



**Republic v Laparlash (Criminal Case E002 of 2023)  
[2025] KEHC 12972 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12972 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARSABIT  
CRIMINAL CASE E002 OF 2023**

**FR OLEL, J  
SEPTEMBER 22, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MUNGUYA LAPARLASH ..... ACCUSED**

**JUDGMENT**

**A. Introduction**

1. The accused, Munguya Laparlash, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars were that on 25<sup>th</sup> July, 2023, at around 15:00 hours at Namarei area within Marsabit South Sub-County of Marsabit county, Murdered one Malmaro Leparlash.
2. The gist of the prosecution's evidence was that the deceased was shot dead by the accused person, who is his younger brother, after a disagreement, while grazing livestock.

**B. Evidence**

3. PW1 PC Alfred Cheruto testified that he was a police officer stationed at Merile police post, performing general duties. On 01.08.2023 at about 10.00 am, he was at the station, with his colleague's PC Kosgey, PC Kinyua and PC Timothy Chetiki, when they were informed by the OCS -Liasamis that some children who were grazing had stumbled upon a gun hanging on a tree, and he suspected that it might have been used to commit a crime.
4. They proceeded to Manyatta Lagima, where they were directed to the scene, and found a G3 Rifle, with an empty magazine ( Serial No G3A3 6511097) hanging on a tree. They retrieved the same and handed it over to the armourer at Liasamis police station. The accused was later arrested after recovery of the G3 rifle and was detained at Liasamis police station as the investigation was undertaken. Under



- cross-examination, PW1 confirmed that they were directed to the scene, where they recovered the rifle by the area chief, accompanied by local elders, and he proceeded to recover it. He also confirmed that the accused was not arrested on that said date.
5. PW2 PC Wesley Kosgey, also confirmed that he was stationed at Laisamis police station and recalled that on the 25.07.2023, at about 5.00 pm, he was at the station when he was informed by the acting OCS IP Ahmednasir of a murder case that had occurred at Mayatta Legima and was requested to accompany the team that was going to the scene of the crime. At the scene, they were received by the Area chief, who informed them that the deceased had been shot dead by his brother, the accused person herein and after processing the scene, they took the deceased's body to Marsabit referral hospital.
  6. On 18.10.2023, he was again informed by OCS IP Ouko that the accused person had been arrested and while accompanied by PC George Gasheru and PC Wanyoike, they went to Namarei, where they found that the accused person had been arrested and his hands tied using a rope. They re-arrested him and took him to Laisamis police station, where they handed him over to the DCI for further investigations. He identified the accused person on the dock as the person whom they had arrested on the said date.
  7. Under cross-examination, PW2 confirmed that he was amongst the police officers who had visited the murder scene and had found the deceased body lying under a tree. Sergeant Nyota, proceeded to document the said crime scene and collected 2 spent cartridges. He too, had observed the deceased's body and noted that he had been shot through the mouth, and the bullet exited through his head.
  8. PW3 CPL Simeon Gichea Wanyoike testified that in July 2023, he was stationed at Laisamis police station and recalled that on 25.07.2023 at around 17.30 hrs, he was on stand-by duties at the station when he was instructed by the OCS Inspector Ahmednasir to accompany other officers to visit a murder scene at Manayatta Langima, which had been reported via OB/16/25/7/2023. The deceased's body was dumped about 50 to 100m from the riverbank bank and he had a bullet wound, which entered through the mouth and exited from the back of the head. They recovered one spent cartridge, processed the scene and took the deceased body to Marsabit level 5 hospital for preservation.
  9. A few months later, on 18.10.2023, he was called by IP Ouko, who informed him that the accused person had been arrested by members of the public. Accompanied by other police officers, they went and re-arrest the accused person, and had him detained at Laisamais police station as the investigation continued. PW3 identified the accused before the court as the person whom they arrested. Under cross-examination, PW3 confirmed that it was Inspector Nyota who picked up the spent bullet cartridge and took photographs of the scene using his phone. They did not get the chance to search the accused's house when he was arrested.
  10. PW4 CI Bonface Mulee confirmed that he was the current DCIO of Laisamis Township and recalled that on 25.07.2023, he had been called by OCS George Ouko, who informed him of the murder incident that had occurred at Namarai sub location, where it was alleged that the suspect had shot dead his elder brother. They got a team of police officers, who rushed to the scene, and recovered a spent 7.62 x51 mm cartridge. On 01.08.2023, they were again called by the assistant chief of Namarai sub location, and he informed them of the recovery of a G3 rifle, which had been left hanging on a tree. They went and recovered the G3 rifle serial No 6511087 and had it booked under OB/NO 18/1/08/2023.
  11. He later forwarded the said G3 rifle and recovered cartridge to the ballistic experts at DCI headquarters for examination and got their report dated 29.08.2023. The report stated that the rifle was a German Heckler & Koch G3 rifle in 7.62mm and was designed to chamber 7.62 x 51 mm rounds of ammunition. The rifle was in fair general and mechanical condition, complete in all of its components and was capable of being fired. Examination of the bullet had been carried out under comparative microscope examination, in conjunction with three test cartridge cases fired using the G3 rifle.



12. The same revealed sufficient breech face markings, ejector markings and firing pin indentation markings to enable the examiner to form the opinion that the bullet/cartridge (Exhibit B ) was fired from the G3 rifle Serial 6511087 (Exhibit A). Later on 18.10.2023, the accused, who had gone into hiding after committing the offence, resurfaced at their manyatta and was promptly arrested by the village elders. The police were informed and re-arrested him. From the information gathered, the accused and his brother were out in the field grazing cows when a fight broke out, and he fatally shot the deceased, after which he fled for about two months.
13. PW4 produced the spent cartridge, Exhibit Memo form, ballistic report, G3 rifle, 3 spent test-fired bullet cartridges and the post mortem report as Exhibits before the court. Under cross-examination, PW4 confirmed that they did not have an eyewitness to the murder, nor did they have proof that the accused owned the G3 rifle that was recovered during investigations. Be that as it may, the accused had confessed to him when recording his statement under inquiry that he had shot his brother as they struggled for control of the G3 rifle after an altercation between them, while in the field grazing cows.
14. The accused was placed on his defence and opted to give sworn evidence. He confirmed that he was a resident of Namarei village, and as at 25.07.2025, when the incident occurred, he was out in the field grazing his livestock at Milima Lenguna, having left home about one week earlier. When he came back home, he was shocked , when informed of what had transpired and asked to see the deceased's final resting place. The community was not receptive and proceeded to arrest him, though he had nothing to do with his brother's murder and had no motive to kill him. He urged the court to find that he had been wrongly accused and prayed to be released.
15. Under cross-examination, he admitted that the deceased was his elder brother, but strenuously denied ever owning the G3 rifle. He further emphasized that they had separate herds of cattle and grazed them on different paddocks once the deceased got married, he was handed over his own livestock. He reiterated that he left home one week before the incident and did not know what transpired until he arrived back in the village. He also denied confessing to the village elders that he had murdered his brother, the deceased.

### **C. Determination**

16. I have considered the evidence adduced by both parties and submissions on record, and the question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein had a hand in the murder of Malmaro Leparlash, the deceased herein.
17. Section 203 of the Penal Code defines the offence of murder as follows:

“ Any person who of malice aforethought, causes death of another person by an unlawful act or omission is guilty of murder.”
18. Arising from the foregoing, the ingredients of murder were explained in the case of Roba Galma Wario vs. Republic [2015] eKLR, where the court held that:

“ For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant, and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”
19. In Republic vs. Mohammed Dadi Kokane & 7 Others [2014] eKLR, the elements of the offence of murder were listed by M. Odera, J as follows: -



- 1) The fact of the death of the deceased.
  - 2) The cause of such death.
  - 3) Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly
  - 4) Proof that said unlawful act or omission was committed with malice aforethought.
20. In Mombasa High Court Case Number 42 of 2009 between Republic vs. Daniel Musyoka Muasya, Paul Mutua Musya, and Walter Otieno Ojwang, the court expressed itself as hereunder:

“The prosecution, therefore, is required to tender sufficient proof of the following three crucial ingredients in order to establish a charge of murder:

- a. Proof of the fact as well as the cause of the death of the deceased persons.
- b) Proof that the death of the deceased resulted from an unlawful act or omission on the part of the accused persons.
- c) Proof that such unlawful act or omission was committed with malice aforethought.”

21. I will now proceed to interrogate each issue.

**i. The death of the deceased and its cause.**

22. It is common ground that Malmaro Leparlash died on 25.07.2023 within Namarei area of Marsabit South sub-county, having sustained a bullet injury which entered through his mouth and exited through the brain. PW2, and PW3 all went to the scene of crime and saw the deceased's body, and PW4 produced the post-mortem report dated 03.11.2023, which certified the said death.
23. This court therefore finds as a fact that the deceased died as a result of being shot through the mouth with the bullet exiting through the brain.

**ii. Whether it has been proved that the accused committed the unlawful act which caused the death of the deceased:**

24. Nobody saw the accused fatally shoot his brother, but from the information gathered from the village elders, he was the last person to be seen with him, while they were herding cows together. At some point, late in the afternoon of the said date, his deceased body was discovered by the villagers lying under a tree within the grazing fields, by which time, the accused had taken off and was nowhere to be seen.
25. On 01.08.2025, about one week later, children who were herding livestock pounced upon a G3 rifle hanging on a tree. The same was retrieved, and upon examination, it was confirmed that it is the said rifle that discharged the 7.62 x51 bullet cartridge, which had been recovered from the scene of crime. The accused did not come back to Mayatta Lerima until 18.10.2023 (about three months later ) and was promptly arrested by the villagers and handed over to the police.
26. For the prosecution to succeed and secure a conviction based on circumstantial evidence, the inference of guilt and the inculpatory facts must be incompatible with the innocence of the accused and incapable of any other explanation or reasonable hypotheses other than that of the accused person's



guilt. In *Ahamad Abolfathi Mohammed and Another v Republic* [2018] e KLR, the Court of Appeal stated as follows on reliance on circumstantial evidence:

“However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. 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.

27. The same issue was discussed in *Abanga Alias Onyango vs. Rep CR. A No.32 of 1990 (UR)*, the Court of Appeal set out the principles to apply to determine whether the circumstantial evidence adduced in a case is sufficient to sustain a conviction. These are:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

- i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.
- ii. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- iii. 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.”

28. In summation, of the aforesaid case law, it is thus required that before any conviction based on circumstantial evidence is reached, the said evidence adduced must be adequate to prove the case on the required standard of beyond reasonable doubt. In that regard, the court will admit circumstantial evidence if it meets the following criteria;

- a) Evidence that is logically connected to the case.
- b) The evidence must prove or disprove a fact relevant to the case.
- c) The evidence should be reliable, trustworthy with minimal chance of falsehood.
- d) Its potential to influence a decision should not outweigh the probative value.
- e) The evidence should not be hearsay.

29. Accordingly, it would be safe to conclude that circumstantial evidence may include;

- a) Physical evidence, such as fingerprints or DNA, that connects the accused to the crime or scene of crime.
- b) Documentary evidence, for example, documentary records and text messages that support inference of guilt.
- c) Behavioral evidence includes the accused's actions that point to his guilt or involvement in the crime. Examples include running away after the offence is committed or attempting to destroy incriminating evidence.

30. Even though there was no eyewitness to the shooting incident, the entire village, through the area chief and village elders, pointed an accusing finger at the accused, branding him as the guilty party, and told the police as much. The accused confirmed this fact in defence when he stated that, “I asked to see



his grave and my people were not receptive. The village elders came and arrested me”. The court takes judicial notice of the fact that it is unlikely that the entire manyatta, in a sparsely populated area, where all families know each other, could be wrong in their assessment of what transpired.

31. Further, it is not a coincidence that immediately after the shooting incident, the accused took off and ran away from his village for about three months, and he was promptly arrested and handed over to the authorities when he came back from his self-imposed exile (On 18.10.2023). As already stated above, behavioral evidence could also be an indicator of a person's guilt, unless adequately explained. In defence, the accused claimed to have been away looking after his livestock for one week, and came back unaware of what had transpired. The explanation proffered is a white lie, as the date when he came back to the village is well known. His explanation thereto has to be taken with a pinch of salt.
32. Section 119 of the *Evidence Act* allows the court to;
- “presume the existence of any fact which it thinks likely to have happened, regard being given to the common course of natural events, human conduct, and public or private business, in relation to the facts of a particular case”.
33. The undeniable inference to be drawn from the accused's behavior after the incident is that he was the guilty party who pulled the trigger on his elder brother, dumped his G3 rifle, and fled for three months before running out of options. This, coupled with the fact that there are no other co-existing circumstances which would weaken or destroy this inference when taken cumulatively, forms a chain so complete that there is no escaping from the conclusion that, within all possibilities, it is the accused who pulled the trigger and shot dead his elder brother as they were grazing livestock on 25.07.2023.

### iii. Malice Aforethought

34. Having found that the prosecution has proved actus reus, the other issue for determination is whether malice aforethought can be inferred from the prosecution's evidence presented. The offence of murder is complete when “malice aforethought” is established. Section 206 of the Penal Code provides that:
- (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.”
35. It is sufficient to say that the mental element required by section 206 of the Penal Code can be equated to broad guidelines set out in the case of *Tubere s/o Ochen vs. Republic* [1945] 12 EACA 63:
- “The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”



36. In the case of Republic v Okwara (Criminal Case E015 of 2023) [2024] KEHC 1360 (KLR), the court stated as follows;

“Mens rea in murder causes takes the form of malice aforethought, and the elements are set out in section 206 of the Penal Code. They relate to intention and knowledge. Intention to kill or cause grievous harm or to commit a felony. Knowledge that the act or omission causing death could cause such death, and being indifferent to the consequences of the act or omission. Intention and knowledge are mental elements. One forms an intention, in their mind, to do or not to do something, and has knowledge, within his mental faculties about something. So, the mental element for the offence of murder is either intention or knowledge.

Has the prosecution adduced evidence to establish such intention or knowledge, that the accused had formed an intention to kill or cause grievous harm or to commit a felony, or knew that whatever he was doing was likely to cause death, but remained indifferent to the consequences? Well, the mens rea of an offence is usually to be inferred from conduct or action, being a mental element, unless the intention is voiced by the perpetrator.”

37. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased.

38. The accused blew off his brother's brain matter, using a powerful G3 rifle. It is clear that the accused did not have any other intention other than to inflict grievous harm upon the deceased. It is my finding that the accused person knew or ought to have known that his action would result in death, and it can be safely inferred from the nature of the injury inflicted on the deceased that the accused person's action was premeditated.

39. In the circumstances, I am persuaded beyond reasonable doubt that the prosecution has proved their case, and specifically, the presence of malice aforethought on the part of the accused, too, has been established.

### **G. Disposition**

40. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, Munguya Laparlash, beyond reasonable doubt and convicted her accordingly under section 215 of the Criminal Procedure Code.

41. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.

42. It is so Ordered.

**JUDGMENT, SIGNED AT MARSABIT THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**JUDGMENT READ AND DELIVERED IN OPEN COURT ON THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**



In the presence of:-

..... Accused

..... For O.D.P.P

..... Court Assistant

