



**Republic v Meme (Criminal Case E001 of 2021)
[2025] KEHC 13448 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13448 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL CASE E001 OF 2021**

JN NJAGI, J

SEPTEMBER 17, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

FESTUS GITONGA MEME ACCUSED

JUDGMENT

1. The accused herein is facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 5th day of December 2020 at about 21:09 Hours at Maji village in Mokowe location, Lamu West Sub-County within Lamu County he murdered Daniel Kimathi Lawrencia (herein referred to as the deceased).

Prosecution case

2. The case for the prosecution is that the deceased used to work for the accused on his construction site. That on the evening of 4/12/2020, the deceased was with a friend at a bar at Mokowe in Lamu county. They were being attended to at the bar by a lady called Ann Wangoi PW2. It was the evidence of Wangoi that the deceased and his friend left the bar at 8 pm.
3. It was the evidence of Stephen Mwikathi PW2 that on the same night sometimes before 9 pm, he met with the deceased on the way. The deceased told him that he was heading to the home of the accused as the accused had telephoned him and asked him to go to his home for them to make work arrangements. That the deceased went towards the home of the accused which was not far. That at 11 pm, the accused telephoned him; PW2, and told him that he had cut a thief who had gone to his home. That on the following day he, PW2, went to the house of the deceased. He saw blood stains in his house. He PW 2 went to his place of work. Later he went to the house of the deceased and witnessed the police breaking into his house. The deceased was found dead in his house. The body was placed in a police vehicle and taken away.



4. Anne Wangeci PW5 testified that on the 5/12/2020 she witnessed the police collecting the body of the deceased from the deceased's house.
5. PC George Nyamesegora PW7 told the court that he was stationed at DCI Hindi when he received a report from the OCS Mokowe of the death of the deceased herein. He visited the scene with other police officers. They found the body of the deceased on a mattress on the floor of his one roomed house. The body had a deep cut wound on the head. It was dressed in a blood-stained white shirt. They escorted the body to Mpeketoni Hospital Mortuary.
6. George PW7 investigated the case and learnt that on that day at 6 am the accused had made a report at the police station that he had killed a thief who had peeped into his house at night. They went to the home of the accused where they found him and recovered the following items: piece of wood, a piece of metal, used piece of iron sheet that had blood spots, a plastic container with blood stains, a piece of used newspaper with blood stains and used piece of plastic pipe which had blood stains. Photographs of the scene were taken.
7. It was further evidence of PW7 that a post mortem was performed on the body of the deceased and blood samples extracted from the body. He prepared an exhibit memo and forwarded the items recovered from the home of the accused to the government analyst together with the deceased's blood samples and his white long-sleeved shirt. He charged the accused with the offence. He later received a report from the government analyst.
8. The government analyst who examined the items, PW6, testified that their laboratory was requested to ascertain whether the blood stains on the exhibits received at their laboratory matched with the blood samples of the deceased and the blood stains on the white shirt. That after carrying out DNA analysis on the exhibits, the witness found that the piece of used iron sheet, the piece of green plastic pipe, a piece of used newspapers and the used plastic containers, generated a male DNA profile that matched with the DNA profile generated from the blood sample of the deceased and the deceased's white long-sleeved shirt. The witness prepared a report to that end.
9. The doctor who performed the post mortem, PW1, testified that he found the body with a deep cut on the scalp that exposed the brain matter. There were also injuries on the left upper jaw. He made a conclusion that the cause of death was due to hemorrhagic shock due to severe head injury. He prepared a report to that end.
10. During the hearing of the case in court the government analyst PW6 produced his report as exhibit, P.Exh.3. The doctor who performed the post mortem PW1 produced his report as exhibit, P.Exh.1. The investigating officer produced the exhibit memo, the iron sheet, the plastic container, the piece of newspaper, the plastic pipe, the deceased's shirt and the metal piece as exhibits, P.Exh. 2, 4 - 9 respectively. He also produced the photographs taken at the scene, its certificate and memo as exhibits, P.Exh 10 – 12 respectively.

Defence case

11. When placed to his defence, the accused stated in a sworn statement that he operates a shop at Mokowe in Lamu county. That on the midnight of 4/12/2020 he was asleep in his house when he saw a person peeping into his house through the window. He armed himself with a metal bar and came out of his house. He confronted the person who tried to attack him. He struck him on the back and he ran away. He chased him while screaming. The person jumped over some timber but he did not get him. He threw the metal bar at him and hit him on the head. He did not identify him. Two of his neighbours



heard his screams and came out. In the morning at 6 am he went to Mokowe police station and reported the incident.

12. It was further evidence of the accused that the deceased was at that time working for him as a supervisor at his site. That the deceased was to go for work on that day as they had arranged for that day's work on the previous day. He called a person called Patrick and asked him whether work had commenced at his site. He was informed that it had not. He went to the site and found that work had not commenced. He got other people to do the work. At 9 am he and a person called Sila passed by the house of the deceased to find out why he had not reported for work. They found his house locked from inside. They saw a person sleeping inside the room. They thought he was drunk and left it at that. In the evening Patrick called him and told him that the deceased was found dead in his house. He was summoned by the police. He was told that the person he had hit in his compound is the deceased. He said that he had not identified the person he had hit. The police went to his home and picked some items in his compound. He gave them the metal bar he had used.

Submissions

13. Counsel for the accused filed nwritten submissions in the case while the prosecution counsel did not file any.
14. Counsel for the accused referred to the case of Anthony Ndegwa Ngari v Republic (2014) eKLR where the ingredients for the offence of murder were stated to be: proof that the death of the deceased occurred; that the accused committed the unlawful act which caused the death of the deceased and that the accused had malice aforethought.
15. It was submitted that there is no dispute that the death of the deceased occurred as the same was confirmed by the post mortem report produced in court.
16. On the second ingredient, it was submitted that the deceased was found dead in his house. That none of the witnesses who testified for the prosecution placed the accused at the scene. That even the alleged murder weapon, the metal bar, when tested did not generate any DNA which meant that the accused's DNA was not identified. Therefore, that it was not proved how the deceased met his death. That there was no evidence linking the accused with the death of the deceased.
17. On malice aforethought, it was submitted that the person the accused hit in his compound at night remains unidentified. That the deceased's death seems to be a mere coincidence with the events that occurred at the home of the accused on the material night. That the accused had no misunderstanding with the deceased as even before his demise he was doing some casual work for him. That there was no evidence that the accused had any intention of causing the death of the deceased person. Consequently, that the prosecution had not proved the charge beyond reasonable doubt and the accused should be acquitted.

Analysis and determination

18. This being a criminal trial, the standard of proof is that of beyond reasonable doubt. Lord Denning in Miller vs. Ministry of Pensions, [1947] 2 ALL ER 372 stated this degree to be as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible,



but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

19. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. Section 203 of the Penal Code defines murder in the following terms:

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

20. The elements of the offence of murder under sections 203 and 204 of the Penal Code were stated in the case of Republic Versus Andrew Omwenga (2009) eKLR to be as follows:

“It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission – there are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are:

- (a) The death of the deceased and the cause of the death,
- (b) That the accused committed the unlawful act which caused the death of the deceased and
- (c) That the accused had the malice aforethought”.

21. It is the duty of this court to interrogate the respective ingredients of the offence of murder and determine whether the offence of murder was proved against the accused person.

22. A post mortem report was produced that showed that the body of the deceased had a deep cut wound on left parietal region that fractured the skull and exposed the brain matter. The doctor who performed the post mortem found that the cut was caused by a sharp object. He as a result formed an opinion that the cause of death was due to hemorrhagic shock secondary to deep cut wound on the head. This evidence was not challenged. I find the cause of death to be as opined by the doctor. The death and cause of death of the deceased was therefore proved.

23. On whether the accused is the one who committed the unlawful act that caused the death of the deceased, the prosecution did not have direct evidence connecting the accused with the offence, It relied on circumstantial evidence. The first circumstantial evidence is the evidence of Stephen Mwikathi PW3 that he met with the deceased on the evening of 5/12/2020 who told him that he was heading to see the accused for them to arrange matters concerning work. That on the same night at 11.45 pm the accused called him and told him that he had cut a thief who had gone to his home. That on the following day he went to the accused’s house where he saw blood stains.

24. The other circumstantial evidence is the finding of the doctor who conducted the post mortem, PW1, that the cut wound on the head was curved, clear with smooth edges that in the opinion of the doctor was caused by a sharp object.

25. The circumstances under which the court may convict on the basis of circumstantial evidence were stated in the case of Republic vs Kipkering arap Koskei 1949 16 EACA 135 where it was held that:-

There is no direct evidence to the effect that those wounds were inflicted on her body by the accused person. The case must therefore be decided purely on circumstantial evidence.

It is now settled that for a Court to convict on circumstantial evidence there must be evidence which points irresistibly to the accused person to the exclusion of any other person.



At the same time there must be no co-existing factor or circumstances which may weaken or destroy the inference of the guilt of the accused person.

26. In the case of *Mucheru v Republic* 2002 KLR the court held the following on the subject:
- “It is trite law that where a conviction is exclusively based on circumstantial evidence such conviction can only be properly upheld if the court is satisfied that the inculpatory facts are not only inconsistent with the innocence of the appellant but also that there exist no co-existing circumstances which would weaken or destroy such influence”
27. In the Court of Appeal case of *Ndurya vs Republic* [2008] KLR 135 the test to be applied by a court relying on circumstantial evidence was explained as follows: -
- Circumstantial evidence was often the best evidence as it was evidence of surrounding circumstances which by intensified examination was capable of accurately proving a proposition. However, circumstantial evidence was always to be narrowly examined. It was necessary, before drawing the inference of the accused person's guilt from circumstantial evidence, to be sure that there were no other co-existing circumstances which would weaken or destroy the inference. The circumstantial evidence in this case did not dislodge a lingering possibility that the offence may have been committed by a person other than the appellant.
28. In *Abanga alias Onyango v Republic*, Cr. App No. 32 of 1990 the Court of Appeal set out the conditions for circumstantial evidence as follows:
- “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.”
29. The fact that items picked at the Accused's home had DNA profile for the deceased means that the deceased received the injury that caused his death at the home of the Accused. The deceased is therefore the person the accused attacked at his home.
30. Stephen Mwikathi PW2 told the court that his wife and the wife to the accused are sisters. There is then no reason why PW2 would lie that he saw blood stains in the house of the Accused. The fact that PW2 saw blood stains inside the house of the Accused means that the Accused was not telling the truth as to how the incident took place.
31. The evidence of the doctor who performed the post mortem PW5 that the cut on the deceased's head was caused by a sharp object was not challenged. The doctor's findings dislodges the defence of the Accused that he hit the deceased with an iron bar on the head as an iron bar cannot have caused a clear-cut wound with smooth edges as evidenced by the doctor. I find that the accused cut the deceased with a sharp object.
32. The circumstantial evidence adduced before the court irresistibly points at the Accused as the person who caused the death of the deceased by cutting him with a sharp object on the head. I find no other co-existing circumstances which would destroy that inference. That the cut was very deep can only



- invite the conclusion that the act was unlawful. It was therefore proved that the accused unlawfully cut the deceased on the head and caused his death.
33. Having come to the finding that the accused is the one who unlawfully caused the death of the deceased, the question is whether he did so with malice aforethought.
34. The offence of murder is defined as the unlawful premeditated killing of one human being by another. The Black's Law Dictionary Tenth Edition Page 1776 states murder to be the killing of a human with malice aforethought.
35. Section 203 of the Penal Code provides that: -
- Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
36. Malice aforethought is defined in Section 206 of the Penal Code in the following terms:
- (a) An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.
- (b) Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person 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 be caused.
- (c) An intent to commit a felony.
- (d) An intention to facilitate the escape from custody of a person who has committed a felony.
37. Section 202(1) of the Penal Code provides as follows:
- (1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.
38. Section 205 of the Penal Code provides that:
- Any person who commits the felony of manslaughter is liable to imprisonment for life.
39. In this case, the prosecution has not adduced evidence to show why the accused cut the deceased on the head. The prosecution did not prove malice aforethought on the part of the accused. Without proof of malice aforethought, the charge proved against the accused is that of manslaughter contrary to section 202 of the Penal Code.
40. In the case of *Roba Galma Wario vs Republic* [2015] eKLR, it was 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.”
41. The same view was held in *Nzuki vs. Republic* (1993) KLR 171, where the Court in substituting a charge of murder with manslaughter stated that:
- In the absence of proof of malice aforethought to the required standard, the appellant's conviction for the offence of murder is unsustainable. His killing of the deceased amounted only to manslaughter.”



42. I find the offence committed in this case to be manslaughter and not murder. I accordingly find the accused guilty of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convict him accordingly.

READ, DELIVERED AND SIGNED AT GARSEN THIS 17TH DAY OF SEPTEMBER 2025.

J. N. NJAGI

JUDGE

In the presence of:

Miss Mkongo for prosecution

Miss Tonia Mwanja for accused

Accused – present

Court Assistant - Rahma

