospital theatre that the Accused had given him shoes to mend and they disagreed over his payment.

5. According to the Investigating Officer (PW4) the Deceased identified the Accused as the assailant and was arrested and charged in Nakuru Chief Magistrate's Court's file No. 920 of 2018 over the assault. Unfortunately the Deceased died on 12/2/2019 while receiving treatment in the Hospital. The witness tendered the proceedings of the assault charge preferred in the lower court.
6. According to PW1, the Pathologist who carried out autopsy on the Deceased's body (PW2) testified that the Deceased was emaciated due to poor nutrition status. Sores were on the shoulders and buttocks. 75% of the intestines were missing, and the doctor opined that the;

“ cause of death was chronic malnutrition with anaemia and infection from sores and injuries to the guts as a result of sharp trauma to the abdomen.”

The doctor found that the primary cause of death was multiple stab wounds to the stomach.

7. PW3 is a Clinical Officer who attended to the Deceased at the Nakuru County Referral Hospital. His medical findings are similar to those observed by PW2.
8. The exhibited proceedings of the lower court show that the Deceased testified on 23/7/2018. He told the court that on 18/2/2018 at 2:00 p.m. the Accused asked him to repair shoes for him and his children. After finishing the job, the Accused allegedly suggested that he accompany him to the local Shopping Centre so that he could be paid agreed Kshs. 180/= for his services. Along the way, the Accused entered a house belonging to one Paul and later told the Deceased he was, after all, not going to the Trading Centre. When the Deceased asked for his payment, the Accused is said to have entered into the same house and emerged with a knife with which he threatened to stab the Deceased. He did make good the threat and allegedly stabbed the Deceased in the stomach rendering him unconscious, and he only came to the following day in Hospital where he was receiving treatment.
9. No other witness testified in the Lower Court. After this murder charge was laid against the Accused, the charge before the Lower Court was withdrawn pursuant to the provisions of Section 87 (a) of the [Criminal Procedure Code](#).

### **The Defence Evidence**

10. The Accused was put on his defence upon the close of the prosecution evidence. Offering a sworn evidence, he testified that on 18<sup>th</sup> February 2018 at around 2 pm he was at home. A cobbler called Patrick Muchiri, the Deceased herein, passed by and he engaged him to mend his shoes for pay. The shoes were repaired at the Accused's home after which the two agreed to go to the local Trading Centre where the Accused would get change and make good the repair charges of Ksh. 40. According to the Accused, the Deceased expressed doubt as to whether he would be paid and an argument between them ensued.. He then decided to go to the home of his friend called Paul nearby but the Deceased , who was allegedly drunk, held onto him while pulling him.
11. The Accused continued to state that he reacted by pushing the Deceased away, causing him to fall down. He proceeded to the home of his friend and later learnt of the Deceased's demise. He denied stabbing the Deceased and suspected that he injured himself during their confrontation using an awl he had which he used to mend the shoes.



## Final Submissions

12. Learned Counsel for the Prosecution and the Defence filed their final submissions in writing. The Prosecution Counsel submits that in law every homicide case is presumed to be unlawful unless otherwise shown to be excusable (see case law in Uganda V. Lydia Draru Alias Atim HCT-00-CR-SC-0404 High Court of the Republic of Uganda; Akol Patrick & Others V. Uganda (2006) HCB (Vol. 1) 06 and R V. Gusambiza s/o Wesonga 1948 15 EACA 65 cited in reliance by Counsel among other judicial determinations).
13. On the evidence, the Prosecution Counsel thinks that the Accused's culpability is proven beyond reasonable doubt, adding that malice aforethought on his part is established. Further reference is made to the Republic V. Juma Kituko Mwambegu (2020) eKLR in which it was observed thus in relation to cases of murder;

“In determining existence or non-existence of malice one has to look at the facts proving the weapon used , the manner in which it is used and the part of the body injured”.
14. On the other hand, the Defence Counsel contends that the essential ingredient of the offence of murder to wit; malice afterthought was not established. Counsel submits that the death occurred after the Accused's confrontation with the Deceased when both were drunk. He acted in self defence after the Deceased brandished a knife and fell on it in the tussle . In support of these submissions Counsel cites inter alia the judicial determinations in Republic V. David Mugo Mwangi (2020) eKLR and Republic V. Musoke (1958) EA 715.

## Analysis and Determination

15. The sole issue for determination arising from the charge, the evidence and submissions is whether the prosecution has proved beyond reasonable doubt that the Accused murdered the Deceased, actuated by malice aforethought.
16. In Republic V. Gideon Wambua Kioko & 2 Others (2019) eKLR the following three essential elements of the offence of murder were stated;
  - 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.
17. 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.”



18. 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)}. Proof of motive may therefore aid the prosecution but it is not on its own sufficient to found a conviction.
19. In the instant case, the prosecution relies on the evidence of a single witness implicating the Accused, the Deceased, who testified before his death and told the court that the Accused stabbed him with a knife. The Accused admits that there was a confrontation between them but blames the death on the Deceased who allegedly fell on his own tool for mending shoes, fatally injuring himself. The claim in the Defence submissions that the Deceased wielded a knife justifying the Accused to act in self defence, however, contradicts the sworn defence and thus lacks evidentiary value. It is trite law that submissions are not evidence as they are not made under oath and subjected to cross-examination.
20. This court's decision in AHM V. Republic (Criminal Appeal No. E043 of 2021 ) {2022} KEHC 12778 (KLR) ( 31 August 2022) (Judgement) underscored the established legal position that a conviction can be based on the testimony of a single witness provided his/her evidence is credible and therefore reliable. Indeed, there is no particular number of witnesses required to prove a fact by dint of the provisions of section 143 of the Evidence Act. Every case depends on its own facts and circumstances , however.
21. The Accused testified to a confrontation between him and the Deceased on the material date over a debt he owed him. Contrary to the Defence submissions, the Accused told the court it was only the Deceased who was drunk at the time . The apparent defence of drunkenness does not therefore arise and so the judicial decisions the Defence cites in this regard are distinguishable. The Pathologists's evidence corroborates the Deceased's evidence, opining that the primary cause of the death were several stab wounds to the abdomen. A fall on a sharp object as the accused claims to have happened to the Deceased may not cause multiple wounds. The Accused's evidence does not accordingly dislodge the Deceased's evidence that he attacked him for demanding his dues. The Accused must have known that the stabbing in the abdomen could cause death or grievous harm. The assault was on the evidence actuated by malice aforethought.
22. In the result, the court finds that the prosecution proved the charge as preferred beyond reasonable doubt. The Accused is convicted thereof pursuant to the provisions of section 215 of The Criminal Procedure Code.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

**J. M. NANG'EA , JUDGE.**

In the presence of:

The Prosecution Counsel, Mr Wakasyaka

The Defence Counsel, Mr Kirui

The Accused, present

Court Assistant, Jeniffer

**J. M. NANG'EA**

**JUDGE.**

