



REPUBLIC OF KENYA



**Republic v Ndegwa (Criminal Case 5 of 2023)
[2025] KEHC 15088 (KLR) (Crim) (27 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE 5 OF 2023
KW KIARIE, J
OCTOBER 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SIMON NGIGI NDEGWA ACCUSED

JUDGMENT

1. Simon Ngigi Ndegwa is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence in count one state that on the 23rd day of April 2020, at Chakareli village, in Nyandarua West Sub-County of Nyandarua County, he murdered Eunice Muthoni Ndung'u.
3. In count two, the particulars of the offence are that on the 23rd day of April 2020, at Chakareli village, in Nyandarua West Sub-County of Nyandarua County, he murdered Linet Muthoni.
4. The evening of 23rd April 2020 was like any other day for Lucy Wangui Muturi's family (PW1). She was with her two daughters, Miriam and Eunice Muthoni, and their children, including Linet Njeri Muthoni. After their evening meal, some members went to sleep while others watched TV until about 11 p.m. The latter group read the Bible and prayed before going to bed. Their sleep was disturbed around 2 a.m. by an intruder who killed two family members and injured others. The prosecution claims the intruder was the accused.
5. Simon Ngigi Ndegwa, the accused, opted to keep mum at the close of the prosecution's case.
6. The issues to be determined are:
 - a) Whether the accused was the intruder; and



- c) Whether the offence of murder was established against the accused.
7. The family of Lucy Wangui Muturi (PW1) planned to spend the night in two separate houses. At about 3 a.m., she saw a spotlight, and her door was kicked in. She rushed to the door to reinforce it, and at the same time, raised an alarm. When she turned on the lights and opened the door, she saw a big hole near the door. The hole was large enough for a human being to fit through. Some members of her family from the other house had serious injuries, while the two deceased had succumbed.
 8. Simon Ngigi Ndegwa, the accused, was linked to the offence by a jacket that was found abandoned in a thicket. There was a knife nearby. This jacket was identified by Paul Kariuki Koigi (PW7) and Pauline Wangui Ndegwa (PW8) as that of the accused. PW7 is the accused's paternal uncle, while PW8 is his mother. PW8 stated that the knife recovered with the jacket was hers.
 9. No single eyewitness testified to having witnessed the incident. The evidence adduced against the accused is circumstantial. In the case of *Mohamed & 3 Others vs Republic* [2005]1KLR 722, Osiemo, Judge, restated what circumstantial evidence is, as follows:

“Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved.”

10. Earlier, in the case of *Republic vs Kipkering arap Koskei & Another* 16 EACA 135, the Court of Appeal held:

“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”

11. These authorities will guide me in weighing all the evidence against the accused and determining whether it is incompatible with his innocence and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
12. The evidence of the recovery of the accused's jacket near the scene of the murders, as well as his mother's knife, is inconsistent with the accused's innocence and cannot be reasonably explained except by his guilt. This is further supported by his confession, which he made before Superintendent of Police Donator Otieno (PW5). Part of his confession stated:

“Nikikumbuka vizuri mnamo mwezi wa nne usiku wa terehe 23/4/2021, nilisikia mwito wa shetani ikiniielekeza kwa boma moja ya jirani yetu upande wa Chakareli na nikajihami na shoka ya mjomba Paulo, tochi ndogo na kisu ya mama yangu Pauline. Nilikuwa nimevaa longi nyeusi, shati nyeusi, jaketi nyekundu na nyeupe kwa rangi. Nilielekea kwa nyumba ya jirani ambapo nilichimba shimo kwenye ukuta ya nyumba moja ya matope karibu na mlango nikitumia kisu nilikuwa nimetoa kwa mama yangu Pauline na nikatumia hilo shimo kuingia ndani. Nilipo ingia nikamulika tochi, wote walikuwa wamelala. Wawili walikuwa wamelala kwa kitanda moja na wengine wawili kwenye kitanda kingine. Nikatakakulala na mwanamke moja mkubwa laikini akaniskia nikamkonga na shoka kwa kichwa. Mtoto pia akaniskia nika ngonga na shoka kwenye kichwa chake. Wale wengine waliolala kitanda lingine walipojiskia nikawakongagonga kila moja nikitumia hilo shoka. Kisha nikatoa turimbo iliyokuwa imetumika mlango. Nilijaribu kufungua mlango lakini sikuweza nikakata jafi (lock) nikituma shoka na kufungua mlango na kutoroka mbio kabla sijakimbia mbali



niliskia nduru ikitoka kwa hiyo nyumba nikafikiria nitaonekane na jaketi langu la rangi ya nyekundu na iko na nyeupe kwenye mkono, Nikavua na nikakunja kisu ndani na kutupa kwa msitu mdogo ilioyoko karibu na reli, kwa vile ilikuwa inanyesha na nilikuwa naskia nduru nikakimbia hadi mahali nilipata maji ya mvua yaliyokusanyika nikatumia kuosha hilo shoka na kurudisha kwa jiko la Paulo. Nilirudi kwangu na kubadilisha nguo nakutoroka kwa miguu mpaka upande wa Kinangop/Njabini. Hapo nilijificha mpaka December 2020, baadaye nikafukuzwa na baba Wamaitha baada ya kujaribu kulala na mischina wake. Kutoka hapo niliamua niende Naivasha kwa dada nyangu mkubwa Sabina Ndegwa na tukakaa hadi terehe 26/4/2020 nilipokamatwa na mafisa wa upalelezi kutoka ofisi ya DCI Naivasha."

13. The accused vividly described how he was dressed, what he did to gain entry to the house where the deceased were sleeping, what he planned to do, and how he inflicted injuries on the victims when he realized his mission had been thwarted.
14. This was a bizarre incident. The accused blamed the devil. Since the devil is a spirit, if his allegation is true, then we can only address the human host. However, the prosecution has proved that the accused caused the deaths of the two deceased persons in this case.
15. To secure a conviction based on the evidence on record, the prosecution must establish the presence of malice aforethought. In Black's Law Dictionary, 10th Edition, malice aforethought is defined as:

"The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule)."
16. Section 206 of the Penal Code gives instances when malice aforethought may be proved. It 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;
 - (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."
17. The two victims were murdered brutally. The act was deliberate, establishing malice aforethought. The prosecution has proven the charges beyond a reasonable doubt. I find him guilty and convict him of murder.

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

KIARIE WAWERU KIARIE



JUDGE

