



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Rukwaro (Criminal Case 30 of 2023)
[2025] KEHC 14987 (KLR) (Crim) (27 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14987 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE 30 OF 2023
KW KIARIE, J
OCTOBER 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN KARIUKI RUKWARO ACCUSED

JUDGMENT

1. John Kariuki Rukwaro 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 are that on the 23rd day of December 2021, at Ngano location, in Nyandarua West Sub-County of Nyandarua County, murdered Anastashia Wairimu Waweru.
3. The deceased and the accused were husband and wife. Their marriage was experiencing severe difficulties at the time of the deceased's death. The deceased opted to spend the night on a sofa in the sitting room, while the accused used their bedroom. Their daughter, the only child living with them then, was sleeping with the deceased in the sitting room.
4. On the material night, what occurred between the couple is not very clear. The prosecution's evidence against the accused was circumstantial.
5. The accused argued that he disagreed with the deceased, as was customary between them at the time. A fight ensued, and the deceased sustained injuries. He offered to take her to the hospital the following day.
6. The issues to be determined are:
 - a) Whether the accused inflicted the injury in the course of a fight; and



- c) Whether the offence of murder was established against the accused.
7. This was evidently a marriage that was on the rocks. That is why the mother and daughter were sleeping on a sofa in the sitting room. Unfortunately, it had to end this way.
 8. Peris Mumbi (PW3) is a fourteen-year-old girl who was the only other person at home. Her evidence was that when she slept, she left her parents watching TV. The following morning, she woke up and thought everything was in order until she found her mother on the sofa. This was after she called her, but got no response. She saw some blood on the seat. Her evidence was that her parents were constantly quarrelling; however, before she went to sleep, the two had not argued. When she discovered her mother, her father was not present. She did not see him that morning.
 9. The evidence of Corporal Nicholas Chigiri (PW5) was that the accused vanished from home from the 24th of December 2021 until he was arrested at Kahuho on the 26th of December 2021.
 10. 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.

11. 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.

12. 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.
13. The accused vanished from his home until the time he was arrested elsewhere. William Shakespeare in *Henry VI, Part 3*, said:

Suspicion always haunts the guilty mind; The thief doth fear each bush an officer.

This is a natural human reaction. The accused was no exception. The conduct of the accused in disappearing from home after the incident points to no other logical conclusion than that he was the one who killed the deceased.

15. John Kariuki Rukwaro, the accused, admitted that he had indeed fought with the deceased. He struck her on the head with a piece of wood. When he realized she was bleeding, he offered to take her to the hospital the next morning. Probably, I say so for no evidence was adduced, on realizing the following morning that she had passed away, he fled.
14. 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).

15. 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.

16. We may not know what transpired between the accused and the deceased, leading to her death. No evidence was presented to establish malice aforethought. We have evidence on record that the two often quarrelled. The accused claimed that this was due to the infidelity of the deceased. As the deceased is no longer alive to clarify whether this was true or not, it will remain an allegation as far as the court is concerned. However, the close relatives are aware of the truth. This defence is persuasive. I conclude that the prosecution has not proven the offence of murder against the accused. Nevertheless, the prosecution has demonstrated beyond any reasonable doubt the lesser offence of manslaughter. I therefore reduce the charge from murder to manslaughter. I acquit the accused of murder. I find him guilty and convict him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

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

KIARIE WAWERU KIARIE

JUDGE

