



**Republic v Musimbi alias Seto (Criminal Case E066 of 2022)
[2025] KEHC 13992 (KLR) (Crim) (7 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13992 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE E066 OF 2022**

**K KIMONDO, J
OCTOBER 7, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SETRICK NADWA MUSIMBI ALIAS SETO ACCUSED

JUDGMENT

1. On 17th May 2021, a vicious brawl erupted between two rival matatu groups of Aldana Sacco and Eastleigh Sacco over the management of the stage at the OTC area on Racecourse Road. In the midst of the fight, Peter Macharia Kamau (hereafter the deceased) was stabbed on his left shoulder and suffered death.
2. The Republic brought Information to the High Court charging the accused with murder contrary to section 203 as read with section 204 of the Penal Code.
3. The particulars are that on the 17th May 2021 at about 19:30 hours at Eastleigh Stage along Racecourse Road, in Kamukunji Sub-County within Nairobi County jointly with others not before the court, murdered the deceased.
4. He pleaded not guilty. The prosecution marshalled nine witnesses. When the accused was placed on his defence, he gave sworn testimony. He claimed that he acted in self-defence having been attacked and beaten by seven persons. He said that he escaped to the Kamukunji Police Station.
5. I will now appraise the evidence. John Karanja Kamau (PW1) was a “stage attendant” working for Aldana Sacco. He said his duties were to maintain order among matatus as they picked up passengers. He testified that on 17th May 2021, he was at the stage with the deceased, Samuel Gitonga and Joseph



Irungu. At around 19:30 hours, a scuffle ensued between the two rival groups: Aldana Sacco and Eastleigh Sacco.

6. The material part of his testimony went as follows-

We were arguing with operators from Eastleigh. They included Setrick (accused) Babu, Heho, Mrefu. I know them as we have worked together. There are floodlights. Setrick said the vehicles would not be charged. An Eastleigh vehicle came. When deceased asked for fees, a fight ensued. Setrick punched Macharia (deceased). We intervened to help him. An egg vendor (Kimani John) came. Setrick stabbed deceased on shoulder using a knife from the egg vendor.

He bled and was losing consciousness. Setrick took off. We took deceased to Park Road Hospital. He was bleeding and not talking. We got to hospital at 8.30pm. He was received and started getting treatment. After 10 minutes, Samuel Gitonga came out and told us deceased had died. I went in and confirmed it...

7. PW1 said that he assisted the police in tracking the accused and was present when he was arrested at Tarus Club, Nairobi, more than a year after the homicide.
8. Under cross examination, he stated that it is the deceased who approached the Eastleigh Matatu to collect parking fees of Kshs 50 but he was unsure whether it was paid. The fee was an unofficial levy for use of the parking slot or what he referred to as “shimo”. He conceded that there were earlier disputes between the stage attendants which had never been reported to the police. He also agreed that the Eastleigh Sacco had used the stage for three years prior to Aldana.
9. According to John Kimani Wanjiru (PW2) he was an egg vendor operating on the pavement next to the stage. The deceased and the accused, and who he referred to as Macha and Saito were engaged in a fight. He knew for a long time as his customers and was unaware of any prior fights between the two.
10. He said that Saito picked the knife PW2 used for his work and stabbed the deceased. He said it was a small knife with rough edges. When PW2 tried to snatch it back, he was cut on his finger. In his evidence in chief, he said he managed to retrieve it but under the cross, he said he never succeeded.
11. The deceased’s mother, Lydia Njeri Kamau (PW3) saw the lifeless body at Park Road Nursing Home. The deceased’s shirt and clothes were bloodstained. She also identified the remains for postmortem purposes at the Kenyatta University Hospital Mortuary.
12. PW4 was Bilhan Jays Moiyela, another stage attendant. He testified that on the material day, he witnessed the fight and thought a thief had been caught. But when he went there, he saw the deceased bleeding on ground. But under cross examination, he conceded that he last spoke to accused at 17.00 hours on the Eastleigh Sacco side and last saw him 20 metres from where deceased’s body lay.
13. PW5 was Samuel Gitonga Maina. According to him, on the day of the incident at about 6.30 p.m., all matatus for Aldana Sacco moved to a different parking slot while those Eastleigh replaced them. The fees for use of the shimo was Kshs 30 to be paid to the tout on duty. He said that the deceased decided to collect the fees. It led to some fracas and he witnesses the deceased being kicked by some touts.
14. PW5 said he started to throw some stones towards the attackers who retaliated by throwing them back. By that time, the deceased had fallen and the accused was brandishing a knife. Under the cross, he stated that the accused stabbed deceased on the hand and chest and that is when I he “started throwing stones to rescue Macha”. He denied that they started the fracas.



15. The accused was arrested on 26th September 2022 by I.P. Dorlas Ombicho (PW7). At about 1.00 a.m., he got a call from C.I. Muchai who was alerted by an informer, that the accused was at Taurus Lodge, Buruburu. He arrested him from the club and booked him at Kamukunji Police Station.
16. PW8 was He and his colleagues were on patrol when they were alerted of the fracas. By the time he reached the scene, the situation had been calmed down by police. He went to Park Road Nursing Home where he saw the body of the deceased. It bore a stab wound on the left shoulder; and, his clothes were blood-stained. PW8 and John Karanja, a brother of deceased, removed the body to Kenyatta University Hospital mortuary.
17. According to the post mortem examination conducted by Dr. Johansen Oduor (PW9) it had a stab wound on left side of chest 2cms on the outer edge of the collar bone which had penetrated the left side of chest cavity. in his opinion, the cause of death was “chest injuries due to penetrating force trauma”.
18. Like I stated, when the accused to the stand, he denied on oath that he deliberately stabbed the deceased. He said that he was attacked by over seven men from the rival gang, and that when he jumped onto the egg trolley he grabbed a knife but did not then know it was a knife. He stated-

At 6.00 p.m., an Eastleigh vehicle came to Aldana Sacco side. A commotion I referred to arose. I enquired what the issue was. It was now about 7.00 p.m. The deceased wanted 50/= but when the other tout refused, the deceased hit me. I tried to tell them not to fight. I was then beaten; they were now saying I was an informer. Seven people were beating me. There was chaos. I jumped into an egg-trolley and did not then know it was a knife.

They took the knife from me and it cut me. This is the mark on my palm. I ran away into Kamukunji Police as I could not defend myself from the many attackers.

I was advised to enter the OB and go to hospital. I got into a taxi and went home as I was bleeding. I was attended to at home. After 2 months I resumed my work but at Mlango Kubwa. I did not return to town for I feared for my life.

I learnt the deceased died. I was not aware the police were looking for me. I was now living in Saika.

19. Learned counsel for the accused, Mr. Olala, thus submitted that the conduct of the accused was spontaneous and was thus not of malice aforethought. He argued that there is no credible evidence showing a clear motive.
20. Reliance was made on a number of precedents including Republic v James Onserio Achochi & another [2016] KEHC 1066 (KLR), Isaack Kimanthi Kanuachobi v Republic, [2013] KECA 392 (KLR) and Nzuki v Republic, Court of Appeal, Nairobi, Criminal Appeal 70 of 1991 [1993] eKLR.
21. My findings are as follows. The burden of proof that the accused murdered the deceased lay squarely with the Republic. Woolmington v DPP [1935] AC 462, Bhatt v Republic [1957] E.A. 332.
22. 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.
23. There are three key ingredients that must be present: first, the prosecution must prove beyond reasonable doubt the death of the deceased and the cause of that death; secondly, that the accused committed the unlawful act that led to the death; and, thirdly, that the accused was of malice aforethought.



24. The death of the deceased is no longer in doubt. His mother (PW3) saw the lifeless body at Park Road Nursing Home and also identified it for postmortem purposes at the Kenyatta University Hospital Mortuary.
25. The cause of death has also been established. From the postmortem report made by Dr. Johansen Oduor (exhibit 6), death resulted from “chest injuries due to penetration force trauma”.
26. I thus readily find that the death was unlawful. The next question then is whether the Republic proved beyond reasonable doubt that the accused, of malice aforethought, killed the deceased.
27. According to PW1 and PW2, it is the accused who grabbed a knife from PW2’s egg trolley and stabbed the deceased on the shoulder and then fled the scene. The accused admitted on oath that he took the knife from the trolley and used it to stab the deceased.
28. PW1 said that when the deceased sought fees from an Eastleigh matatu, the accused punched him. But according to the accused, the deceased wanted Ksh 50 but when the other tout refused, the deceased hit the accused. From the further testimony of PW4 and PW5, the fight ballooned into a huge fracas between the two rival groups and stones were flying from each side. Some of the combatants ran away or took cover. A number of them were injured in the melee including the accused, PW1, PW2, PW4 and PW6.
29. Granted that evidence and the admission by the accused, the accused has been positively identified as the person who grabbed a knife from PW2’s egg trolley and fatally stabbed the deceased. See generally, *Wamunga v Republic* [1989] KLR 424; *Maitanyi v Republic* [1986] KLR 198 at 201.
30. Like I stated, the accused admitted that he stabbed the deceased. He explained it as follows-

The deceased hit me. I tried to tell them not to fight. I was then beaten; they were now saying I was an informer. Seven people were beating me. There was chaos. I jumped into an egg-trolley and did not then know it was a knife. They took the knife from me and it cut me.

31. There is no doubt that the conduct was unlawful and led to the death of the deceased. I do not fully agree with the version adopted by the accused. To my mind however, the circumstances under which he stabbed the deceased clearly disclose the offence of manslaughter. I say so because the accused and the deceased had operated at the stage for years and there was no evidence of any prior animosity or fights between them.
32. Furthermore, the stabbing occurred in the course of a fight involving many combatants; and, the single stab wound to the left shoulder, albeit fatal, was inflicted in that heated environment. This series of facts negates malice aforethought. Paraphrased, there is no credible evidence that the stabbing was premeditated. The only negative inference that I can draw is that he went underground until his arrest over a year later on on 26th September 2022.
33. I am well guided by *Wero v Republic* [1983] E.A 549 and *Republic v James Onserio Achochi & another* [2016] KEHC 1066 (KLR). In addition, the Court of Appeal in *Isaack Kimanthi Kanuachobi v Republic*, had this to say on the subject-

In summing up the issues for the assessors, on page 47 of the record of appeal, it is evident that the High Court drew from the facts on behalf of the assessors by stating:

In this case it is clear there was a quarrel. Therefore, the stabbing of deceased was sudden and on impulse.



Having arrived at this conclusive finding, it is not clear how or why the learned Judge proceeded to convict the appellant for the offence of murder. It is clear that malice aforethought was not proved in this case and the appellant should have been convicted for manslaughter and not murder. [underlining added].

34. For all of those reasons, I find that the accused is guilty of the lesser but cognate offence of manslaughter contrary to section 202 as read together with section 205 of the Penal Code and I convict him accordingly.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCTOBER 2025.

KANYI KIMONDO

JUDGE

Judgment read virtually on Microsoft Teams in the presence of-
Accused.

Ms. M. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. V. Olala for the accused instructed by Kipchirchir & Associates Advocates.

Mr. E. Ombuna, Court Assistant.

