



**Republic v Khaemba (Criminal Case E029 of 2022)  
[2025] KEHC 15352 (KLR) (31 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15352 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL CASE E029 OF 2022**

**RK LIMO, J**

**OCTOBER 31, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MARTIN SHIKUKU KHAEMBA ..... ACCUSED**

**JUDGMENT**

1. Martin Shikuku Khaemba, the accused herein is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars as per the information presented are that on 8/11/2022 at Moiben village Trans-Nzoia County he murdered Tyson Bujumba Khaemba (the deceased herein).
2. The accused denied committing the offence and the prosecution has presented a total of 8 witnesses to prove their case. The prosecution's case is based on direct evidence and below is a summary of the evidence tendered by the witnesses during trial.
3. Sharon Nafula Werunga (PW1), a wife to the deceased herein, testified that on 7/11/2022 at around 10pm as she was walking towards her in-laws house to look for her husband (deceased) she met the accused, who was her brother in law in a foul mood and talking to himself swearing that someone would know who he was. That she followed him and found the deceased ahead after a bridge drinking with Sarah Khaemba, a daughter to the accused. She stated that the deceased and the said Sarah Khaemba were drunk. That the accused held the deceased by the neck and roughed him up trying to strangle him telling him that he was destroying peoples homes.
4. She stated that she pleaded with the accused not to harm the deceased and he obliged. That the deceased bled as a result of the encounter between him and the accused. That she walked the deceased home and called one Shiro who was a wife to one of her brother in-laws. That after few minutes, the accused reappeared with a stick and hit her on the leg and that when she went to check on her husband



- (deceased), she found him lying down bleeding profusely and unconscious. That she asked the accused what he had done but he told her to stop.
5. She stated that other family members woke up and raised alarm. That the deceased was rushed to Moi's Bridge Sub County Hospital where he was treated and transferred to Kitale County Hospital. That he was bleeding from the eyes, mouth and ears. She stated that on 9/11/22 he succumbed. She stated that she saw the accused with a hoe stick because there was bright moonlight at the time. She denied suggestions that the accused was drunk but agreed with the defence that he was angry because he found the deceased and Sarah together drunk.
  6. Mary Mukhwano Khaemba (PW2) the mother to both the deceased and the accused recalled that on 7/11/2022 while she was sleeping in her house she heard screams and when she went out, she found the deceased lying down unconscious and standing next to him was the accused holding a stick which appeared to her like a hoe stick. That she screamed and people gathered.
  7. She stated that the deceased whom she referred to as "Tyson" appeared seriously injured as he was bleeding from the eyes, nose, mouth and ears. That he was rushed to Moi's Bridge Hospital then to Kitale County Hospital where he succumbed. She recalled that she heard someone being beaten outside when she was sleeping and when she went out she found the accused beating the deceased who was his young brother and that both the accused and deceased used to take alcohol.
  8. Nashon Buchumba (PW3) a brother to both accused and deceased, testified that on 7/11/2022 at around 9pm while in his house, he heard people quarrelling outside and when he went out to check he found that it was PW1 and Martin's (accused) daughter fighting. That he asked them what the problem was and PW1 told him that she had found Sarah (a daughter to the accused) with her husband in a bush that night. He stated that the accused then appeared and hit the deceased who fell down as a result. That the deceased bled from the injuries sustained. He stated that he called the police who advised that the deceased be rushed to hospital first which was done adding that when they reached Kitale County Hospital his condition deteriorated. That he went to Kachibora police station to report and led the police home to arrest the accused. That the deceased later succumbed at Kitale County Hospital.
  9. He insisted under cross-examination that the incident occurred in front of his house and that when the accused hit the deceased on the head, the deceased fell on his doorstep. He stated that the accused attacked the deceased possibly because he was angered by what the deceased and Sarah were engaged in.
  10. Sylvia Juma (PW4), on her part testified that she was in her house sleeping with her children and husband when she heard someone calling from outside their home. That she went out and found PW1 and Sarah fighting. That the deceased was lying down with the accused standing next to him with a big stick. That Nashon (PW3) came out of his house and got hold of the accused. That they went to the village elder as her husband took the deceased to hospital where he later died after 2 days.
  11. She stated that when she went out she had carried a lamp but added that there was moonlight that night. She clarified that she is married to a son of Martin (accused) and therefore the accused is her father in law.
  12. Dr. Dennis Nanyingi (PW5) the doctor who carried autopsy on the body of the deceased, testified that he did so on 14/11/22. He stated that he found the deceased's head deformed with blood around the left ear. That the left side of the face had bruises. That internally he noted subdural hematoma of around 500cm on the left aspect of the head. That the deceased also suffered left temporal parietal skull fractures and inter cerebral hematoma. That he formed the opinion that the deceased died from head injury secondary to assault by a blunt object. He tendered the Post Mortem report as Pexhibit 1.



13. PC Caleb Simiyu (PW6) a Scene of Crime Officer stated that on 5/6/23 he received a CD from CPL Jumamosi, who was the investigating officer in the case and the investigating officer requested him to process photographs from the CD. That he produced 5 photographs of a male adult with injuries on the face, with broken skull above left ear. He tendered the photographs as Pexhibit 2(a) to (e).
14. CPL Victor Jumamosi (PW7), the investigating officer in the case testified that on 8/11/2022 a report was made at Cherangany police station by two brothers namely Nashon Buchumba and Kundu Khaemba and the report made was that the accused had seriously assaulted his brother (deceased). He stated that police officers proceeded to the scene and arrested the accused.
15. He stated that on 9/11/2022 in the company of other officers, he visited the scene which was a homestead and recovered a wooden stick with blood stains. He stated that the report he received was that the accused had used the wooden stick to assault the deceased. That he collected blood samples at the scene and later sent the samples to Government Chemist for analysis. He tendered the wooden stick as Pexhibit 3. He stated that he recovered the wooden stick himself from the house of the accused. He stated that he collected blood samples from the blood stains found on the ground at the scene. He stated that the information he received was that a dispute arose after allegations of an affair between the daughter of the accused and the deceased erupted.
16. David Kiara Muthoni (PW8) an expert based at Kisumu Government Chemist testified that on 23/11/22 he received some samples for forensic analysis at Kisumu Government Laboratory from PC Victor Jumamosi and listed the items as;
  - i. Wooden stick marked 'A'.
  - ii. Finger nails of Tyson Khaemba (deceased) in a plastic container marked "B".
  - iii. Mucal swab of the accused (Martin Shikuku Khaemba) marked "C".He testified that the items were accompanied with a duly executed exhibit memo.
17. He stated that the wooden stick was moderately stained with human blood. That DNA profiles were generated from the above listed items and tabulated in a report he compiled and signed. He tendered the report as Pexhibit 4. In summary his conclusion or findings were that the DNA profile generated from wooden stick item "A" matched DNA profile from the deceased.
18. When placed on his defence, the accused gave unsworn statement stating that the deceased was his brother and that on the material date he arrived home and wife to the deceased told him that she had not seen the deceased and he went looking for him in the company of the wife (PW1). That he found him drunk with his daughter lying on the grass in the bush. He stated that the deceased was too drunk and they escorted them home. That the deceased did wrong by sleeping with his daughter who was a daughter to the deceased too.
19. He stated that he left the deceased in his house and went to sleep. That he was later called and went and found the deceased lying down bleeding from the mouth and ears. That he asked PW1 why they had fought and she told him that she had pushed him outside. That he went and woke up his brothers and took the deceased to hospital.
20. He stated that after 2 days he received information that the deceased had died. That they went and reported. He stated that he did not know what happened to him.
21. This court has laid out the evidence tendered by both the prosecution and the defence. The accused as observed above is facing a charge of murder contrary to section 203 of the Penal Code. A charge



of murder going by the cited provisions can be sustained if the following elements are established and proved by the prosecution.

- i. Fact of death and its cause.
- ii. Actus reus. That unlawful act causing death was committed by the accused.
- iii. Mens rea or malice aforethought

**(i) Fact of death and its cause.**

22. There is no dispute that the deceased in this case died on 9/11/22 due to serious injuries sustained on the night of 8/11/2022. The Post Mortem report tendered as Pexhibit 1 by doctor Nanyingi (PW5) indicates that the deceased died as a result of head injury secondary to assault by a blunt object. That fact was corroborated by the evidence tendered by the wife to the deceased (PW1), Mary Khaemba (PW2) and Nashon Buchumba (PW3). The fact of death and its cause has been proved beyond reasonable doubt. The accused was responsible for the murder of the deceased.

**(ii) Actus Reus**

23. The accused in his unsworn defence stated that he had no idea on what happened to the deceased after he escorted him home on the night of 8/11/22 but the evidence of Sharon Werunga (PW1) and his own mother Mary Khaemba (PW2) clearly reveals that he was responsible for the serious injuries inflicted on the deceased.

24. The evidence tendered by the deceased's wife (PW1) indicates that the accused had in fact roughed him up earlier after finding him in a compromising situation with his daughter in a bush. PW1 stated that the accused appeared very angry and had talked to no one in particular stating that someone would know him that day. PW1 saw the accused emerge with a stick later at home before the accused hit her on the leg and set upon the husband (deceased). PW1 heard the accused beat the deceased severally using the hoe stick. PW2 saw the accused (her own son) beat the deceased (the other son). she says she saw the deceased lying down bleeding from eyes, nose, mouth and ears and the accused standing next to him with the stick. That stick was recovered by the investigating officer (PW7) and tendered as Pexhibit 3. Blood stains on the exhibit was taken for forensic analysis and the expert from Government Chemist (PW8) was able to link the DNA of blood stains on the stick to that of the deceased. There is no doubt therefore that the stick (Pexhibit 3) was the murder weapon used to inflict the serious injuries that the doctor (PW5) noted were caused by a blunt object in the Post Mortem report (Pexhibit 1). That exhibit is a blunt object. This court finds that the prosecution has proved the element of actus reus beyond reasonable doubt.

**(iii) Mens rea.**

25. From the evidence tendered in this case, it is clear that the accused was quite upset by the inappropriate relationship between the deceased and his daughter named Sarah. PW1 gave clear indication about the situation the deceased and Sarah were found. That the two were found drunk in a compromising situation and that explains the later altercation that night between Sharon and PW1 before the accused arrived and hit the deceased beating his head next to a pulp.

26. The accused conceded in his defence that the deceased did wrong by sleeping with his daughter (Sarah) who was his daughter too. The manner he carried out the attack however was regrettable and beyond comprehension. PW1 in her evidence stated that the accused had earlier stated that someone that night



would know who he was which in my view shows that the accused was intent at causing serious harm to the deceased. Section 206 of the Penal Code provides as follows;

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.....”

It is quite apparent that from the nature of injuries inflicted on the deceased as witnessed by his own mother (PW2) and observed by the doctor (PW5), malice can be inferred from the person who caused the injuries. The hoe stick used can be lethal if used to hit someone on the head. The accused used it to hit the deceased several times on the head making the head to deform as a result. The element of mens rea was proved beyond any reasonable doubt. The accused certainly was upset because of what the deceased was doing with his daughter which was abominable but his reaction went beyond expression of anger. He is therefore found guilty of murder as charged and is here by convicted accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 31<sup>ST</sup> DAY OF OCTOBER, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of

No appearance for Wekhuyi for the accused

Martin Shikuku Khaemba – the accused person

Mugun for the State

Duke/Chemosop – Court assistants

