

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL CASE NO.E009 OF 2024**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOSPHAT KING'ORI MUTHUI alias**

**BAYO.....ACCUSED**

**JUDGMENT**

1. Josephat King'ori Muthui alias BAYO 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 28/10/23 at Mitume within Kitale Township, Trans-Nzoia County he murdered Geoffrey Kimani Njoroge (the deceased herein).
2. The accused denied committing the offence and the prosecution has presented 6 witnesses to support their case. The prosecution's case is based on direct evidence and below is a summary of the testimonies tendered at the trial.
3. Miriam Wangoi Kimani (**PW1**) the wife to the deceased testified that she was home on 28/12/2023 at around 6pm when she heard her neighbour calling at the gate that "**Baba Njeri amepigwa**". She stated that one of her daughters named Esther Njeri rushed out and went back and confirmed that the deceased was injured and unconscious. That she rushed out and found her husband being carried by 2 boys from the neighbourhood. She

stated that the deceased was placed outside as she looked for transport to rush him to hospital. That the deceased regained consciousness outside the house but shortly became unconscious again. That she managed to have him taken to Kitale County Hospital but the following day between 8 and 9am he succumbed. That she informed relatives and reported to the police. She recalled that the children who alerted her told her that it was **“Bayo”** who beat the deceased. She further added that on 2/1/24 she attended Post Mortem examination of the body of the deceased.

4. Esther Njeri Kimani (**PW2**) a daughter to the deceased testified that she was home on 28/12/23 when she heard children from the neighbourhood calling her mother that her father was being beaten. That she rushed out and found **“Bayo”** (the accused) walking away from where the deceased was and he told her he had disciplined her father (the deceased). That she called her father but he did not respond. She stated that she went back to the house and informed her mother (**PW1**). That people had to carry the deceased home unconscious and that he was eventually taken to hospital. She recalled that when the deceased was lying down at their home, he did regain consciousness and said he smelt blood and then fell back to unconsciousness. That her mother took him to hospital and returned the following day and informed them that their father was dead. She stated that she knew the accused well as he was a neighbour.
5. She recalled that the deceased was not bleeding from anywhere when he was carried home and the clothes were not blood

stained. He stated that the accused was not armed when he told her that he had disciplined her father. That the deceased used to drink alcohol and that previously a month before he had been beaten by one kupang'a.

6. Hemony Otieno a 15 year old pupil stated that he was in Class 7 and that he was also known as Eddy. He recalled that on 28/12/23 he was in Kitale to visit his mother and that his mother was washing dishes when he heard people outside their compound calling Baba Njeri (deceased). That he went outside and saw him giving sweets to children. That he went back to the house and shortly heard the children warning Baba Njeri to run away as Bayo (accused) was coming with a rungu towards him. That he went out and saw the accused hitting the deceased with a big rungu on the back and the head. That the deceased fell down but the accused continued beating him until the club broke.
7. He stated that many people gathered at the scene. That the deceased did not cry or scream. That he kept silent and lay down. That some people rushed and called Njeri (**PW2**) who went and found the accused walking away. That Njeri was assisted to carry the father (deceased) home. That the following morning his mother told him that the deceased had died.
8. He stated that he saw what the accused used to beat the deceased. That it was a big long stick that broke in the process. He identified the accused in court. He recalled that the deceased appeared drunk when he gave them sweets.
9. He insisted under cross-examination that he saw the accused beat the deceased on the back, legs and head. That the deceased did not bleed from the beatings. That he saw one

person trying to restrain the accused in vain and that it was at day time.

10. Dr. Dennis Nanyingi (**PW4**) the doctor who conducted autopsy on the body of the deceased stated that he did so on 2/1/2024 and the following were his observations;

**A. Externally**

- i) Bruises on the face.*
- ii) Bruises on posterior aspects of both arms.*
- iii) Peripheral cyanosis of the fingernails (blackening of fingernails due to respiratory issues).*

**B. Internally**

- i) The heart was darkened with clots in situ (heart attack).*
- ii) Subdural hematoma at the left temporal region.*
- iii) Scalp fracture on left temporal area.*
- iv) Clots in the brain.*

He opined that the cause of death of the deceased was heart failure and head injury secondary to an assault with a blunt object. He tendered Post Mortem report as **PExhibit 2** and that he issued Burial Permit serial number 0459646.

11. PC Martha Okoma (**PW5**), the investigating officer in the case stated that the DCIO tasked her to investigate a case of murder reported vide OB No.14/29/12/23. She stated the case was first reported as an assault case before it turned into murder. That she visited the scene of the murder and recovered a piece of wood. That she visited the hospital during Post Mortem and the wife to the deceased identified the body. She stated that she

recorded statements from witnesses who saw the accused beat the deceased using the piece of wood. She tendered the piece of wood measuring about 3 inches in diameter and half a metre or 2 feet in length as **PExhibit 1**. That she recommended murder charges after completing her investigations. She further stated that the scene of crime was a path that led to the homes of both the deceased and the accused. She further added that the accused surrendered himself to the police after the incident.

12. Musa Otieno (**PW6**) a security officer at a nearby Jamia Mosque testified that on 28/12/2023 around 6pm he was home tending to his sick dog. That as he was doing so, his children rushed to him and told him that the accused was beating the deceased. That although he was reluctant at first, the persistence of his children made him go. That he went and found the accused and deceased in a tangle fighting and he tried separating them but was overpowered. He stated that the deceased fell and the accused took a fencing post and started beating the deceased on the ground. That he hit him on the head and he struggled and managed to stop him. That the accused then walked away leaving the deceased lying down. He stated that he sent the children to go and call the wife adding that the deceased was then bleeding from the nose, ears and mouth. That 2 passersby came and helped in carrying the deceased. He clarified that he had known both accused and deceased for more than 15 years.

13. When placed on his defence, the accused denied committing the offence. He recalled that on 28/12/23 he went to take changa'a at Umoja and the police arrived at 5pm. He stated that everyone ran to different directions to escape the police.

That he jumped over the fence and fell on an iron sheet and suffered a small cut. That he continued running to his home and slept. He stated that he was with the deceased at the drinking place. That the deceased was a neighbour and a longtime friend. According to him the wife to the deceased was displeased with their friendship and drinking habit. He stated that the police went to his house at 10am the following day and that his father told him to go to the police station which he did. He denied killing the deceased or even fighting with him.

14. This court has laid out the prosecution's case as well as the defence case. The accused as observed above is charged with murder and under section 203 of the Penal Code the following ingredients must be established and proved by the prosecution for the murder charge to be sustained.

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

***ii) Actus reus.***

***iii) Malice aforethought.***

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

This element is undisputed in this case. The evidence of **PW1** and **PW2** regarding the demise of the deceased is corroborated by the medical evidence tendered by Dr Nanyingi (**PW4**) who performed autopsy on the body of deceased and tendered Post Mortem report (**PExhibit 2**). The Post Mortem report revealed that the deceased died due to head injury/heart failure secondary to assault by blunt object. The element of fact of death and the cause of death was clearly proved by the prosecution's case.

16. (ii) **Actus reus or that the unlawful act causing death was caused by the accused.**

The accused and the deceased person were neighbours and perhaps even friends going by the evidence laid before this court. The prosecution's case clearly demonstrated the link between the accused person's action and the cause of death of the deceased. There are 2 eye witnesses who testified and said they actually saw the accused assaulting the deceased.

17. The evidence of Hemediy Otieno (**PW3**) a 15 year old boy was very candid. He said he saw the accused beat the deceased with a piece of wood. Musa Otieno (**PW6**), a caretaker of Jamia Mosque gave glaring evidence of the incident. He said he saw the accused hit the deceased with a fencing post that was broken in the process and the investigating officer (**PW5**) tendered a piece of wood as **PExhibit 1**.

18. It is also very clear that both the prosecution's case and the defence places the accused at the scene of crime. His denial that he was not involved in my view is a mere denial and an attempt to escape culpability. This court finds that the prosecution's case has proved the element of actus reus beyond reasonable doubt.

19. (iii) **Mens rea**.

The defence has submitted extensively that accused had no malice against the deceased and may have committed the offence because of drunkenness. That he did not possess any ill motive that is why he presented himself at the police station. He cites the provisions of section 13 of the Penal Code and the case of **Bakari Magangha Juma -vs- Republic (2016) KECA 162 KLR**.

20. The issue of intoxication however was not brought up in the defence. The accused said he was drinking when police arrived

and that he jumped over a fence and onto a rooftop of a house over the fence as he ran away. He did not state the amount of liquor he took or the time or period he had been drinking.

21. Moreover this court finds that a person who is able to sense danger and jump over a fence onto a rooftop, if at all he was able to pull such a feat, was certainly not too intoxicated.
22. Besides this, section 13(1) of the Penal Code provides;

### **Intoxication**

***(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.***

***(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and—***

***(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or***

***(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.***

The above provisions shows that intoxication is not a defence to a criminal offence per se unless an accused person can prove the following;

- i) That the state of intoxication was not deliberate and caused without his consent or by negligent or malicious act of another person.***
- ii) That the state of intoxication caused him temporary insanity or incapacity to know that whatever he was doing was wrong.***

The accused person in his defence did not allege any of the above and therefore this court finds that the defence of intoxication is unavailable to him. It is an afterthought as he did not raise it during his defence.

23. This court observed the fencing post used by the accused and found the same to be an ordinary fencing post but the same can be lethal if turned into a weapon. While it is factual that there is no evidence indicative that the accused harboured ill intentions or had previously differed with the deceased, the object used to commit the offence was lethal and section 206 of the Penal Code provides that malice aforethought can be inferred in such circumstances. Section 206 provides;

***“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....”***

This court in light of the above provisions and circumstances obtaining herein finds that the prosecution’s case has established and proved the element of malice through inference from the murder weapon used to commit the offence. The prosecution’s case on the overall has proved beyond reasonable doubt that the accused committed the offence of murder against the deceased for reasons only he can tell. He is found guilty as charged and convicted accordingly.

**DELIVERED, DATED and SIGNED at KITALE this .....30<sup>th</sup> .  
..... day of .....OCTOBER....., 2025.**

**HON JUSTICE R.K. LIMO  
KITALE HIGH COURT**

**Judgment delivered in open court**

**In the presence of**

**Auta for accused**

**Josphat King’ori Muthui alias BAYO -the accused**

**Mugun for the State**

**Duke/Chemosop- Court assistants**