



**Republic v Alando (Criminal Case 4 of 2023)
[2025] KEHC 14476 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14476 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA
CRIMINAL CASE 4 OF 2023
JN ONYIEGO, J
OCTOBER 9, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MESHACK OKIRI ALANDO ACCUSED

JUDGMENT

1. The accused person is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 12.03.2021 at around 1240 hours in Mandera Central Sub County within Mandera County he murdered one Daniel Otieno Abwao.
2. Having pleaded not guilty, prosecution called 7 witnesses in support of its case while the accused person upon being put on his defence gave sworn testimony without calling any witness.

Prosecution’s Case

3. Briefly, PW1, Michael Musinya testified that, on 12.03.2021 at 12.30 p.m., he was in his house sleeping when his fellow fundi, Daniel Otieno arrived at his house. That the said Daniel told him that he had problems with his friend Meshack Okiri, the accused herein who was also a fundi. Shortly, the accused person joined them and all over sudden, the duo started quarreling in Luo language. Consequently, Daniel slapped Okiri on the right cheek thus prompting Okiri to leave and return armed with a knife.
4. He stated that he tried to restrain Okiri with no success and therefore, he resorted to screams to attract people’s attention and help. He further stated that Okiri stabbed the deceased on the neck and further cut his throat and right hand. That Karish helped him follow Okiri who ended up reporting at the police station. It was his evidence that he managed to find a taxi and therefore returned to the scene from where he picked the victim whom he rushed to Elwak hospital. He stated that he reported the matter to the police who proceeded to arrest the accused and recovered the knife used in stabbing the deceased.



5. On cross examination, he stated that he was not privy to the reasons that led to the accused and deceased person's quarrel in as much as it was Daniel who slapped the accused person first. He reiterated that he saw the accused person cut the deceased's throat. He further stated that upon taking the deceased to the hospital, they also saw the accused person thus prompting them to inform the police officers who had accompanied them to the hospital. It was his evidence that he did not see the accused person sustain any injury.
6. PW2, No. 250250 PC Mark Kanamwayi testified that on 12.03.2021, the OCS directed him together with PC Kirepei and PC Karichu to go to El wak Sub County Hospital to visit a victim by the name of Otieno who had allegedly been attacked. That the said victim had deep cut wounds on the left side of the neck, a cut wound on the lower back of the hand near the wrist joint and the back of the head. He stated that they took his particulars and thereafter, arrested one Meshack Okiri Alando, the accused person herein. He also stated that they recovered a kitchen knife from the accused person.
7. On cross examination, he stated that it was PC Karichu who asked him to accompany him and that they were only three police officers as no civilian accompanied them. He stated that at the time the accused person was arrested, he was at the treatment room and therefore, he did not witness the arrest. It was his testimony that earlier on, the accused person had reported at the police station that he had been assaulted. He told the court that accused had some injury and blood stained clothes. He stated that the accused was referred to the hospital for treatment.
8. PW4, Paul Omondi Marera, a mason by trade testified that on 12.03.2021, he left his house at 7.00 a.m., going to visit a lady by the name of Judy. That he found the accused person and Michael at Judy's place. According to him, Judy was known to sell traditional liquor and so, he ordered a cup of the said liquor. later, the deceased person also joined them and equally ordered for some liquor.
9. He stated that at 0930hrs, together with Omondi, they left the accused person and Michael at Judy's place as they went to take tea elsewhere before returning to Judy's place for more beer. At about 1100hrs, he left for work thus leaving Daniel, Michael and Meshack at Judy's place. That on the following day, Michael called and informed him that Daniel had been stabbed and had been taken to the hospital. On cross examination, he stated that he did not see the accused person attack the deceased.
10. PW5, No. 11280 PC Joseph Karichu testified that on 12.03.2021, they received a call from Elwak Sub-County referral hospital informing the OCS of an assault case. That together with some colleagues, they visited the said hospital where they found one Daniel Otieno bearing injuries on the left side of the neck and on the right hand near the elbow. It was his evidence that the deceased was still talking and even requested for some water. That the doctors told them that the attacker was locked in a room with a knife. Upon visiting the said room, they found Meshack Okiri with a knife. He further stated that they took him to the station while the patient was referred to Mandera referral hospital. It was his evidence that the suspect had an injury on the ear in as much as he did not know how the deceased was attacked.
11. On cross examination, he stated that he was with PC Kanamayi when they arrested the accused and that he did not see Okiri at the hospital. He stated that he did not know who called the OCS. According to him, Okiri was locked in a room by doctors as he had a blood stained knife.
12. PW5, PC Kerapei Cosmas No. 261724, the investigating officer recalled that on 12.03.2021 at 13.20hrs while at Elwak police station with PC Kanamayi and PC Karicho, they received a call from Elwak Sub-County hospital informing them that there was a patient by the name of Daniel Abwao who had been stabbed, and the person who stabbed him was in the hospital with a kitchen knife trying to finish him. That they booked the OB and together with CIP Stephen Mwaura (OCS), PC Karichu and PC Kanamayi, proceeded to Elwak Sub-County hospital and upon arrival, they found the deceased lying



- on the bed with a stab wound on the neck, a cut wound on the right shoulder and his right hand near the elbow.
13. He further stated that, the accused was being held in another room by doctors and upon entering the said room, they recovered a blood stained kitchen knife from him. That the accused person was arrested while the victim was referred to Mandera referral hospital but unfortunately, he was later pronounced dead.
 14. On cross examination, he stated that it was PC Karichu who received the report as an assault report was made first by the hospital staff. He stated that the accused person had injuries on the head while the deceased also had injuries. It was his statement that he did not investigate the cause of the accused person's injuries and further, that the knife was recovered by PC Karichu. That he recorded Michael and Judy's statements and further, from his investigations, he learnt that the accused and deceased used to stay together but differed over payment of a debt not paid at some hotel - traditional liquor joint. On re-exam, he stated that the accused and deceased fought in a club/traditional chang'aa den and that the accused appeared drunk when they arrested him.
 15. PW6, Dr. Benard Midia, testified on behalf of Dr. Gacii and Dr. Irungu who carried out post mortem on the body of the deceased. It was his evidence that the post mortem was done on 21.04.2021. According to him, the deceased had stitched stab wounds on the left side of the neck while on the left side of the chest wall, there was a penetrating wound. It was his testimony that on the left neck, the wound measured 5x5cm while the one on the chest measured 1x0.5cm. That on opening the body, the right lung had a stitch measuring 8cm long and similarly, an injury on the large intestine which was already stitched measuring 3cm in length.
 16. He testified that the stitches raised spinal pressure as a result of the injuries sustained. According to him, the cause of death was multiple injuries on the neck, chest, lungs and intestines following sharp injuries. On cross examination, he stated that the internal injuries were on the neck and chest wall.

Defence Case

17. DW1, Meshack Okiri Alando, a mason by trade testified that on 12.03.2021 at 1100hrs, he received a call from Mzee Michael asking him if he was together with the deceased and where possibly they could be. That he told him that the deceased and him were staying together. According to him, Michael wanted to go to Fatuma's for some work but instead, he told the deceased to go for the work.
18. He further stated that Michael wanted him also to go for the work and therefore, at 11.00 a.m., together with Daniel, they left to go do the work. He stated that upon reaching Baragoi, they met Michael who was at that time talking to a land lady by the name of mama Zakaria. She wanted Michael to go repair her window and therefore, Michael told him to go as Daniel and Michael entered the house of Michael in preparation to go to Fatuma's place.
19. According to him, he repaired the window and after that, a lady by the name of Kathambi told Michael to go see why Daniel was quarreling with some people. Upon arriving at the scene, he found people claiming they had not been paid for two months. Equally, he found people drinking traditional liquor known as karunganga. He further stated that Michael used to sell bhang and spirits.
20. He recalled that one Murithi told him that it was now better that they were all there as he demanded cash from them noting that they had allegedly worked yet there was a go slow. That while talking to Daniel, Kizito hit him with a stone hammer on the head and so, he left Daniel there and headed to the police station to report. While at the station, he was referred to the hospital where, he saw Karis and



Michael standing at the emergency door at the hospital. He also stated that while at the hospital, he learnt that Otieno Daniel was also there.

21. He testified that he was given first aid and later, the OCS and two officers arrested him. According to him, he was not arrested with anything as he was charged with an offence he did not commit. That the people who allegedly killed the deceased are known. That Paul Omondi was bribed to testify against him.
22. On cross examination, he stated that where they were taking beer, people used to sell bhang and that he reported the said people. Additionally, that his OB indicated that it was Daniel Osudo who assaulted him. That while at the hospital, he saw Michael and Karis having brought Daniel to the hospital but he did not go to see the deceased. On re-exam, he stated that it was Kizito who informed him that Daniel had been injured as he was not there when the deceased was being beaten. He pleaded innocence and further urged the court to release him.
23. The parties did not file their submissions despite being directed to.

Analysis and Determination

24. Upon considering the evidence of the 7 prosecution witnesses together with the defence witness's sworn evidence, this court is duty bound to determine whether the ingredients of the offence of murder as provided for under Section 203 of the Penal Code Chapter 63 of the Laws of Kenya have been proved beyond reasonable doubt by the prosecution. [Republic vs Kibichiy, Criminal Case No. E005 of 2021].
25. Section 203 of the Penal Code Chapter 63 of the Laws of Kenya under which the accused person is charged provides as follows: -

‘Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.’
26. The said provision creates elements of the offence of murder that must be proved by the prosecution beyond reasonable doubt as here under.
 - i. That death occurred;
 - ii. That the death was caused by an unlawful act or omission;
 - iii. That the accused person directly caused the death of the deceased or indirectly participated in the commission of the alleged offence; and
 - iv. That there was malice aforethought.
27. In the case of Republic vs. Andrew Mueche Omwenga [2009] eKLR Maraga J (as he then was), referring to the definition of section 203 of the penal code on the offence of murder 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 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 that 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.”

28. As to the question whether the deceased died, It is not in dispute that one Daniel Otieno Abwao died. The prosecution witnesses together with the accused person did not controvert the evidence that indeed the deceased passed on. PW6 who testified on behalf of the doctors who carried out the post mortem on the body of the deceased opined that the cause of the deceased’s death was as a result of multiple injuries on the neck, chest, lungs and intestines following sharp injuries. Pw2 clearly stated that the deceased died as a result of a fatal injury occasioned by the deceased. As such, this court is satisfied that indeed the prosecution proved the element of death.
29. On what caused the death of the deceased, the evidence of the doctor was that the deceased died as a result of multiple injuries following sharp force injuries due to assault. This court therefore finds that the death of the deceased was not as a result of self-inflicted injuries or an accident. The nature of injuries suffered by the deceased were so severe. Taking into account the circumstances under which it occurred, it is my finding that the death of the deceased was not as a result of self-inflicted injuries or an accident hence unlawful.
30. On whether the death was caused by the accused person, this court is guided by the finding in the case of *People vs Bretagna* (298 NY 323, 325-326 [1949]) where the court stated that:
- “Evidence is direct and positive when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses...In other words, direct... evidence, as the term is commonly used, means statements by witnesses, directly probative of one or more of the principal...”
31. In the instant case, it is clear from the direct evidence of PW1 that the accused person committed the act that caused the death of the deceased. PW5 who also investigated the matter told the court that the accused and deceased used to stay together but differed over payment of a debt not paid at some hotel - traditional liquor joint. PW7’s evidence corroborated the evidence of PW2 as regards the respective places where the accused person struck the deceased hence leading to his death.
32. The offence was committed during the day. Pw1 knew the accused person very well. There was no possibility of any error in terms of identification. It is true that the only direct evidence is that of pw1. However, from his general demeanour, pw1 appeared to be so honest and consistent. He struck be as a truthful witness. He had no reason to fabricate this case. His evidence was so detailed and unshaken. In the case of *Abdallah Bin Wendo v Republic* (1953)20EACA 166 and *Roria v Republic* (1967)EA 583 both courts held that a fact can be proved by the testimony of a single witness as long as the court cautions itself of the danger of convicting based on such evidence. I have cautioned myself of the dangers of convicting based on the evidence of a single witness.
33. According to the arresting officer, accused had a knife stained with blood when he was arrested. What was the source of blood and what was he doing with a blood stained knife? His defence theory that he did not know what caused the deceased the fatal injuries does not add up. He was seen at the scene of the attack while armed with a knife which he picked shortly after the deceased slapped him. I have no doubt that the fatal injuries sustained by the deceased were caused by the accused.
34. On whether the unlawful act was committed with malice aforethought, section 206 of the Penal Code defines malice aforethought as follows: -

“Malice aforethought shall be deemed to be established by evidence proving anyone 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 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 act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony”.

35. Further to the above, the elements to prove malice aforethought were settled in the Court of Appeal decision in the case of Joseph Kimani Njau vs R (2014) eKLR which held that:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

- i) The intention to cause death;
- ii) The intention to cause grievous bodily harm;
- iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts. It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed...”

36. In the same breadth, the Court of Appeal in the case of Bonaya Tutu Ipu & another vs Republic [2015] eKLR stated as follows on prove of malice aforethought; -

“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of Chesakit v Uganda, CR App No 95 of 2004, the Court of Appeal of Uganda stated that in determining a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person. Earlier in Rex v Tubere s/o Ochen [1945] 12 EACA 63, the former Court of Appeal for Eastern Africa stated thus on the issue:

It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick.....”

37. In the instant case, the nature and extent of injuries inflicted on the deceased, as detailed in the post-mortem report, strongly indicate an intention to cause death or grievous harm. the doctor who conducted post mortem on the body of the deceased, opined that the death of the deceased was caused by multiple injuries following sharp force injury due to assault.

38. The investigating officer testified that the accused and deceased used to stay together but differed over payment of a debt not paid at some hotel - traditional liquor joint.



39. It was stated that the deceased slapped the accused person during the time of the quarrel but instead, the accused person left and shortly returned while armed with a knife which he used to stab the deceased hence causing the death herein. The attack mounted by the accused person against the deceased was intentional as opposed to the slap by the deceased person. It was not to be denied that the accused person stabbed the deceased using a kitchen knife on the various parts of the body including the neck hence causing his death. As a reasonable person, he knew that the injury caused was likely to cause grievous harm or death hence desired the results.
40. The accused person clearly failed to reconcile himself with the possibilities of what his actions could amount to when he repeatedly stabbed the deceased on vital body parts using a kitchen knife. It is my view that the actions of the accused person cannot pass as normal misunderstandings and quarrels as the same was aggravated by the type of the weapon used, the area where the injuries were inflicted and the fact that the same were repeatedly done despite being restrained by PW2 and not to forget the fact that the deceased was unarmed.
41. In my honest view, the act was a violation of the deceased person's rights and the same ended in the deprivation of the deceased person's life contrary to Article 26 of *the Constitution* of Kenya, 2010. Evidence of malice on the part of the accused person in my view, was thus proved beyond reasonable doubt.
42. In conclusion, it is my finding that the ingredients of the offence of murder have been proved by the prosecution beyond reasonable doubt and as such, the accused person is found guilty and consequently convicted accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF OCTOBER 2025

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J.N.ONYIEGO

JUDGE.

