



**Republic v Karambu & another (Criminal Case E035 of 2023)
[2025] KEHC 15115 (KLR) (27 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E035 OF 2023
HM NYAGA, J
OCTOBER 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

LUCY KARAMBU 1ST ACCUSED

GERALD MUTAHURA 2ND ACCUSED

JUDGMENT

1. The accused persons were charged with the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the alleged offence are that on the night between 21st February 2023 and 22nd February, 2023, at Kwa Koome Village, Buuri East Sub County within Meru County, jointly with another not before court they murdered Stephen Murera Kiugo.
3. Each accused denied the charge. The 2nd accused passed away in the course of the trial and the case against him was withdrawn post-humously.
4. The prosecution called five (5) witnesses, whose evidence is summarized as hereunder.
5. Ruth Kendi (PW1) was the deceased's sister. She stated that on the material day she was called by one Gichuru, who asked her to go to the home of Karambu (1st Accused) where her brother was being assaulted. When she got there she found several people including the accused persons who were assaulting her brother on allegations that he had stolen maize. She did not try to intervene, instead she went back to her home. On the following day she went to see how the deceased was doing. The deceased was unresponsive, so she alerted her other brother, Manyara, who informed her that the deceased was no more.



6. PW2 was the said James Gichuru. He told the court that on the material day he was in his farm. He heard screams from the home of Gerald (2nd Accused). He went there, with one Frankline. They met the 2nd accused and they proceeded to the home of Murithi, a brother to Gerald. He saw the 1st accused assaulting the deceased using a small stick. He confirmed that he was the one who called PW1 to the scene. He also saw the 2nd accused hold the deceased as the 1st accused poured pepper on the deceased. Later he learnt that the deceased had died.
7. Ernest Manyara (PW3) confirmed receiving a call from PW1. He went to the house where the deceased was living. He confirmed that his brother was dead. He then alerted the area manager, who called the chief. The police arrived and took the body of the deceased.
8. Purity Nkirote (PW4), also a sister to the deceased, witnessed the post mortem examination on the body of the deceased.
9. The case was investigated by P.C. Erick Mireti (PW5). He visited the place where the alleged offence was committed as well as the house where the deceased's body was found. The scene was processed and then the body was carried away. He produced the post mortem report that was prepared by a Dr. Kimaita.
10. The 1st accused gave sworn evidence. She stated that on the material day she was from the shops when she met Gichuru, who asked her if she had seen the deceased. She answered him in the negative and went home. Later the deceased and Phineas, who is her brother went to her home. Phineas accused the deceased of stealing his maize and with other people at the scene, he assaulted the deceased. That she tried to intervene, but in vain. On the following day she learnt that the deceased had died. She denied assaulting the deceased as alleged.
11. The 2nd accused's evidence was that he was at home and when he heard the screams from the home of Festus Murithi, he went to see what was going on. On the way he met Gichuru. When they got to the scene, he saw one Mukaria and other people assaulting the deceased over the allegations of having stolen maize. He tried to intervene but to no avail. He left the scene while the assault was going on. In the morning, he learnt of the death of the deceased.
12. Nicholas Gikonyo (DW3) told the court that on the material day, he had gone to visit the 1st accused who was his wife then. On the way, he found a commotion near her homestead. He saw the deceased being assaulted by a group of people, who included one Mukaria, who is a brother to the 1st Accused. That since he was a visitor, he did not intervene. On the following day he went back to his home in Nyeri. He stated that he did not see the 1st accused beat the deceased.
13. Timothy Kaunyangi (DW4) told the court that on the material day, he was in his shop. He heard the commotion and so he went to see what was going on. He saw a man being beaten by a group of people, who included Mukaria. He said that he did not see the 1st Accused or her husband at the scene.
14. No submissions were made by the defence counsel or the prosecutor.
15. 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.”



16. The Court of Appeal addressed the key elements that have to be proven by the prosecution in *Anthony Ndegwa Ngari v Republic* [2014] eKLR. It held:

“For the offence of murder, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the Accused had the malice aforethought.”

17. In the instant case, therefore, the questions that the court must answer is whether the prosecution proved:

- a. That there was the death of the deceased and the cause of the said death.
- b. That the death was caused by unlawful acts or omission.
- c. That the accused committed the unlawful act which caused the death of the deceased
- d. That the accused had malice afore thought.

18. Causing death is defined under section 213 of the Penal Code as follows;

A person is deemed to have caused the death of another person although his act is not the immediate or the sole cause of death in any of the following cases—

- (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
- (b) if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;
- (c) if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;
- (e) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

19. According to the Doctor who conducted the post mortem examination, the body had;

- a. Multiple bruises on the face.
- b. Extensive right scalp haematoma.
- c. Bruises on both upper limbs.



- d. Bruises on the bilateral lower limbs.
 - e. Extensive hyperpigmentation, bruising and blistering on the abdominal, thigh, genital, gluteal, and back regions.
 - f. Internally, the body had extensive frontal, parietal, and occipital scalp haematoma with clotted blood. Also noted was intercranial bleeding affecting the said regions.
20. The cause of death of the deceased was found to be intercranial hemorrhage following blunt trauma to the head.
21. It thus quite evident that the deceased did not die from natural causes. The injuries were consistent with assault.
22. The next question to be determined if the 1st accused has been identified as being part of the group that assaulted the deceased on the material day.
23. The prosecution witnesses who were at the scene, namely PW1 and PW2 confirm that the 1st accused had a small stick that she used to hit the deceased.
24. The 1st accused denied beating the deceased. Her now estranged husband (DW3) said that she did not beat the deceased. DW4 stated that he did not see her at the scene.
25. I have considered the evidence and I find that the 1st Accused was at the scene. PW2 is not related to the deceased. He had no reason to incriminate her for nothing. The defence evidence appears to have been crafted after the defence heard the prosecution case, but it does not really shake the testimony of the two prosecution witnesses who witnessed the incident.
26. The 1st accused was clearly identified as having hit the deceased with a small stick. This was part of the assault that eventually led to the death of the deceased, by application of the doctrine of common intention.
27. The doctrine of common intention is found under the section 21 of the Penal Code and states as follows;
- “When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose, an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”
28. The ingredients of common intention were enunciated in *Eunice Musenya Ndui v Republic*, Criminal Appeal No. 534 of 2010 (2011) eKLR as follows:-
- (1) There must be two or more persons;
 - (2) The persons must form a common intention;
 - (3) The common intention must be towards prosecuting an unlawful purpose in conjunction with one another;
 - (4) An offence must be committed in the process;
 - (5) The offence must be of such a nature that its commission was a probable consequence of the prosecution of the unlawful purpose.



29. Thus, the mere fact that other people may have been involved does not render the accused free of culpability in the act or omission that led to the demise of the deceased.
30. Was there malice aforethought on the part of the 1st accused?
31. Section 206 of the Penal Code provides the definition of malice aforethought and it reads 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;’
32. Thus, the ingredient of malice aforethought can be express or implied. It can be deemed to have been established by evidence which proves an intention to cause death of or to do grievous harm to any person, whether that person is actually killed or not.
33. There are numerous authorities that have dealt with the manifestation of malice aforethought on a charge under Section 203 of the Penal Code. For instance, in *Rex v Tubere s/o Ochen* [1945] 1 EACA 63, Eastern Court of Appeal observed:
- “ In determining existence or nonexistence of malice one has to look at the facts proving the weapon used, the manner in which it is used and part of the body injured.”
34. In addition, in the case of *Hyam v DPP* [1974] A.C. the Court held inter alia that:
- “ Malice aforethought in the crime of murder is established by proof beyond reasonable doubt when during the act which led to the death of another the accused knew that it was highly probable that, that act would result in death or serious bodily harm.”
35. The evidence is that the 1st Accused used a small stick to beat the deceased. It is unlikely that she contemplated that the deceased would succumb to the injuries. Thus in my view the malice aforethought required for a conviction for the offence of murder is lacking.
36. Having found that there was lack of malice aforethought, I find that the 1st accused is guilty of the offence of manslaughter, contrary to section 202 as read with section 205 of the Penal Code. She is convicted on this offence.

DATED, SIGNED AND DELIVERED AT MERU THIS 27TH DAY OF OCTOBER, 2025.

H. M. NYAGA

JUDGE.

