



**Republic v Hassan (Criminal Case E001 of 2024)
[2025] KEHC 12993 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA
CRIMINAL CASE E001 OF 2024
JN ONYIEGO, J
SEPTEMBER 22, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MOHAMED ISSACK HASSAN ACCUSED

JUDGMENT

1. The accused person is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on or about 04.03.2024 at Elwak Township in Mandera Central Sub – County within Mandera County he murdered Paul Munini Muteti. Having denied the charge, a plea of not guilty was entered.
2. Consequently, the prosecution called 6 witnesses in its endeavor to prove its case. On his defence, accused gave sworn testimony thus denying the charge.

Prosecution’s Case

3. PW1, Rahim Ochako Mokaya, a mason testified that on 03.03.2024, he and Austin Kamiti went to Kagendo’s house in Karobastani area to drink traditional beer known as Kirunganga. Present at the house were Kagendo, Doreen, and Mohamed. It was his testimony that they drank beer for approximately two hours before leaving for town in search of work. At the gate, they met with David Musyoki and Paul Munini, who were equally heading to Kagendo’s house to drink beer. Later, he saw David running towards the police station nearby thereby reporting that Paul had been stabbed.
4. That he proceeded to the station and saw Mohamed seated at the report office. He later joined others at the hospital where Paul was receiving treatment. The following day, he learnt that Paul had been referred to Mandera Hospital, where he succumbed to his injuries. He stated that he contributed to Paul’s burial and observed that David’s clothes were soaked in blood. He confirmed knowing Mohamed from the drinking session but denied having any prior acquaintance or grudge against him.



5. On cross-examination by Mr. Wethow advocate, he confirmed that he left Kagendo's house at around 3:00 p.m. and that he did not witness the stabbing incident. He also clarified that he did not know Mohamed prior to the events of that day.
6. PW2, David Musyoka Munyoki testified that he worked as a casual labourer and that on the material day, at about 3.00 p.m., he was at Elwak, a place known as Killogushen. That he was in company of the deceased, Kameti, Ochako and Moa. He stated that they were drinking a traditional Meru drink at Kagendo's house where the deceased ordered for him a jug of the said traditional beer. That while there, he left for a short call. Upon returning, he found the accused person fighting with the deceased. He told the court that it was Moa who took a knife and stabbed the deceased on the stomach. It was his further evidence that he reported the matter to the police as the deceased was rushed to El Wak hospital and later to Mandera Referral Hospital where he passed on.
7. On cross examination, he stated that in as much as he was not aware of the cause of the fight, he saw the accused herein stab the deceased.
8. PW3, Austin Mutua, a resident of Mwingi Central, testified that on 04.03.2024, he was at Elwak town with Rahim Ochako(pw1). That they went to Kagendo's house to drink traditional beer. Present were Moa, Kagendo, Doreen, and an unidentified man. After drinking, they left for town. At around 4:00 p.m., he saw David Musyoki with blood-stained clothes. David informed him that Moa, who was the landlord to Kagendo had stabbed Paul. He later went to the police station and recorded a statement. He confirmed that Paul's body was taken to hospital. In cross-examination, he stated that he went to drink with Rahim and was not present during the stabbing. He confirmed seeing Moa at Kagendo's house and identified him as the landlord.
9. PW4, Isaack Mbuvi Kiema testified that on 18.03.2024, he attended Mandera Referral Hospital where he identified the body of the deceased to the doctor who conducted the post mortem.
10. PW5, Dr. Curtis Kamau on behalf of Dr. Kimanthi testified that the post mortem was in respect to the deceased herein as filed on 18/3/24. That on general observation, the body was that of an African male whose gut had been cut. The body was generally bruised on the face and blood was oozing from the right ear, the eyes were swollen, black and white in color. He stated that there were stiches above the left eye lid and bruises on both upper limbs as a sign of defence.
11. He went further to state that the horizontal part of the stomach had a horizontal bandage measuring 10x15cm; the lower limbs were not damaged and likewise the internal appearance. The deceased's abdomen was open with more than 22 stitches while the small and large intestines were damaged as the rest of the parts were normal. According to him, the cause of death was a major wound in the abdominal cavity and severe bleeding from a cut.
12. PW6, No. 112415 PC Eric Muema, the investigating officer stated that on 04.03.2024 at 6.30 pm, he was at his place of work when members of the public reported that one Moha had stabbed somebody and so his boss directed him together with other officers to rush to the scene. That the other officers had assisted the victim to be taken to the hospital and therefore, he rushed to Elwak Sub County Hospital where he found the victim undergoing treatment although he was in great pain.
13. That he had a large wound on the stomach as the intestines were hanging. He stated that it was Moha (accused) who also presented himself to the station and therefore arrested and preferred the charge of grievous harm against him while the deceased was referred to Mandera Referral Hospital for specialized treatment. That the victim passed on 10.03.2024 thus leading to the charges against Moha(Accused) being revised to murder case.



14. That post mortem was conducted on 11.03.2025 at Mandera Hospital wherein the family preferred that the body be transferred to Mwingi for a second post mortem. He testified that from his investigations, he found out that the accused and the deceased knew each other and on the fateful day, they were at a local brew den when a feud erupted. He stated that while the two were drinking, the accused got annoyed and stabbed the deceased and that the cause of the disagreement was not known.
15. On cross examination, he stated that the post mortem conducted in Mandera referral hospital was not part of the report and further, the doctor in Mandera stated that the cause of death was a septic shock. According to him, the deceased died on 10.03.2024 but he could not ascertain the specific weapon that was used. He conceded that the two post mortem reports were in contradiction in as much as he was present when the post mortem was done.

Defence Case

16. The accused in his sworn testimony denied killing the deceased as he claimed that he was not possessed of the strength to fight. It was his case that he did not know the deceased and neither the witnesses. He pleaded innocence and urged the court to release him.
17. At the conclusion of the hearing, both counsel opted not to submit but urged the court to consider the evidence on record and make its decision.

Analysis and Determination

18. Having considered the evidence of 6 prosecution witnesses and the defence given on oath by the accused, the only issue which germinates for determination is whether the ingredients of the offence of murder as provided for under Section 203 of the Penal Code Chapter 63 of the Laws of Kenya have been established beyond reasonable doubt by the prosecution.
19. Section 203 of the Penal Code Chapter 63 of the Laws of Kenya under which the accused person is charged provides as follows: -

‘Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.’
20. The said provision creates elements of the offence of murder that must be proved by the prosecution beyond reasonable doubt thus; proof that the deceased died; that the cause of death was unlawful; that the accused was responsible for the death in question and; that the death was caused with malice aforethought. This position was espoused in the case of Anthony Ndegwa Ngari vs Republic [2014] e KLR where it was held that to establish commission of murder, prosecution must establish: -
 - i. That the deceased died;
 - ii. That the death was caused by an unlawful act or omission;
 - iii. That the accused person directly or indirectly participated in the commission of the alleged offence; and
 - iv. That there was malice aforethought.

Death of the deceased

21. There is no dispute as to the death of the deceased Paul Munini Muteti. PW4 testified that he identified the body of the deceased to the doctor who carried out a post mortem on the body of the deceased. PW5 who carried out post mortem on the body opined that the death of the deceased was caused by



major wounds in the abdomen cavity and severe bleeding from a cut by a sharp object. Equally, Pw4 a relative who identified the body for postmortem confirmed that the deceased had indeed died. As such, the prosecution has proved the element of death.

22. On the alleged contradiction of the two postmortem reports on the cause of death, it was alleged by the investigating officer that the one conducted in Mandera was disputed by the victim's family leading to a second opinion at Mwingi which was not disputed hence the relevant report for purposes of establishing the cause of death in this case.

whether the death was caused by an unlawful act or omission.

23. The evidence of the doctor was that the deceased died as a result of major wounds in the abdomen cavity and severe bleeding from a cut by a sharp object. From the nature of injuries suffered by the deceased which were severe coupled with the circumstances under which the attack arose, it leads to the inescapable conclusion that indeed the death was unlawful. This court therefore finds that the death of the deceased was not as a result of self-inflicted injuries or an accident.

whether the death was caused by the accused person herein

24. In the case of *People vs Bretagna* (298 NY 323, 325-326 [1949]) the court addressed itself in the following language:

“Evidence is direct and positive when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses...In other words, direct... evidence, as the term is commonly used, means statements by witnesses, directly probative of one or more of the principal...”.

25. It is trite that a case can be proved either through direct or indirect evidence. In the instant case, it is the direct testimony of PW2 that while at Kagendo's house drinking traditional beer, he saw the accused person stab the deceased with a knife. This act is consistent with the injuries described by the doctor (pw5) who stated that the deceased died of cut wound injuries leading to bleeding. Although the accused denied being at the scene of the incident on the material date, pw1, pw2 and pw3 confirmed that Moha was at the drinking den where the stabbing took place.
26. Besides, pw3 stated that when he saw pw2 running to Elwak police station with his clothes soaked in blood, he enquired from him what had happened to which pw2 instantly answered that Moha (accused) had stabbed Paul the deceased. Further to the two testimonies, pw6 the investigating officer told the court that it was the accused himself who presented himself to the police station reporting of what transpired. From these chain of events, I am persuaded that the evidence on record does irresistibly point a blameworthy finger towards the accused. To that extent, I am inclined to find that the accused was the person who stabbed the deceased leading to his death.

Was there malice aforethought

27. Section 206 of the Penal Code defines malice aforethought as follows: -

“Malice aforethought shall be deemed to be established by evidence proving anyone 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 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 act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony”.

28. In the case of *Odio v Republic* (Criminal Appeal 228 of 2019) [2024] KECA 1544 (KLR) (20 September 2024) (Judgment) the court held thus;

“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.”

29. In the same breadth, the court in the case of *Isaac Kimathi Kanuachobi vs R* (2013) eKLR defined malice aforethought as follows: -

“There is express, implied and constructive malice. Express malice is proved when it is shown that an accused person intended to kill while implied malice is established when it is shown that he intended to cause grievous bodily harm. When it is proved that an accused killed in further course of a felony (for example rape, a robbery or when resisting or preventing lawful arrest) even though there was no intention to kill or cause grievous bodily harm, he is said to have had constructive malice aforethought.”

30. Further to the above, the elements to prove malice aforethought were settled in the case of *Ernest Asami Bwire Abanga alias Onyango vs R* (CACRA No. 32 of 1990) where the Court held:

“the question of intention can be inferred from the true consequences of the unlawful acts or omission of the brutal killing, which was well planned and calculated to kill or to do grievous harm upon the deceased.”

31. According to the doctor who carried out post mortem on the body of the deceased, he opined that the death of the deceased was caused by major wounds in the abdomen cavity and severe bleeding from a cut by a sharp object.

32. What the accused person did to the deceased by inflicting multiple injuries using a knife cannot pass as normal misunderstandings and quarrels. The same was aggravated by the type of the weapon used and the area where the injury was inflicted. The act was a violation of the deceased person’s rights



and ended in the deprivation of the deceased person's life contrary to Article 26 of *the Constitution* of Kenya, 2010. Evidence of malice on the part of the accused person was proved beyond reasonable doubt by the prosecution witnesses. Considering the part of the body targeted, it is logical to conclude availability of malice a forethought on his part.

33. In a nut shell, this court finds that all the ingredients of the offence of murder have been proved by the prosecution beyond reasonable doubt. The accused person is accordingly found guilty and is convicted pursuant to Section 322(1) Criminal Procedure Code.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 22ND DAY OF SEPTEMBER 2025

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J.N. ONYIEGO

JUDGE

