



**Republic v Ndirangu (Criminal Case E007 of 2022)  
[2024] KEHC 12567 (KLR) (18 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12567 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL CASE E007 OF 2022  
MA ODERO, J  
OCTOBER 18, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**CHARLES NDEREBA NDIRANGU ..... ACCUSED**

**JUDGMENT**

1. The accused herein Charles Ndereba Ndirangu faces a charge of Murder Contrary To Section 203 as read with Section 204 of The Penal Code.
2. The particulars of the offence were that  

“On the night of 9<sup>th</sup> November 2021 at Hiriga village within Mathira West, within Nyeri County within the Republic of Kenya murdered Ambrose Ndirangu.”
3. The Accused entered a plea of ‘Not Guilty’ to the charge. His trial commenced on 14<sup>th</sup> March 2023 before Hon. Lady Justice Muchemi who recorded the evidence of the prosecution witnesses. Following the transfer of the trial judge to Thika High Court I took over the matter and heard the defence of the Accused.

**The Evidence**

4. PW1 Catherine Nyamai Ndirangu told the court that the accused is her last born son. She states that on the evening of 19<sup>th</sup> November 2021 at about 8.00pm the accused arrived home with some vegetables to cook for his supper. PW1 told the accused to join herself and his father for dinner as she had already cooked. They sat down to eat together.



5. After taking a few spoonfuls the accused suddenly got up and went into a mud hut adjacent to the kitchen. PW1 followed him there. The accused then came out armed with a Panga which he used to cut PW1 on the head and shoulder. PW1 fell to the ground shouting for help.
6. The witness states that the accused then ran towards his father (the Deceased) and cut him severally on the head. The Deceased pleaded with the accused to leave him but the accused continued to slash his father even after he had fallen down.
7. PW2 Eunice Njeri Muriuki told the court that she was the daughter in law of both PW1 and the Deceased. That on the material night at about 8.00pm PW2 was in her house which is within the same compound when she heard PW1 call out for help. PW2 rushed to the scene and found her mother in law lying bleeding on the kitchen floor whilst the Deceased was lying on the ground outside the main house bleeding profusely. PW2 ran to go and call her husband.
8. PW3 Samuel Muriuki Ndirangu is the husband of PW2. He stated that on 19<sup>th</sup> November 2021 at around 9.00pm he was at the local shopping Centre when his wife came and told him that his parents had been attacked by his younger brother.
9. PW3 took a taxi and rushed home. He then took his parents to Jamii Nursing Home in Karatina for treatment. PW1 was treated but the Deceased was taken to Tumu Tumu PCEA Hospital for treatment but unfortunately succumbed to his injuries.
10. PW4 Teresia Wanjiku Ndirangu is a daughter of the Deceased who resides in Thika. PW4 stated that on 19<sup>th</sup> November, 2021, her brother Samuel PW3 phoned and informed her that her parents had been attacked by the Deceased. That whilst her mother (PW1) survived the attack her father (the Deceased) succumbed on 16<sup>th</sup> December 2020.
11. PW4 told the court that she attended the post mortem examination and identified the body of the Deceased to the Doctor.
12. PW5 Dr Paul Kimathi of Mukurweini Sub-County Hospital conducted the autopsy on the body of the Deceased. He filled and signed the Post-Mortem report which he produced in court as an exhibit PExh 2.
13. PW6 Inspector Duke Kangwana told the Court that at the material time he was stationed at Kamariga Police Station. That upon receiving the report of the incident on 20<sup>th</sup> November 2021, he visited the Victims in hospital.
14. Later at 8.00pm the Local Chief called to report that the accused had been spotted in the area. PW6 went and arrested the accused and took possession of a panga which the accused had. The witness produces the panga as an exhibit PExh 5. Following the death of the Deceased the accused was charged with the offence of murder.
15. PW7 PC Brian Esembe was the Investigating Officer.
16. PW8 Dr Moses Richu Mwenda is the psychiatrist who examined the accused prior to the trial. He stated that though the accused had a history of psychiatric illness upon examination all parameters were found to be normal. PW8 found that the accused was fit to plead but recommended that he continue with treatment to avoid any relapses.
17. At the close of the prosecution case vide a ruling delivered on 27<sup>th</sup> July 2023 the Accused was found to have a case to answer and was placed on his defence.
18. The accused elected to give unsworn evidence and did not call any witnesses.



19. The accused in his defence confirmed that the Deceased Amos Ndirangu was his father. However the accused denied having slashed the Deceased with a panga causing his death. He stated that he has no idea how his father met his death. That he was only informed by police after his arrest that his father had been cut.
20. Upon closure of oral evidence parties were invited to file and exchange written submissions. The accused filed written submissions dated 6<sup>th</sup> June 2024. The Hon. DPP filed submissions dated 28<sup>th</sup> May, 2024.

### **Analysis and Determination**

21. I have carefully considered the evidence adduced by all the prosecution witnesses in this matter, the defence of the Accused as well as the written submissions filed by both parties.
22. The offence of murder is defined by Section 203 of the Penal Code, Cap Laws of Kenya as follows;-  

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
23. From the above definition the prosecution is required to prove the following three ingredients of the offence of murder.
  - i. The fact of the death of the Deceased.
  - ii. Proof that the Deceased met his death due to an unlawful act or omission on the part of the Accused. The ‘actus reus’
  - iii. Proof that said unlawful act or omission was committed with malice aforethought – the ‘mens rea’
24. Regarding the fact of the death of the Deceased there can be no controversy. PW1 the wife of the deceased told the court that she saw her late husband fall to the ground after being slashed on the head. PW2 and PW3 the daughter-in-law and son of the Deceased both rushed him to hospital. PW4 Teresia Wanjiku was a daughter of the Deceased. All these witnesses testify that the Deceased succumbed to his injuries at the Tumu Tumu PCEA Hospital. They all identify the Deceased who was well known to each of them as ‘Ambrose Ndirangu’
25. PW4 that the court that she attended the post-mortem examination where she identified the body of her late father to the Pathologist.
26. The cause of death of the Deceased is proved by the evidence of PW5 Dr. Paul Kimathi, the doctor who conducted the post-mortem examination. The doctor indicated that upon examination he noted scars on the frontal region of the Deceased’s head. That upon internal examination he noted a depressed skull fracture as well as ultra and extra-cranial injury.
27. The Doctor opined that the cause of death was severe head injury due to assault. He filled and signed the Post-mortem report which was produced in Court as an exhibit PExhb 3. This medical evidence was not challenged nor controverted by any other witness.
28. The next aspect of the charge requiring proof is the identity of the person who fatally assaulted the Deceased. PW1 who was the wife of the Deceased told the court that on the night of 19<sup>th</sup> November 2021 at about 8.00pm she and the Deceased were taking supper with their son (the Accused). After taking a few mouthfuls of food the accused got up and went into a small hut next to the kitchen.



29. PW1 goes on to narrate how the accused emerged from the store with a panga. That he cut her on the head and shoulder. The witness fell down screaming for help.
30. The Deceased then also came out to see what the problem was. At that point the accused turned on the Deceased and using the same panga slashed the Deceased severally on his head.
31. I am mindful of the fact that there was only one eye witness to the incident. However the accused was the witness's son and a person whom she knew very well. The family had been enjoying a meal together barely moments before this tragic incident occurred.
32. PW1 told the court that after taking a few mouthfuls of food the accused got up and went to a store adjacent to the kitchen. She also got up and followed him. At no time did PW1 lose sight of the accused. I find that in the circumstances of this case there was no possibility of a mistaken identity.
33. Although PW2 did not witness the actual assault she states that she rushed to the scene in response to her mother in law's cry for help. Upon arrival PW1 told PW2 that it was her son 'Ndereba' who had slashed both her and the Deceased with a panga. PW1 remained consistent in her identification of the Accused as the person who had attacked the Deceased.
34. It must be remembered that the accused was the son of PW1. Indeed PW1 told the court that the accused is her 9<sup>th</sup> born and last born child. She said that they had always related well as a family. This was evidenced by the fact that although the accused had bought his own food to cook, PW1 invited him to join his parents for supper as she had already cooked. Further PW1 stated that as her norm the deceased gave accused some money from sale of his farm produce. The witness had no reason or motive to falsely implicate her own son in such a heinous act. I am satisfied that there has been a clear and positive identification of the accused as the person who slashed the Deceased thereby causing his death.
35. On the question of 'mens rea' it is quite evident from the ferocity of the attack that the accused intended to kill or at the very least to seriously maim the Deceased. PW1 told the court that even when the Deceased fell to the ground bleeding profusely the accused continued to slash him repeatedly on the head which is a very sensitive part of the body.
36. PW4 who was the arresting officer told the court that at the time he arrested the accused he had with him a panga. The said panga was produced in court as an exhibit PExhb 1.
37. However no link of connection has been shown to exist between the panga found on the accused and the weapon used to kill the Deceased. No blood stains were noted on the panga and no matching was done. A panga is a farming implement which is commonly found in rural homes. I find no connection has been shown between the exhibit produced in court and the weapon which killed the Deceased.
38. In his defence the accused merely issued a blanket denial. He stated that he has no idea how his father met his death. The accused stated that it was only after his arrest that he was informed that his father had been killed.
39. I have noted that in the medical report it is indicated that the accused suffers psychotic episodes though at the time of examination he was found to be in remission. Neither the accused himself nor any witness has alluded to the fact that the accused may have been suffering a psychotic episode at the time of this incident. No medical report in that respect has been produced before the court. As such I find that the accused was not suffering from any mental impairment at the time of commission of this Act.
40. All in all I find that the prosecution have presented a solid case. The defence of the accused did not in any way shake or weaken the prosecution case. I therefore find that all the elements of the offence of



Murder have been proved beyond reasonable doubt. Accordingly I convict the accused of the offence of murder contrary to Section 203 of the Penal Code.

**DATED IN NYERI THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024.**

**MAUREEN A. ODERO**

**JUDGE**

