



**Republic v Karanja (Criminal Case E050 of 2022)
[2025] KEHC 13481 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E050 OF 2022
HI ONG'UDI, J
SEPTEMBER 29, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

DUNCUN KARANJA ACCUSED

JUDGMENT

1. Duncun Karanja the accused herein stands charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. Particulars being that the accused on 5th September, 2022 at Kirima sub-location, Wanyororo location in Nakuru North sub-county within Nakuru county murdered Josphat Macharia Wambugu.
2. The accused denied the charge and the case proceeded to hearing with the prosecution calling six (6) witnesses while the accused gave a sworn statement of defence without calling any witness.
3. A summary of the evidence is that the accused is a brother to the deceased. PW1 Peter Mbugua a brother to accused testified that on the material day at 5.00pm their mother (PW4) came to his place of work and asked him to go home as there was a problem. He called his other brother (PW2) who came and they went to their mother's home together. On arrival they found the deceased lying down dead while the accused was cooking 'ugali' outside. He was also harassing PW4 while asking for more flour. The accused tried to run away after telling them he had killed the deceased but was stopped. Police officers arrived and the accused showed them the bottles allegedly used in the murder. He was not aware of any bad blood between the deceased and accused. He said the accused had threatened him saying he was next on his list of those to be killed.
4. In cross examination he said the deceased had been hit on the head and was bleeding a lot. His hand was also swollen and part of this fingers were missing.



5. PW2 John Njoroge a brother to PW1 and the deceased confirmed having been called by PW1 whom he accompanied to their mother's (PW 4) home. They found the accused outside cooking. On entering the house, they found the deceased lying down and bleeding. On asking the accused what was happening he told them he had killed the deceased. They told him not to leave the house. Police arrived and did their work and recovered bottles from the table plus a stick (EXB 3) the accused brought from outside. The stick (EXB 3) had blood stains. He confirmed that the deceased had an injury on the head. PW2 said the accused takes alcohol while the deceased did not take alcohol. He added that when drunk the accused caused a lot of trouble.
6. In cross examination he said he only saw a head injury on the deceased while PW1 had an injury on the left hand. He knew of no issues between the accused and deceased.
7. PW3 Dr. Titus Ngulungu the pathologist conducted the post-mortem at PGH Nakuru on 9th September, 2022, upon identification of the body by PW1 and PW2. He found the body to show lack of air/oxygen before death. It had injuries around the eyes and bruising while the skull was deformed. There were defence injuries on the forearm and bleeding in the tissue. The lungs were collapsed, fracture of 3rd and 4th ribs, extensive skull fracture and extensive lacerations of the brain. He found the cause of death to be severe head injury due to multiple blunt trauma to the head. The body had no pre-existing conditions on it.
8. PW4 – Sarah Njoki is mother to PW1, PW2, accused and the deceased. She testified that on 5th September, 2022 3pm she left home for Kanduma Trading Center to buy flour. It started raining so she delayed returning home. When she reached home she found the deceased lying down in the house bleeding from the head. She had left him just sitting. She did not scream or cry. She took a motor-bike and left to call PW1 who called PW2 and they came home.
9. It was her evidence that on her way from the market she had seen the accused ahead of her but he disappeared. Reaching home, he found the deceased injured while the accused sat on a chair. She said the accused took alcohol while the deceased did not. Further that she lived with the accused and deceased in the same house which had two rooms. The accused and deceased shared one room. She identified the broken glasses (Exb 2a), full bottle (EXB 2b).
10. In cross examination she said when she saw the accused ahead of him he went through another path and arrived home earlier than her. She found him seated on a chair and he threatened to beat her if she opened her mouth. She repeated the same in re-examination saying he told her if she spoke he would kill her and the police would come for them. PW5 No. 256655 P. C. David Hosea Ojwang of Marmar police station but formerly of Bahati police station said the station received a report of the murder on 5th September, 2022 at 6pm from a member of the public. He went to the scene with the O. C. S. and other officers. They found the deceased lying lifeless in a pool of blood, in PW4's house. He had injuries on the head. They gathered information on the confrontation between the accused and deceased. He identified Exb 3 as the murder weapon, plus a bottle of chrome. Also recovered were blood stained clothes – Exb 4.
11. In cross examination he said the piece of wood (EXB 3) had bloodstains at the edge. That the chrome bottle (EXB 2b) was whole. He stated that the accused was drunk when he was arrested.
12. PW6 No. 75479 Sgt Silas Nyakebor, was the investigating officer. He visited the scene with other officers where they found the piece of wood (EXB 3). When he entered the house, he found broken bottles on the table and floor (EXB 2a) and a full bottle (EXB 2b). He saw injuries on the deceased's head, left hand and he was in a pool of blood. The scene had not been tampered with and so he took photographs (Exb 6a-j). He also recovered the deceased's Tee shirt (EXB 4) and torn trouser (EXB 5)



- both soaked in blood. He produced a certification letter from the scenes of crime Mr. Mariti dated 23rd November, 2022 (EXB 7), accused's jacket (EXB 8) and blue jeans trouser (EXB 9). He was not told of any bad blood between the two brothers.
13. In cross examination he referred to a photo (Exb j) showing an injury on accused's left hand, and said there had been a struggle between the accused and deceased. He further stated that since the accused and deceased were the only people in the house it was not easy to tell who started the fight.
 14. In his sworn statement of defence the accused Duncan Karanja stated that he worked as a coblar, and the deceased was his elder brother. That on the material day he returned home at 4pm and went to PW4's sitting room. He said he had his own house and that is where the deceased used to sleep. He placed on the table what he had bought and it was then that the deceased inquired from him whether he had come with his shs 300/= debt. He explained to him that he had no money since he had spent all he had on the things he had bought.
 15. It was his evidence that it was at this point that the deceased hit him on his right shoulder. They then had a struggle until he threw outside the piece of wood the deceased had. That the deceased took the accused's bottle of alcohol which he hit on the table, and it broke. He stated that the deceased held the broken piece wanting to pierce his throat. It was at that point that he used his left hand to shield himself and he got injured.
 16. He said he held the deceased and pushed him against the table. Their mother (PW4) entered the house and found him bleeding. She asked what it was and he explained to her. He said he was drunk on that day, but denied having had any intention to kill his brother. Finally, he said their family relationship is good and even his brothers have been at the prison to see him and they have forgiven him.
 17. In cross examination he said he lived with their mother (PW4) and the deceased. It was his case that the deceased was not well. He confirmed that PW4 had gone to the shops when all this was happening. He stated that the stick (EXB 3) was what the deceased had used to hit him, though, he never bled. He denied hitting the deceased with EXB 3 saying the deceased hit himself on the table when he pushed him. He said the deceased never bled, and he never heard PW1 and PW2 say the deceased was bleeding. He admitted to not having assisted the deceased when he fell saying he was drunk and his mind was not clear.

Submissions

18. The prosecution's submissions are dated 16th January, 2025 having been filed by M/s Emma Okok principal prosecution counsel. She submitted that the prosecution had proved all the ingredients of murder namely death, commission of an unlawful act that caused the deceased's death, the said unlawful act having been committed by the accused and finally malice in the commission of the unlawful act.
19. The defence submissions filed by H. Chepng'etich of Geoffrey Otieno & company advocates are dated 22nd July, 2025. Counsel submitted that all the witnesses confirmed that the accused was drunk at the time of the incident and his hand was injured. Further that the accused confirmed that there was a fight between him and the deceased. Referring to malice aforethought under section 206 of the penal code. She submitted that it was the duty of the prosecution to prove that ingredient. In this case she argued that the prosecution had not proved both the actus reus and mens rea and the court should therefore acquit the accused.



Analysis and determination

20. The accused faces a charge of murder contrary to section 203 as read with section 204 of the penal code. I have considered all the evidence on record. It is a clear principle of law that in criminal cases the burden of proof lies with the prosecution.

21. Section 203 of the penal code provides

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”

Whereas section 204 of the Penal Code provides:

“Any person convicted of murder shall be sentenced to death”.

22. A reading of section 203 of the penal code reveals three (3) ingredients which must be proved by the prosecution beyond reasonable doubt. The ingredients are:

- a. The death and cause of death of the deceased.
- b. The unlawful act causing the death was committed by the accused (actus reus).
- c. The presence of malice aforethought/intention by the accused in committing the unlawful act (mens rea)

See: Nzuki V Republic [1993] KLR 17,

The death and the cause of death

23. There is no dispute that Josephat Macharia Wambugu died on 5th September, 2022. This has been established by the prosecution witnesses, the accused and PW3 Dr. Titus Ngulungu who conducted the post mortem on 9th September, 2022 and produced the report (P Exb 1). He gave a detailed account of the numerous injuries he found on the deceased's body. He gave the cause of death as:

“Severe head injury attended by extensive skull and brain laceration due to multiple blunt force trauma to the head”

From the above it is clear that the deceased did not die of a natural cause of death.

Who committed the unlawful act that led to the death?

24. PW4 is the mother to the accused, deceased, PW1 and PW2. Their evidence is that the accused and deceased lived in PW4's house which had two rooms. The two men shared one room. When PW4 left for the shopping center on 5th September, 2022 she left the deceased (who was jobless) at home seated on a chair. On her way back home, she saw the accused ahead of her but he disappeared upon taking a different route. He therefore arrived home earlier than her. On arrival home she was accosted with the painful incident. The deceased was lying down in the house bleeding. She was threatened by the accused not to speak otherwise she too would be killed. It is also clear that when PW4 arrived home there was no one else present besides the accused and the deceased.

25. Upon receiving a desperate invite by PW4, her other sons PW1 and PW2 responded very fast and came home, only to find their brother (deceased) lying in a pool of blood in their mother's house. The



accused was there busy cooking ugali outside the house. He never gave any explanation as to what had happened but he told them he had killed the deceased.

26. The Scenes of crime officer took photos of the scene (Exb 6a – j). The photos (Exb 6 b, c, d, e and f) show the multiple injuries the deceased had all over the body. These injuries resonate very well with the findings by Dr. Ngulungu (PW3). He captured the said injuries very well in his post mortem report (EXB 1). The photo Exb 6(i) shows a pool of blood on the floor. These were not drops of blood. This also confirms the evidence of PW1, PW2, PW4, PW5 and PW6 who all said they found the deceased bleeding. Infact the police officers (PW5 and PW6) were very categorical in their evidence that they found the deceased in a pool of blood which fact is confirmed by the photo Exb 6(i) The accused therefore lied when he said in his defence that the deceased never bled.
27. In his defence the accused said it was him who was injured by the deceased after he failed to give him his debt of Ksh 300/=. That he only pushed the deceased against the table and he fell down. At another point he stated that he was too drunk to understand himself.
28. The stick that was said to be the murder weapon was produced as EXB 3. A photo of it was taken at the scene and it was produced as Exb 6(a). It had blood stains on it. Broken bottle pieces and a whole bottle were produced as Exb 2a & b. The accused in his defence said EXB 3 was never used by him to kill the deceased but rather it was the one used by the deceased to hurt him.
29. Taking into consideration the doctor's (PW3) evidence on the injuries sustained by the deceased, the cause of death (EXB 1), and the evidence in the photos (EXB 6) it is my finding that a single push against a table could not result in such grievous injuries. It clearly shows the deceased was assaulted severally resulting in the injuries suffered. The person who did all this was none other than the accused. I am thus satisfied that it is the accused who committed the unlawful act that led to the deceased's death.

Was malice aforethought established?

30. Section 206 of the penal code provides that malice aforethought shall be established by evidence proving one or ore 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.
31. This has been relied on in several cases among them: Kaburu V Republic (Criminal Appeal No. 103 of 2023) 2004 KECA 536 KLR Republic V Ali Kajotot Ali (2021) Republic V Tubere s/o Ochen (1945) 12 EACA 63)
32. The burden to prove malice aforethought lies on the prosecution. In this case the witnesses PW1, PW2, PW4 and the accused stated that there was no bad blood between the accused and deceased prior to the incident. So, what caused this raffle? According to PW5 (officer) accused was drunk at the time of his arrest. On the other hand, PW6 also an officer who went to the scene said the accused was not drunk as he did not smell of alcohol.



33. The accused on his part said he was drunk and his mind was not clear during the incident. That he had also brought alcohol to the house. A bottle of chrome (Exb 2b) was recovered alongside pieces of broken bottles (Exb 2a) in the house. The accused further stated that he was injured when he lifted his left hand to shield himself as the deceased wanted to pierce his throat with a broken piece of bottle. He however added that he never bled from the said injury. There was equally no medical proof of this injury save for what was seen in (Exb 2j) which was not anything serious.
34. Putting all these pieces of evidence together would one say that the accused was so drunk that the was not aware of what he was doing? Can he be said to have lost control of his mind?
- i. First of all, his mother (PW4) said he had seen the accused ahead of her and he took off using a different route making him reach home earlier than her.
 - ii. The evidence is clear that the house in which this incident occurred was occupied by only three people namely: Accused, Deceased, and PW4. By overtaking the mother (PW4) the accused knew that the only person at home was the deceased. So, he got an opportunity to do what he wanted to accomplish.
 - iii. When PW4 arrived home, she found the accused comfortably seated on a chair while the deceased was lying dead bleeding on the floor. The incident seemed not to bother him.
 - iv. When PW1 and PW2 (his brothers) came home the accused was outside cooking ugali and harassing PW4 for more unga (flour). He therefore knew what he was doing.
 - v. The several severe injuries inflicted by the accused and the pool of blood the deceased lay in tell a lot. The injuries on the head of the deceased were so traumatic. Can these be actions of someone who did not know what he was doing? He knew his actions would cause grievous harm and/or death. All these actions reflect a real element of malice aforethought.
35. In the case of Daniel Muthee V Republic Criminal Appeal No. 218 of 2005 (UR) cited in the case of Republic V Lawrence Mukaria & another [2014] eKLR Bosire, O’kubasu & Onyango Otieno JJA, while considering what constitutes malice aforethought observed as follows:
- “When the appellant set upon the deceased and cut her with a panga several times and then proceeded to cut the young Allan in similar manner, he must have known that the act of cutting the deceased persons on the head with a sharp instrument would cause death or grievous harm to the victims. We are therefore satisfied that malice aforethought was established in terms of section 206(b) of the penal code”.
36. In view of the decided cases, law and the evidence adduced herein it is clear that the accused was clear in his mind what his intention was i.e to kill or cause grievous harm hence the aim on the head and other parts of the body with the stick (EXB3)
37. I am satisfied that the prosecution has discharged its mandate in proving a murder charge against the accused.
38. For my part I find the accused guilty and convict him as charged.
39. Orders accordingly

**DELIVERED, DATED AND SIGNED THIS 29TH DAY OF SEPTEMBER, 2025 IN OPEN COURT
AT NAKURU**

H. I. ONG’UDI



JUDGE

