



REPUBLIC OF KENYA



**Republic v Ndung’u (Criminal Case E019 of 2022)
[2025] KEHC 13542 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13542 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E019 OF 2022
SM MOHOCHI, J
OCTOBER 1, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SUSAN NYAMBURA NDUNG’U ACCUSED

RULING

1. The accused Susan Nyambura Ndun’gu was on the 8th April 2022, arraigned before this court and charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars are that on the 28th February 2022 at Tayari Location, Molo Sub-County within Nakuru County, murdered Fredrick Kahiro Gichini.
2. The accused person pleaded not guilty to the offence preferred against her. The prosecution presented eight (8) Witnesses and Sixteen (16) exhibits constituting Exhibits 1a, 1b, 1c, 1d, (2i -2x), 3 and 4 in support of its case.
3. In this case the court recalls that the accused and deceased lived as husband and wife until the fateful night and it is alleged that the two were involved in a fight leading to the deceased succumbing to injuries inflicted.

Prosecution’s Case

4. PW1 Josephat Ngugi a friend of the deceased whom he described as his elder brother testified how on the 1st March, 2022 at 2 p.m Herman Wainaina came to his house expressing concerns and fears about his deceased brother he had not woken up or gone to work.

He requested for his company to go and check o the deceased. The witness asked him they also notify his sister Joyce Wanjiru and father.



5. He and Herman went to the home of the accused, there was no one, Herman showed him where deceased was lying, the house was not locked and Herman had received information from Elizabeth Wangui the deceased daughter.
6. That they pushed the door into the deceased house, he was laid on a bed that did not have a mattress, his shoes by the side as if he was dead asleep.
7. They tried to lift him and there was blood at the back of his head and on the blanket.
8. That, they left the deceased on the bed and went to Molo Police Station to report after which DCI officers responded and they went back to the scene where Elizabeth Wangui explained that deceased and his wife had a fight, she showed the officers sticks they used in the fight.
9. Furthermore on 7th March, 2022 he attended the mortuary and identified the body when the postmortem was conducted and they were told cause of death was blood clot to the head.
10. PW2 Joyce Wanjiru Kahiru, Sister to the deceased testified how a day prior to the fateful day, on the 28th February, 2022 she was at her shop and she saw the deceased pass by headed to his house.
11. That in the first instance he was carrying mattress and in the second instance at 8.30pm he was carrying a single seater sofa but she never spoke to him.
12. That later on 1st March 2022 at 4.00p.m. she received information from PW1 who told her that her brother had died.
13. PW3 Rahab Nyambura Karihu, a neighbor testified she knew the accused and deceased and on 28th February, 2022 she was in her kibanda when saw deceased pass twice from his parents' home headed to his house.
14. On his 1st trip he was carrying mattress and 2nd trip at 8. 30p.m he was carrying a single sitter thereafter on the 1st March 2022 at around 3 – 4p.m. she got report from the sister to the deceased PW2 that the deceased had succumbed.
15. PW4 Samson Karuga Gitau a shop keeper in Molo town was an acquaintance and a distant relative to the deceased whom he knew as a potato dealer.
16. That on 7th March, 2022 he was called by the deceased brother PW1 to accompany him to the mortuary to identify body of the deceased which he did before the postmortem.
17. PW5 Ann Njeri Kibanga a neighbour knew the deceased as grew up together and she knew accused whom she described as her friend.
18. That on 28th February, 2022 she was at home at 6 p. when the children of the accused – Njoki, Monicah Njeri and Esther Wanjiru came from washing clothes at the river. They had earlier sent Wangare the small one asking to come to my place as their mother was not at home.
19. Later the witness sent Njoki to check on her mother and when they found her unavailable she prepared the food and they slept at her place.
20. That Elizabeth Wangui the eldest daughter of the accused was not among those that slept in her house.
21. That on 1st March 2022 she went to work (Ushirika) upon return the children of the accused told her of the incident and that Elizabeth Wangui was not at her place when she got the sad news.
22. PW6 Elizabeth Wangui, the eldest daughter of both the accused and deceased recalled that on 28th February, 2022 at 8 p.m. her dad (deceased) entered house found maize in the bucket, kicked the bucket



- smashing the bucket and spilling the maize. Her Accused the accused asked what was wrong and he never responded.
23. That the deceased took jiko and the bucket and threw it outside, dragged accused outside and started beating her. He dragged her by her pullover while strangling her.
 24. That the deceased picked a stick and started beating the accused on the head (it was medium). That the accuse took the stick from him and hit him on the legs and she left and called the witness to join her.
 25. In the meanwhile, the deceased was chasing the accused and stopped after Accused had reached the road like 10 meters from the gate.
 26. That the deceased went back home warning to kill us should they go back there.
 27. The witness and Accused went to Molo Police Station reported and were issued with OB No. 70/20/02/22.
 28. The witness and Accused went back home, and upon arrival they never found him, checked everywhere Shamba, jikoni, nyuma ya nyumba and never saw him.
 29. The witness and Accused slept on the same bed in the accused bedroom, the house was 3 rooms; bedroom and sitting. Kitchen was elsewhere.
 30. The witness ordinarily slept in the sitting room but was afraid hence sleeping with the Accused.
 31. While still asleep, the Accused woke up in the morning to go see her sisters Jecinta Njoki – 10, Martha Njeri and Esther Wangare – 5 years and and Jane Wangare – 3 years who had spent at a friend's and was to prepare breakfast for those going to school closing day.
 32. When she woke up went to the kitchen and found that the Accused had not lit fire, she lit up the fire and because of smoke she decided to pull the curtain that divide kitchen and the bed.
 33. Upon lifting the curtain she saw her dad the deceased on the bed lying there, she tried calling him and he was unresponsive and she touched him and he was cold.
 34. She took boda and went to her Guka who never spoke to them as he called them poor. she never knew where he went.
 35. That she remained waiting until 3 p.m. and on realizing that he was not coming back she went to the uncle of the Accused, Amon Wainaina who resided in Nyakinyua Molo, and explained to him, he told her to notify Thuo PW1 and they both went to Thuo but she remained at the neighbor as Amon went to Thuo.
 36. That Thuo came and confirmed the deceased death as good riddance as there were many O.B. police reports against him.
 37. That Thuo and Amon Wainaina left for the police station while she remained at the neighbor and after sometime, the police came and asked me what transpired, Scene of crime came; photos taken. Took body.
 38. She was asked to go to police station to record statement.
 39. That all along she never knew where the accused was, after sometime almost 3 – 4 months she was found in Isiolo.
 40. In cross-examination the witness confirmed the Deceased was her father; accused was her mother. And that she witnessed the incident.



41. That the accused provoked the fight by spilling the maize, smashing the bucket and beating the accused.
42. That they are 6 children and she is a first born.
43. That the deceased was habitual abuser, drunkard and he used to beat Accused. On one occasion he dragged, pinned her down and beat her.
44. That the deceased was a violent man who beat the accused on head and accused took stick from him and hit him on the leg.
45. That they went and reported and were asked to fuel the police car 500/= which they never had, and that every time the police demand 500/=.
46. That when they fled we never locked the gate and he pursued them to the gate/road and went back and when they returned they never found him.
47. That they were afraid hence checking for him upon their return and she never knew what time deceased came back.
48. That the deceased used to live at their home. When she went to the grandfather (guka) he never spoke to her as he never used to speak to them.
49. PW7 Police Constable P.C. Shadrack Mumo was the investigating officer attached DCI Molo General Investigations, recalled how on the 1st March, 2022 while on duty he received a call and was asked to visit the scene of crime of sudden death in an incident that had been reported in OB40/01/03/22i.
50. The report was that one Fredrick Kahiho had been found dead in the kitchen in his home.
51. He visited the scene at Tayari area within Molo town, found the body of deceased lying in kitchen with visible injuries on body.
52. They interrogated daughter Elizabeth Wangui who informed them of a fight between Susan Nyambura the mother and the deceased the previous night.
53. That the deceased had come home the previous night he was drunk and started disturbance by breaking household items stating he was moving out of the home.
54. The daughter further informed them that, the two were fighting using sticks and she hit the deceased with stick on head, the accused ran outside and called the daughter.
55. That Elizabeth Wangui and her mother (accused) went to Molo Police and reported the offence of threatening to kill against the deceased which report was entered as OB 70/28/02/22.
56. That Elizabeth Wangui stated that, when they returned they did not find the deceased in the compound and later is when the body of the deceased was found in the kitchen lying dead.
57. That during investigation he established that, the accused took flight. Upon realizing deceased was dead, leaving behind the daughter.
58. That he photographed the scene took ten (10) photographs and recovered weapons allegedly used.
 - a. Photo 1 shows deceased lying dead.
 - b. Photo 2 and 3 general body deceased and injuries on the bodies. Bruises on head.
 - c. Photo 4 and 5, shows head injuries and an injury on the ear.
 - d. Photo 6 shows injuries on head.



- e. Photo 7 shows deeply the disturbance, maize power and scattered clothes.
 - f. Photo 8: Kitchen and house distance photo.
 - g. Photo 9: shows how the house was disturbed.
 - h. Photo 10 shows recovered sticks (weapons) recovered outside the house.
59. They did exhibit memo dated 4th April, 2022 and referred the same to scenes of crime Nakuru. That the photos were developed by C.I. Simon Kamure and he signed a certified for photographic print, Inspector Kamure is unavailable as he is attending a promotional course.
60. The witness produced 3 sticks marked MFI 1(a – c) produced as Exhibit 1(a – c).
61. That they started investigation and suspect was later arrested while on the run at Loitoktok. That they went to Kiamaina Police Station that assisted in effecting arrest.
62. With regard to the body of deceased a postmortem was conducted at Molo Sub-County hospital by Stephen Mbugua Karanja a medical officer. The postmortem concluded the cause of death was blunt force trauma and excessive loss from the fracture of right.
63. In cross-Examination the witness states as follows; That the photos have no time indicating when photos taken. That he visited scene on 1st March, 2024. That the photos do not indicate the source. That with regard to Exhibit 1 – 5. That It was around 4 p.m. when it was reported. That, according to Photos there was a person lying on bed. That he is not a medical practitioner. That from his general knowledge he cannot tell if deceased was in a coma, the body was lying dead. That with regard to photos 4 – 6, the photos do not contain the age of injuries. That with regards with photo 5 – 6 and 4 there is fresh blood the other do not. That the only eye witness was the deceased daughter. That when he visited scene the deceased daughter was present. That the deceased daughter said deceased threatened them with death after the fight. That the O.B. was after the incident. That he was not aware of previous complaints by the accused or knowledge of other Reports. That with regard to photo 7 confirms there was commotion in the house. That the family uses firewood. That the sticks were recovered outside the house.
64. PW8 Dr. Rodgers Namisi Wangalia a doctor based at Molo Sub-county hospital testified and produced a post mortem examination report on behalf of Dr. Stephen Mbugua Karanja who is his colleague at work and recognize his handwriting and signature was not available as he was indisposed.
65. The following are the findings of post mortem as is contained in the report; Report authored on 2nd March, 2022 request by DCI Molo to investigate death of deceased. Injuries inflicted on head and hands domestic violence by wife. Body examined at Molo Sub-County on 7th March, 2022 at 12.30p.m.
- General observation
African male 52 years normal physique, Nutrition good, heights 5,2 feet. Rigo mortis at time examination. On head right ear long laceration with blood clots in ear canal. Multiple laceration, no depressed fracture. Blood clots in nostril. He reported injury on right lower hip deformity, proximal femur complete fracture and blood clotting. Hip joint at the structure site.
- Examination internal
Chest/respiratory, vascular digestive, urinary, nervous spinal column. On head skull fracture blood oozing. In conclusion cause of death haematoma secondary to blunt force on right side of head, excessive bleeding (fracture site right femur).
66. The witness produced the post mortem examination report as Exhibit number 3.



67. In cross-examination the witness confirmed that; That he is not the examining doctor. That he is a medical officer. That, Dr. Stephen is not a pathologist. That he is not a pathologist. That, Dr. Stephen is not a pathologist. That, he is not an orthopaedician. That, Stephen is not an orthopedician. That, the body was not examined on the date of death but 6 days later. That, he did capture the complete fracture of right femur. He did not indicate age of fracture – it indicated recent – there were blood on it. That, the Cause of death was epidural hematoma secondary to blunt force trauma to the right side of the head. Contributing to death was excessive blood loss from the fractured right femur.

Determination

68. I have carefully considered all the evidence availed before court the filed submissions and the only issue in question in this case is whether the prosecution have proved whether the accused persons caused the death of the deceased persons and was there actual malice?

69. The offence and punishment for murder is provided for under Section 203 and 204 of the [Penal Code](#). The said provisions provide that;

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

204. Any person who is convicted of murder shall be sentenced to death.”

70. To establish the offence of murder, the prosecution is required to prove beyond reasonable doubt, proof of death, proof that the death was caused by the accused, by an unlawful act or omission and that, the unlawful act or omission was through malice aforethought.

71. Section 206 of the [Penal Code](#) defines Malice aforethought as follows:

“206. Malice aforethought shall be deemed to be established by evidence proving any one 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 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.”

Proof of Death

72. PW1 and PW4 identified the body of the deceased at the Molo Sub-County Hospital on the 7th March, 2022.



73. The post mortem report by Dr. Stephen Mbugua Karanja was produced as P-Exh 3. The post mortem report revealed that the cause of death was hematoma secondary to blunt force on right side of head, excessive bleeding (fracture site right femur), accordingly the prosecution has satisfied this condition beyond reasonable doubt.

Whether the death was caused by an unlawful act or omission

74. It is my considered view that, the prosecution has established that the accused person caused the death of the deceased by an unlawful act or omission.
75. There is ample evidence that the deceased on the material day was sighted by two witnesses twice carrying a mattress and later a sofa seater to his parents' home. He was in good health state with no evidence of ill health or injury.
76. It is equally in evidence that his body was discovered in the morning after the deceased had been involved in a fight with the accused. His death was not natural and as such it was sudden and unlawful.

Whether there was Malice aforethought?

77. The offence of murder is complete when, "malice aforethought" is established if, pursuant to Section 206 of the [Penal Code](#) evidence proves any one 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 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."
78. In this instance the evidence even though not well presented was that the deceased was in the process of moving out from where they cohabited with the accused, however no concrete evidence was presented in this regard
79. While the Evidence points to the direct implication on the accused in fighting with the deceased the intention to cause the death of or to do grievous harm to the deceased is foggy with doubt;
80. The evidence of the eldest daughter to the accused and deceased (lone eye witness) to the fight was scanty on the details of the fight and only appears to attempt to absolve the accused on the argument that the accused never hit the deceased on the head and that it was the deceased who hit the accused on the head.
81. The scuffle and fight between the deceased and the accused occurred after 8.30 pm, the fight occurred in the house spilling over to the outside which at that hour was dark.
82. By virtue of the deceased having been in good health prior to the fight with the accused and the fact that the deceased body was discovered the next morning in the kitchen bed would lead one to conclude



that the deceased never left the scene after the fight and that all injuries were as a result of the fight with the accused.

83. It is equally noteworthy that the accused claimed to have been hit on the head by the deceased. No evidence was presented including medical evidence.
84. The Conduct and subsequent circumstances by the accused of fleeing the scene to Kimana in Kajiado only to be arrested months later gives inference of a guilty mind and I am persuaded that the prosecutions case establish that there are no other co-existing circumstances, which would weaken or destroy the inference of guilt.
85. When none of the aforesaid elements are proved but there is otherwise an unlawful killing of another human being, the person commits the felony of manslaughter under section 202 [Penal Code](#) which is punishable under section 205 [Penal Code](#) by a term of imprisonment extending up to life.
86. This court is thus persuaded that the accused unlawfully caused the death of the deceased and that the offence of manslaughter has been proven beyond reasonable doubt.
87. As a result, Accused is found guilty of a lesser charge of manslaughter contrary to Section 202 (1) of the [Penal Code](#) as read with Section 205 of the [Penal Code](#) and is convicted accordingly.
88. Mitigation and Sentence shall await preparation of the Pre-sentence inquiry report

It is so ordered.

DATED SIGNED AND DELIVERED ON THIS 1ST DAY OF OCTOBER 2025

MOHOCHI S.M

JUDGE

Quorum

Ms. Ogendi- Advocate for the accused

Mrs W. Mwaura -Prosecuting Counsel for the State

