



**Republic v Wanjala (Criminal Case E021 of 2024)  
[2025] KEHC 15183 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15183 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL CASE E021 OF 2024**

**RK LIMO, J**

**OCTOBER 28, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ANTHONY SIMIYU WANJALA ..... ACCUSED**

**JUDGMENT**

1. Anthony Simiyu Wanjala, the accused person is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars are that on the 17/5/24 at 21hrs at Muungano Area Kiminini Sub County within Trans Nzoia County he unlawfully murdered Joel Namuguva Kisaka, the deceased herein.
3. He denied the charge and the prosecution has presented a total of 6 witnesses. The prosecution's case is based on direct evidence.
4. Allan Wanyonyi (PW1) testified that on 17/5/24 (the material date) at around 9pm (material time), he was walking home when someone called him from behind "Allan!" "Allan!" "Naumizwa!". He stated that he turned back and found the deceased being beaten by 3 people one of whom was armed with a panga. He stated that he held the one with the panga tightly as he screamed and a nearby shopkeeper came to the rescue. That the shopkeeper known as Maurice went and snatched the panga. He stated that he then recognized the person who was holding the panga as the accused herein whom he knew as a neighbour.
5. He stated that the deceased then went home as he also headed to his home. That the next day he went to check on how the deceased who was also a neighbour was fairing. That he found him with a cut on his head bleeding.



6. He testified that he accompanied the deceased to police Patrol Base to report upon which the deceased was issued with a P3 Form. He stated that when he rescued the deceased the previous night he only identified the accused but did not recognize the other 2 assailants. That the deceased was taken for treatment at Matunda after being issued with a P3 Form but the following day, he heard that he had succumbed to the injury at his house.
7. Maurice Wafula (PW2), a shopkeeper from Muungano area testified that he was at his shop at material day and time. That he had closed his business and was taking dinner when his wife went out to fetch water and went back to the house in a hurry telling him there was a commotion outside and that Allan was calling for help. That he rushed outside and found Allan around 10 metres away wrestling someone with a panga.
8. He stated that the two appeared drunk as they wrestled and were not so strong. He stated that he got hold of the panga and took it by force and kept it at the shop. He stated that he knew both Allan (PW1) and Anthony (the accused) as both were his neighbours and customers. He stated that he recognized both of them by voice and there was little light emanating from his shop. That even his wife recognized Allan's voice because he was a frequent customer.
9. He stated that the following day Allan (PW1) passed by and did not go to ask for anything and that after a while the accused went to the shop and asked to be given his panga. He stated that the panga was new and had not been sharpened. That he gave him the panga and he proceeded with his business. He stated that he knew the deceased because he was a teacher in a local school where his kids schooled. He recalled seeing the deceased the following day after the accused had taken his panga being carried on a boda boda. He stated that he greeted him and that the deceased was in high spirits only to hear on 19/5/24 that he had died.
10. Jacob Kisaka (PW3), a brother to the deceased testified that on the material date at around 10pm he was at his home when someone knocked at his door and when he opened he found that it was his brother Joel (the deceased). That he told him that he almost got killed and that he was bleeding from the head where there was a cut. He stated that the deceased told him that Anthony (the accused) who was a neighbour had cut him.
11. He stated after a while a brother in law named Donald called to inquire what had happened and he told him that the deceased had been hurt and needed to be taken to hospital for treatment. That Donald asked him to get the deceased to the road which was around 500 metres away and he took him using a motorcycle because he had one. That they found Donald at the road and the deceased asked them to pass by Allan's place to appreciate his efforts to rescue him. That they found Allan's wife who reported to them that Allan was fine and they proceeded to Kiminini Cottage Hospital for treatment where the deceased was treated and discharged.
12. That the following day the deceased appeared fine when he saw him at around 6pm but the next day on Sunday he succumbed to the injury.
13. He stated that he later attended a post mortem examination and identified the body of his brother (deceased). He recalled that the incident occurred on Friday and that they reported the incident to the police on Saturday upon which the deceased was issued with a P3 Form.
14. He insisted under cross-examination that when the deceased went to his home on the material day, he had a cut on his head and that he told him that the accused had cut him. He denied the suggestion that his late brother was drunk when he reached his home. He stated that he was sober and clearly told him that the accused had attacked him.



15. Inspector Paul Omondi (PW3) the investigating officer in the case testified that on 20/5/2024 a case from Barbaton Patrol Base was referred to them at Kiminini DCI. He stated that an assault case had been reported to them on 17/5/24 vide OB No.4 by one Joel (the deceased). That he went to Barbaton Patrol Base after getting the report and found that the deceased had reported a case of assault and had been issued with a P3 Form and that the deceased reported that the person who assaulted him was known to him and was called Anthony (the accused).
16. That he commenced investigations by recording statements from witnesses that when Joel (deceased) passed on he preferred murder charge against the accused. He stated that the accused after the incident went underground and that he had to use technology to trace him at Ndalú in Bungoma on 31/5/24. He tendered the OB extract on the report of assault first reported on 17/5/24. The OB extract was tendered as PExhibit 2. He added that he did not establish the motive for the murder.
17. Naftali Nyakwara Atumba (PW5) a clinical officer from Matunda Sub-County Hospital testified that he attended to the deceased on 18/5/24 under OP No.2063/24 complaining of an assault that happened to him on 17/5/24. He stated that he observed him and noted multiple cut wounds on the occipital region and multiple bruises on the upper limbs. That his clothes were soaked in blood. He stated that he stitched the cut on his head and gave him drugs and sent him for C-T Scan but did not go back to the facility. He tendered the treatment notes as PExhibit 3(a) and P3 Form as PExhibit 3(b).
18. Dr Dennis Nanyingi (PW6) a medical doctor based at Kijana Wamalwa Teaching and Referral Hospital testified that he conducted a Post Mortem examination on the body of the deceased in this case and noted the following injuries;
  - i. Cut wound measuring 2cm on the occipital region.
  - ii. Bruises on the right wrist.That internally the lungs had collapsed and had suffered hematoma in the occipital area and between the skull and the area covering of the brain. He opined that the cause of death was head injury/ lung failure. Secondary to assault caused by a sharp weapon. He tendered the Post Mortem report as PExhibit 4.
19. When placed on his defence, the accused recalled that on the material date he went drinking with his friends Richard, Allan (PW1), Kibet, Simiyu and the deceased. He stated that in the course of drinking, the deceased and Kibet differed. That they left the joint with Allan and deceased walking in front of them.
20. He testified that Kibet then called Allan and challenged him for a fight and that as the fight began, the deceased joined the fray and he went in to separate them. That when he reached where the fighting was the deceased was holding his head and that he held a panga that Allan was holding and they wrestled to the ground as a shopkeeper named Maurice arrived and stepped on his head and snatched the panga. He stated that the fight ended and he went home.
21. He stated that he had no grudge against the deceased and he was not the one who cut him.
22. He stated that he was with the deceased on 18/5/24 and they talked. That on 19/5/24 he went to Bungoma to see his mother who was unwell and while there he was arrested. He denied fleeing to Ndalú saying that he went there to see his mother.
23. The accused herein is charged with murder contrary to section 203 of the Penal Code. The prosecution in a charge of murder are required to prove each of the following ingredients namely;
  - i. The fact of death and its cause.



- ii. Actus reus.
  - iii. Mens rea (malice aforethought)
- 24 (i) The fact of death and its cause.

This ingredient of murder in this case is uncontested. The evidence of Jacob Kisaka (PW3) a brother to the deceased has corroborated with the doctor's (PW6) evidence who tendered Post Mortem report as PExhibit 4. The doctor testified that the cause of death was a head injury/lung failure hypocyema secondary to assault by a sharp object. The death was therefore caused by a deliberate act which was a cut on the head at the occipital region. The question as to who did it is the next issue for determination.

24.

- (ii) Actus reus

The defence in their written submission dated 17/5/25 submits that the element of actus reus rests on circumstantial evidence.

25. This court has gone through the evidence tendered and finds that while the defence contention is partly true it is quite clear that the cause for the cuts suffered by the deceased is directly linked to the accused.
26. The narrative given by PW1 (Allan Wanyonyi) is to some extent consistent with what the accused stated in his defence and is consistent with the evidence of PW3 (Maurice Wafula –the shopkeeper). It is evident that at the material time the accused, the deceased, PW1 and 2 of their friends were from a drinking joint going home. PW1 was ahead and heard the deceased calling him, “Allan”! “Allan”!, Naumizwa”. When PW1 went back to rescue his friend, he found the accused holding a panga. He wrestled him to the ground and called for help. PW2 the shopkeeper of a shop next to the scene of crime rushed and found the two on the ground wrestling and he snatched the panga from the accused. He took the panga and kept it in the shop. What is telling is that the following day, the accused went and asked for his panga and since PW2 had spotted PW1 that morning and had not heard of the injury to the deceased, he handed over the panga to the accused who took it.
27. The accused was cagey about that fact. He agreed with PW1 and PW2 on how the panga was snatched from him by PW2 after he found him and PW1 wrestling on the ground both appearing drunk.
28. The conduct of the accused after the incident indicates a guilty mind. He took off and was arrested in Ndalungoma County by the police who tracked him there with the use of technology. He says that he had gone to see his sick mother but he did not call the mother to testify and confirm the same and allay the allegation that he had gone there to hide.
29. The other significant evidence with respect to actus reus is that the deceased's brother PW3 stated that the deceased went to his home that night with a head injury and reported to him that the accused had cut him. That piece of evidence is supported by the investigating officer (PW4) who tendered OB extract (PExhibit 2) from Barbaton Police Patrol Base. The OB clearly indicates the deceased reported an assault incident at around 9pm on 17/5/2024 and the OB captures that the deceased reported to have been beaten and injured by the accused and 2 other people. That report is quite consistent with the evidence of PW1.
30. The accused person in his defence squarely placed himself on the crime scene and even said that there was a fracas which he denied causing. However the evidence of PW1 and PW2 shows that he was the culprit. He conceded in his defence that when the panga was snatched from him, the fight ended.



31. I also agree with the submissions made by the State that what the deceased told his brother (PW3) regarding who had assaulted him amounted to a dying declaration which is admissible under section 33 of the Evidence Act. Section 33(a) of the Evidence Act states.

“Statements, written or oral or electronically recorded, of admissible facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured, or whose attendance cannot be procured, without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves admissible in the following cases— (a) relating to cause of death when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question. Such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question”

32. This court finds that the evidence tendered by PW1 and PW2 corroborates the dying declaration made by the deceased and the same when taken together overwhelmingly points to the accused and none else as the person who cut the deceased on the head. He tried evading responsibility by stating that it was one Kibet who had differed with the deceased but the evidence of PW1, PW2 and PW3 shows that it was him. That is why after the incident he went underground and it took the police time with use of technology to trace him in Ndalu Bungoma where he was arrested on 31/5/24. This court is satisfied that the element of actus reus has been proved and linked to the accused beyond any reasonable doubt.

33.

(iii) Mens rea.

The evidence placed before this court does not show that the accused and the deceased had differed or show direct motive for the murder but in light of serious injuries suffered by the deceased, motive can be inferred under section 206 of the Penal Code. Section 206 of the Penal Code states 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.....”

The inference of malice was well expounded in the case of Republic –vs- Tubere s/o Ochieng (1945)12 EACA where the court gave guidelines on what is to be considered when making an inference of malice. The court found that the following factors are important;

- i. The nature of weapon used.
- ii. The manner in which it was used.



- iii. Part of the body targeted.
- iv. Nature of injuries inflicted whether single stab/wound or multiple injuries.
- v. Conduct of the accused before, during and after the incident.

34. I will begin with the type of weapon used. The evidence tendered by PW1, PW2 and conceded by the accused is that a panga was used. PW2 stated that the panga was new and had not been sharpened but a new panga even if it is not sharpened is still lethal.
35. The deceased was cut on the head and going by the clinical officer (PW5) who initially treated the deceased, the deceased suffered a deep cut on the occipital region and bruises on the limbs. He tendered P3 Form as PExhibit 3(b). PW6 who performed the autopsy made similar observations in his Post Mortem report (PExhibit 4). The deceased suffered a deep cut on the head and other injuries which means that the person who caused that sort of injury particularly on the head did not mean well. He intended to cause grievous harm to him.
36. Moreover, the accused's conduct of going underground after the incident infers that he knew what he had done and wanted to run away to avoid the consequences or responsibility.
37. This court is satisfied that the prosecution has proved all the 3 ingredients of murder against the accused beyond any reasonable doubt. He is guilty as charged and is hereby convicted accordingly.

**DELIVERED, DATED and SIGNED at KITALE this .....28<sup>th</sup> ..... day of .....  
OCTOBER....., 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of

Accused - present

Mr Bikundo for the accused

Mr Mugun for the State

Duke/Chemosop – court assistants

