



**Republic v Wakali alias Manu (Criminal Case E033 of 2024)
[2025] KEHC 12655 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE E033 OF 2024**

**RK LIMO, J
SEPTEMBER 17, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

EMMANUEL WAMBWA WAKALI ALIAS MANU ACCUSED

JUDGMENT

1. Emmanuel Wambwa Wakali Alias Manu the accused herein is charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code. The particulars contained in the information filed are that on 27/9/24 at Birunda Village, Kiminini within Trans Nzoia County he murdered Isaiah Solomon Wakali (herein after to be referred to as the deceased for ease of reference).
2. The accused person denied committing the offence and the prosecution has presented 5 witnesses to prove their case. The prosecution’s case is hinged on direct evidence. Below is a summary of the evidence presented during trial.
3. Dr Dennis Nanyingi (PW1), the doctor who conducted autopsy on the body of the deceased on 1/10/2024 stated that the body of the deceased was identified by Moses Simiyu and Caleb Nyongesa. The doctor stated that he made the following observations;
 - a. Externally,
 - i. Multiple bruises covering the right hand.
 - ii. Whip marks on shoulders and neck region.
 - iii. Bruises on the face and scalp.
 - iv. Peripheral cyanosis of the finger nails (i.e. darkening of fingernails due to lack of oxygen).



- b. Internally,
 - i. Multiple adhesions of the lungs bilaterally.
 - ii. Both lungs were in semi collapse state.
 - iii. Muscle of the heart had darkened with clots in situ.
 - iv. Subdural hematoma at occipital and left temporal parietal area.
 - v. Inter cerebral haematoma (clots within brain matter).
4. As a result of the autopsy done, the doctor stated that he opined the cause of death as cardiopulmonary failure/head injury secondary to assault by a blunt object. He stated that he issued a burial permit serial No.0448243 and he tendered the Post Mortem Report as Pexhibit 1.
5. Ian Wakali (PW2) a 13 year old boy in Class 7 Birunda Primary School stated on oath that on 26/9/2024 as he was sleeping at around 10pm, the accused person went home and asked him to open the door. He stated that he knew the accused, his elder brother as a troublesome person and he therefore declined to open. He stated that the accused left and later returned and broke the window, entered the house and began assaulting the deceased using a wire. He stated that he did not know why the accused was indiscriminately beating his dad (deceased) with a wire and that he tried stopping the accused but was unable to stop him. That he rushed to his grandfather's house to ask for help and the deceased followed him but the accused pursued him there and continued beating him.
6. He stated that the grandmother tried in vain to stop the accused but he was unrelenting. That the grandmother went to one Mose for help and when Mose arrived the accused ran away. That the grandmother assisted the deceased to the house because he was too weak to walk on his own.
7. The child stated that he then went to sleep and later in the night he heard the grandmother screaming that the dad had passed on. He identified the electric cable that he stated was used by the accused to beat up his father (the deceased).
8. He insisted under cross-examination that the accused was always troublesome and that he used to go home late disturbing them. That the accused beat the deceased senselessly making demands which he could not comprehend.
9. Margaret Nasimiyu (PW3) the mother of the deceased recalled that on 27/9/24 at night while she was sleeping Ian (PW2) went and called her that the accused who was her grandson was beating the deceased. That the grandson (PW2) stated; "Koko amuka, Manu (accused) anapiga baba atamuua!"
She stated that she woke up and found the deceased in her compound and in bad shape. She stated that the accused was beating the deceased and saw him fall down. That she asked the accused why he was beating his father and he told her that he had taken his phone. That the deceased denied having his phone. She stated that the accused continued beating the deceased and she tried to intervene, he threatened her. That she went and called for help from Moses who rushed to rescue the deceased and that when Moses arrived the accused ran away.
10. She stated that the accused used a wire and a club (rungu) to beat the deceased. She stated that the electric cable and the club was later recovered and taken by the police. She identified the items in court.
11. Moses Simiyu Shikuku (PW4) recalled that on 27/9/24 at around 2am, PW3 went to his house and woke him up telling him that the deceased, who was a cousin to him, was being beaten by his son (the accused). That he rushed to help and found the accused had ran away. He stated that he found the



- deceased in very bad shape because he had been beaten badly. That he was weak and could hardly speak. That the hands were swollen, that the eye had been hit and the head appeared swollen. He stated that he had to listen keenly to what the deceased was trying to say because his voice was weak and low. That the accused had beaten him over a phone he did not have. He stated that the deceased could not stand on his own and they picked him up and took him inside the house. He stated that his condition was such that he could not board a boda boda and they decided to wait till sunrise in the morning to take him to hospital.
12. He stated that he went back home but at around 3am PW3 called him and told him that the deceased was not moving and the body was cold. He stated that he feared for the worst and rushed to the home to find the deceased dead. That his aunt (PW3) started screaming and neighbours rushed in to inquire what was happening. He stated that when the neighbours heard what had transpired they went to the house of accused and frog matched him to the scene. That the accused confessed to the Assistant Chief who had also arrived at the scene. He stated that the accused was then escorted to Kiungani Police Station.
 13. PC Purity Nangole (PW5) the investigating officer in the case testified that she was asked to investigate the murder by Deputy DCIO Kiminini Police Station on 27/9/2024. That she proceeded to Kiungani Police Station and found the accused having been arrested on allegation of killing his father.
 14. She stated she in the company of other officers proceeded to the scene which was the house of PW3 and found the body of the deceased in the kitchen.
 15. She stated that the scene was processed and the body was taken to Kitale County Hospital Mortuary. She states that the suspect (accused) was also taken to hospital for treatment because members of public had beaten him.
 16. She stated that she later recorded statements from witnesses and recommended the accused be charged with the offence of murder. She tendered the electric cable as Pexhibit 2 and the club (rungu) as Pexhibit 3.
 17. When placed on his defence, the accused stated that on the material day, he had taken alcohol worth Kshs.400/- and when he arrived home he met his father and quarreled with him over a phone. He stated that the quarrel degenerated into a fight. That his grandmother (PW3) stopped him and he went to his house and slept. He stated that at the time he was drunk and that the deceased was also drunk.
 18. He stated that later that night he was woken up by Moses (PW4) and other neighbours who informed him that his father was dead. That they descended on him and beat him before being escorted to police station. He stated that he had not quarreled with his father (deceased) before and that he had taken his phone and did not intend to kill him. He conceded that he used the electric cable tendered in evidence (PExhibit 2) to beat the deceased. He expressed his remorsefulness and blamed alcohol for his actions. He further conceded that he pursued his father (deceased) to his grandmother's house and that the grandmother stopped him adding that his younger brother Ian (PW2) used to sleep with the deceased.
 19. In his written submissions through counsel, the accused contends that he was intoxicated at the time and had no intentions of killing his father. He submits that the element of mens rea is missing from the prosecution's case. He prays that the benefit of doubt with respect to the element of mens rea be given to him.
 20. He relies on intoxication as his defence and cites the provision of Section 13(4) of the Penal Code. He submits that due to intoxication he was incapable of forming intent. He relies on the case of Karisa Kimunzu –vs- R (Cr App No.266 of 2006 MSA).



21. He submits that his action after the incident absolves him from the intention to kill or mens rea. He contends he went to sleep after the incident. He contends that in the absence of mens rea the charge of murder cannot be sustained. He relies on *Roba Galina Wario –vs- Republic (2015)eKLR*. He submits that he was arrested while sleeping in his house and that he did not go to the deceased’s house armed. He defends himself that his action did not demonstrate a guilty mind and relies on the case of *Bakari Magangha Juma –vs- Republic (2016)eKLR*.
22. The State on the other hand through written submissions dated 9/6/2025 submits that it proved the element of mens rea by operation of law and cites the provisions of section 206 of the Penal Code. The State submits that from the circumstances obtaining malice aforethought can be inferred. It relies on the cases of *NMW v-s- R (2018)eKLR* and *Morris Aluoch –vs- Republic (1887)eKLR*, where the courts held that malice aforethought can be inferred from factors such as type of weapon used, part of the body injured and type of injuries inflicted.
23. The State submits that in this case an electric cable and a club may not be dangerous weapons but the manner the accused used them made them dangerous because serious injuries were inflicted on the deceased suffered and the same were noted by the doctor who performed Post Mortem examination. The State submits that the accused beat the deceased over a 2 hour period which suggested that he had malice because he targeted the head of the deceased in his beatings.
24. On the defence of intoxication, the prosecution contends that the defence did not build their defence on intoxication. It submits that the accused had the burden to prove that at the time of committing the offence he was too drunk to form mens rea. It submits that from the evidence tendered the accused went to the house of deceased at around 10pm and when PW1 declined to open, he went away and went back after 30 minutes and broke the window and began beating his father after gaining entry.
25. The State contends that the accused threatened his own grandmother when she tried to stop him and that such action does not depict actions of a drunk person.
26. It submits that both PW2 and PW3 were scared of him and that they did not see him staggering or speaking with slurred speech. In short the State submits that the actions of the accused that night were incompatible with mannerism of a person too drunk to take control of himself.
27. Mr Mugun, learned counsel from the Office of the Director of Public Prosecution submits that the accused was quite furious with his father for keeping his phone. He submits that the accused went out to drink deliberately to gain courage to beat his father and that he was intent to beating his father and he should not be allowed to blame alcohol.
28. This court has set out both the prosecution’s and defence case. As observed above, the accused is charged with the offence of murder contrary to section 203 of the Penal Code. For a charge of murder to be sustained there are 3 essential elements which must be established and proved by the prosecution beyond any reasonable doubt. The 3 elements are
 - i. Fact of death and its cause.
 - ii. Actus reus or the fact that the accused through unlawful acts or omissions caused the death of the deceased and
 - iii. Malice aforethought or mens rea.
29. In this matter, the first two elements are conceded by the defence. It is conceded that the deceased died and the cause of death was cardiopulmonary failure/head injury secondary to assault by a blunt object



by the accused. The accused admitted in his defence that he assaulted his father and caused his death. The only element contested is malice aforethought. The accused pleads intoxication as his defence.

30. Intoxication per se is not a defence in a criminal charge save as provided under section 13 of the Penal Code. Section 13 of the Penal Code provides as follows:-

- “(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.
- (2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and—
- (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
- (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission”.

31. Going by the above provisions it is apparent that the burden to establish intoxication is on accused person. The law provides intoxication is only a defence where an accused or a person charged can establish that by reason of intoxication he was unaware of what he was doing or could not tell that whatever he was doing was wrong and that the state of intoxication was caused without his consent or negligent act of another person. A person cannot therefore deliberately cause a state of intoxication so that he can escape culpability of criminal act or behavior.

31. In this matter it is not denied that the accused initially went home and specifically his father’s house at around 10pm going by the account of PW2. The accused himself states that it was 8pm. What is uncontested is that the accused left when PW2 declined to open the door because he says he knew him to be troublesome. The accused in his own defence states that he went and drank alcohol worth Kshs.400/- and then went back to beat his father. Although the accused person did not demonstrate that he actually drank alcohol worth Kshs.400, or the type of alcohol he took, it is apparent that he was aware that his young brother (PW2) would not open the door for him and that is why he went straight away and broke the window to gain access to the house.

32. That act of going to drink deliberately and coming back home to cause trouble to his father negates the defence of intoxication.

33. The other negating factor is the fact that the accused was accusing his father for keeping his phone. The fury and violence towards his father was well captured by his young brother when he went to his grandmother (PW3) telling her:

“Koko amuka, Manu anapiga baba atamuua!”

When PW3 woke up, she found the deceased in bad shape after senseless beating from the accused. PW3 tried to rescue her son but the accused threatened her as well which is a demonstration of intent at causing serious harm to the deceased. When he realized that PW4 was approaching he took off. That act further negates his claim that he was too intoxicated to be unaware of his surroundings or what he was doing.

34. The other negating factor to his defence of intoxication is the choice of weapons used to inflict injury and pain to his father (deceased). The electric cable (PExhibit 2) and club (Pexhibit 3) though not dangerous weapons on their own can be lethal if used to strike a person on the head which the accused



did. The injuries noted by the doctor (PW1) were concentrated on the chest, neck region and the hand. The multiple bruises on both upper limbs could have been caused by defensive acts as the deceased tried to save himself from vicious attacks from his son.

35. This court further agrees with the State that from weapons used and the period the attack took malice can be inferred. Section 206 of the Penal Code provides that malice can be inferred.

Section 206 of the Penal Code provides;

“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.”
36. The accused person broke into his father’s house by breaking through the window. He assaulted him using an electric wire which was thick and could be quite lethal if used to strike a person on the head. The accused was quite unrelenting even after the deceased ran out of his house to his mother (PW3) for help. The accused pursued him beating him senseless using both a rungu and an electric cable. The grandmother (PW3) tried to stop him but he persisted. He threatened her and that is why she went to PW4 for rescue which happened when the damages had already been done. This court is unable to find from the defence presented that his state of mind at the time deprived him of the ability to form specific intent to kill or cause harm to his father.
37. It is dangerous and would be unlawful if this court was to find that just because the accused pleads intoxication he was incapable of mens rea. As is well spelt out by the law cited above, an accused person pleading intoxication as a defence must demonstrate that intoxication was either involuntary or that the intoxication caused temporary insanity.
38. The accused has failed to demonstrate the level of intoxication. He had said he drank alcohol worth Kshs.400/- but he did not specify what type of alcohol. Was it conventional beer or illicit changaa? The failure to specify the kind of alcohol taken and proof that he was in such a state not be able to comprehend intent or mens rea.
39. This court from the foregoing finds that intoxication is raised as an excuse to the unlawful act of causing death to his father. The prosecution has proved its case to the required standard with respect to the 3 essential elements of murder. The accused person was well known by his own young brother as a trouble maker at home. I agree that he ought to have heeded to the wise advice from the scripture cited by Mr Mugun in his written submissions but he did not. Because of his wayward ways he killed his father in a vicious manner. He is hereby found guilty as charged and he is accordingly convicted.

DELIVERED, DATED AND SIGNED AT KITALE THIS 17TH DAY OF SEPTEMBER, 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Judgment delivered in open court



In the presence of;

M/S Auta for the accused person

Mr Mugun for the State

Duke/Chemosop – Court assistants

