



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Njoroge (Criminal Case 19 of 2019)
[2025] KEHC 12653 (KLR) (26 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12653 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 19 OF 2019
GL NZIOKA, J
AUGUST 26, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID NDICHU NJOROGE ACCUSED

JUDGMENT

1. The accused was arraigned before the court charged with the offence of murder contrary to section 203 as read with section 205 of the Penal Code (Cap 63) Laws of Kenya. The particulars of the charge are that on the night of 14th November, 2019 at Manunga area in Kipipiri Sub-County within Nyandarua County he murdered Wallace Mwangi Kamau.
2. The charges were read to the accused and he pleaded not guilty thereto. The case proceeded to full hearing. The prosecution case is that, on 14th day of November 2019, the police received information that, a body was lying on the road at Anunga. The information was conveyed to the Chief Inspector Odongo of Directorate of Criminal Investigation office at Kipipiri. He assigned (PW10) No. 83163 Police Constable (PC) Emphantus Gitari to attend to the report. PC Gitari testified that, he visited the scene and took the body to the morgue to await further investigation.
3. That on 15th day of November 2019, the investigation officer PC Gitari received information that there was someone at a certain place who had blood stains on his clothes. That he went to the place and arrested the person, who is the accused herein. That, the clothes that he was wearing had blood stains and were taken to the Government Chemist for analysis.
4. (PW8) Lucy Warukila Wachira who examined the recovered clothes and prepared a report dated 14th May 2020, indicated that, the DNA profile generated from the blood stains on the suspect's clothes matched the blood sample of Wallace Mwangi Kamau, the deceased herein.



5. In the meantime the deceased body was subjected to post mortem procedure by (PW6) Dr. Evans Ngugi Wamuyu who established that, the cause of the deceased's death was left massive hemothorax secondary to penetrating stab wounds.
6. Pursuant to the finding of the two expert witnesses and other witnesses, the accused was held as the prime suspect in the murder of the deceased and was charged accordingly.
7. At the conclusion of the prosecution case, the accused was placed on his defence. He testified that he sells goats and that, on 15th day of November 2019, he was sourcing for goats for sale. That, he was to meet one Kariuki Mukorino but they did not meet. That at about 8:40am he saw three (3) people who stopped a motor bike as they wanted to see the goats he had bought. Further fifteen (15) people arrived and said that, he was the one who had bought the goats, a fact he denied. That he was accused of stealing goats and when he denied he was thoroughly beaten, and placed in the police cells.
8. The accused further stated that, the police officers who beat him thought he could sue them for assault and further demanded a bribe of Kshs 17,000 and when he refused to give the bribe he was charged with the offence herein of murder. He denied killing the deceased and more so because the deceased had a love affair with his estranged wife.
9. At the conclusion of the trial, the prosecution relied on the evidence adduced while the defence filed submission dated 14th October 2024. In a nutshell the defence submits that the prosecution had the burden to prove the charge against the accused beyond any reasonable. The defence cited section 203 of the Penal Code and submitted that, the prosecution was required to adduce evidence to prove the ingredient of the offence of murder being that; he inflicted the injuries on the deceased and had formed the necessary intention to either cause death or grievous harm on the deceased.
10. The defence argued that the prosecution failed to identify the person who killed the deceased. That it was alleged the deceased was assaulted by unknown people; however, no evidence was led as to the number of people who attacked the deceased, and whether the accused was amongst them, and who saw them.
11. The prosecution was further faulted for failing to call the neighbours as witnesses who were allegedly heard shouting timber thief. That, there was no direct evidence and/or eye witnesses linking the accused to the assault and therefore the prosecution failed to place him at the scene of the crime and/or prove that he inflicted the injuries on the deceased.
12. The defence further relied on section 206 of the Penal Code on what constitutes malice aforethought and argued that the prosecution failed to establish any motive for the killing. That there was no evidence that he knew and/or had threatened the deceased. That the allegations of Ann, his former wife, that he threatened her were insufficient evidence to prove malice aforethought and in any event it will be a stretch of the imagination to allege that alleged threats extended her boyfriend, the deceased.
13. That, the prosecution failed to prove both mens rea and actus reus. The court was referred to the case of, Joseph Kimani Njau v. Republic [2014] eKLR where the Court of Appeal stated that in all criminal trial the prosecution must prove both mens rea and actus reus beyond reasonable doubt.
14. The accused submitted that, the prosecution case rested wholly on circumstantial evidence but did not meet the legal threshold required for the court to base a conviction on such circumstantial evidence. The accused relied on the case of Republic v. Michael Muriuki [2014] eKLR where the Court of Appeal cited the case of, Sawe vs Republic (2003) KLR 364 which outlined the principles a court is to consider before relying on circumstantial evidence to find a conviction.



15. It was submitted that the Court of Appeal in the above case stated that it must be shown that; the facts relied upon are wholly incompatible with the innocence of the accused and incapable of any other reasonable explanation; that there is no other existing circumstantial evidence existing that weaken the circumstances relied on; and that the prosecution bears the burden of proving such facts to the exclusion of any reasonable hypothesis of innocence. Further the burden never shift to the accused at any stage.
16. The accused argued that the allegation he was found with bloodstained clothes was insufficient to point him as the perpetrator. That it was not clear who the clothes belonged to especially considering the fact that they were recovered the following day. In conclusion, he urged the court to find that the prosecution failed to prove the case beyond reasonable doubt and prayed that the court acquits him under section 215 of the Criminal Procedure Code (Cap 75) Laws of Kenya.
17. At the conclusion of the case I note that the accused is charged with the offence of murder which is provided for under section 203 of the Penal Code as follows:

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”
18. The ingredients of that offence are settled by case law including the decision of the Court of Appeal in Joseph Githua Njuguna vs Republic (2016) eKLR, where the ingredients were stated as: a) proof of occurrence and cause of death, b) whether the death was lawful or unlawful, c) proof of commission of the offence by the accused and d) malice aforethought.
19. Pursuant to the aforesaid, I find that, as regards occurrence of the deceased’s death (PW1) Margaret Wanjiku Mwangi testified that the deceased was her husband and when she was informed that he had died, she went to the mortuary and witnessed the post-mortem being conducted.
20. (PW2) Peter Irungu the deceased’s brother also testified that he went to the school where the deceased was working and confirmed he had died and then went to Ol Kalou J. M. Kariuki Hospital morgue and identified the body for post-mortem. Finally (PW6) Dr. Evans Ngugi confirmed the occurrence of death as he is the one who performed the post-mortem on the same. Consequently the occurrence of the deceased’s death is not in dispute.
21. The second issue is the cause of death. According to (PW6) Dr. Evans Ngugi, the cause of death was left massive hemothorax secondary to penetrating wounds. Once again there is no dispute on the same.
22. The third issue is whether the accused is the perpetrator of the offence herein. From the outset, it is clear that there was no eye witness to the death of the deceased. The reason why the accused was charged is purely on the finding of (PW8) Lucy Warukila Wachira that the clothes, namely, a navy-blue trouser packed in a khaki envelope marked “D” and a blue jacket packed in a khaki envelope marked “E” were found to be stained with blood of human origin and which blood was identified to be that of the deceased. According to the prosecution those clothes belong to the accused herein.
23. The question is, has the prosecution proved that those clothes belong to the accused? In that regard (PW3) Daniel Mwangi Gitaru testified that on 15th November 2019, he saw a boda boda rider carrying the accused, notably the deceased was discovered dead on 14th November 2019. That the accused had blood on his clothes and told him that he had been assaulted by thugs. However (PW3) Mwangi did not believe him and he informed his brother (PW4) Francis Mwangi Waititu of the same.
24. (PW4) Francis also testified that when (PW3) Daniel Mwangi called him and informed him that the accused’s clothes have blood, and that he had gone to their mother’s house that was incomplete, PW4



- Francis went to that house and found the accused changing clothes removing the blood stained clothes. That they called the police as the accused had no visible injuries and yet he alleged to have been assaulted by the thugs.
25. Both (PW3) Daniel and (PW4) Francis identified the clothes the accused had on that date as the ones in court, being a trouser and jacket produced as (P.exh 1) and (P.exh 2) respectively. Consequently the evidence of the two witnesses confirm that the deceased had bold stained clothes.
 26. In addition to the evidence of (PW3) Daniel, and PW4 (Francis), (PW9) Peter Kaniu Musee testified that on 10th November 2019, the accused went to the stage where he conducts boda boda business and asked him to go and pick clothes from his house. That, the accused was wearing a blue track suit. That he delivered the clothes but did not pay him to date. The question is what clothes were these? Has the accused denied or recounted this evidence?
 27. The further question that arises is, what does the accused have to say about these clothes he is associated with. Of course the accused has denied the same. However, the question that arise is why would (PW3) Daniel and (PW4) Francis implicate him. A consideration of the evidence of both witnesses reveal that they were well known to the accused. Further (PW3) Daniel confirmed that he has never disagreed with the accused. That he just got concerned because the accused had kept clothes with blood stains in his mother's house. (PW4) Francis testified that he used to see the accused in the area where they were staying. That there was no grudge between him and the accused therefore there is no evidence of bad blood between the two prosecution witnesses and the accused.
 28. Furthermore, there is the evidence of (PW5) Benson Muchiri Kuria, the Assistant Chief at Kipipiri Sub-County that, in the month of October 2019, a lady who was working at St Teresia's Girls School reported to him that the accused was sending her threatening messages as she had declined a relationship with him. That, he directed her to report the matter to the police station.
 29. According to (PW10) PC Gitari, the Investigating officer, he established that, the motive of the deceased's demise was that, the accused's wife had gone to stay with the deceased. I find that the said motive ties up the evidence of the Assistant Chief that, the accused was allegedly threatening a lady for having declined a relationship with him.
 30. Based on the aforesaid, I find that the accused was involved in the commission of the offence herein and although there was no eye witness to the murder, the deceased's blood on his clothes nails him to the offence.
 31. It suffices to note that, while advancing his defence the accused rendered a mere denial. He did not even deny that the blood stained clothes that are said to be his and which bore the deceased's blood were not indeed his. If his clothes had deceased's blood, then who can explain how the deceased met his death better than hthe accused?
 32. The last issue to determine is whether the accused had malice aforethought. The law on malice aforethought is settled. Section 206 of the Penal Code states: -

“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.”

33. The Court of Appeal in *Odio v Republic* [2024] KECA 1544 (KLR) stated that: -

“20. Malice aforethought may be express or implied. Express malice aforethought refers to when a deliberate intention is manifested to take away the life of a person unlawfully. Implied malice aforethought applies when no considerable provocation appears or when the circumstances attending the killing show a reckless and wicked heart. To be convicted of murder, malice aforethought must be proved. Malice aforethought cannot be imputed to an accused person based solely on their participation in a crime. If it is shown that the killing resulted from an intentional act with express or implied malice aforethought, no other mental state need be shown to establish malice aforethought. In *Nzuki vs. Republic* [1993] eKLR, this Court defined malice aforethought as:

...a term of art and is either an express intention to kill, as could be inferred when a person threatens another and proceeds to produce a lethal weapon and uses it on his victim; or implied, where, by a voluntary act, a person intended to cause grievous bodily harm to his victim and the victim died as the result. See the case of *Regina v Vickers*, [1957] 2 QB 664 at page 670. An intention connotes a state of affairs which the person intending does more than merely contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition. See the case of *Conliffe v Goodman*, [1950] 2 KB 237.”

34. Furthermore, in the case of; *Tubere s/o Ochen* {1945} 12 EACA 63 the court in considering whether there was malice aforethought, stated that the trial court should look out for characteristics such as; the nature of the weapons used, the manner it was used to inflict the injuries, the parts of the body targeted whether vulnerable or not, the nature and gravity of the injuries, and the conduct of the accused before, during and after the incident. (See also *Dafasi-Magayi v Uganda* {1965} 1 EA 667).

35. In the instant case the motive established herein by the Investigating officer is sufficient to establish malice aforethought. In addition, the examination of the deceased’s body during post mortem reveals that, he sustained serious and multiple injuries. He had a penetrating stab wound on the face. That it was 2.5x1cm between the left ear and left eye. Further noted cut wounds on the left posterior thoracic region adjacent to each other about 3x1cm and 2.5x1cm deep penetrating to the chest with blood flowing from the wound. Furthermore, there was a cut wound on the posterior right shoulder measuring 1.5x1cm non-penetrating; cut wound on the left forearm measuring 1x1cm penetrating; cut wound on the left anterior chest along right axillary region 3rd intercostal space; lacerations on the left wrist measuring 3x1cm; lacerations on the left shoulder; and two (2) small lacerations on the dorsum of the left-hand measuring 1cm long.



36. It is clear from the injuries inflicted on the deceased that the assailant did not intend to spare the deceased life. Consequently it is the finding of this court that the accused had the mens rea and actus reus and murdered the deceased.
37. However, before I conclude the judgment I wish to address some of the issues raised by the defence in submission. there were neighbours who shouted “thief thief” and were not called to give evidence. However, the defence does not state what evidence these witnesses would adduced that could exonerate the accused.
38. It is further submnitted that there is no evidence the accused threatened his former wife. I find the submission lacking in substance, as the Assistant Chief testified to the same.
39. Finally the defence argue that, the evidence herein is purely circumstantial, I do find the said submission not tenable as the accused’s clothes were found with blood stain which was sufficiently established to belong to the deceased. That is not circumstantial. It is direct evidence.
40. In the given circumstances I find the accused guilty as charged and I accordingly convict him.

DATED, DELIVERED AND SIGNED THIS 26TH DAY OF AUGUST 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Wanga for the State

Mr. Owuor for the accused

The accused present virtually

Mr. Komen: court assistant

