



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ali & 2 others (Criminal Case E002 of 2024)
[2025] KEHC 14782 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14782 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA
CRIMINAL CASE E002 OF 2024
JN ONYIEGO, J
OCTOBER 22, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDIWAHAB NOOR ALI 1ST ACCUSED

ABDIRAHAMAN ADAN IBRAHIM 2ND ACCUSED

YAHYA MAALIM ABDISHAKUR 3RD ACCUSED

JUDGMENT

1. The accused persons herein are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence are that on 20-09-2024 between 0200 hrs and 0300 hours at Kamor Location within Mandera East Sub-County, Mandera County, they jointly murdered Ahmed Hajjow aAhmed.
2. Having pleaded not guilty, the case proceeded to full trial with the prosecution calling ten (10) witnesses in support of its case thus inviting the court to make a finding whether the accused ought to be put on their defence or not. Upon analysing the evidence tendered, the court acquitted accused 2 and 3 under Section 306 of the CPC for lack of a case to answer. Consequently, accused one was put on his defence.
3. Briefly, on 19.09.2024 at 7.00pm, Hassan Mohamed Hussein(pw1) was with Aborsa at the home of Juniah chewing miraa. At about 10.30 pm, they were joined by Abdiwahab alias Falcao (accused 1) and Abdirahaman alias mane (accused 2). At 11.00pm, Mane called Mankiso (deceased). Shortly, the deceased appeared in company of Yaya nick name for accused three.
4. While chewing miraa, the deceased noticed that accused 1 and 2 were playing some game using Jamhuri's phone. He demanded to know where Jamhuri was as he owed him some money. Accused



- 1 and 2 told him that Jamhuri was a sleep. Consequently, the deceased grabbed the phone in question and a fight ensued. As a result, he (pw1) ordered them to leave the house. Shortly, after the three left, a lady known as Fatuma approached him thus informing him that there were people fighting in the next plot.
5. It was his testimony that he proceeded to the scene where the alleged fight was. At the scene, he found the deceased lying on the ground along the road with his t-shirt soaked in blood. Upon observation, he noticed that the deceased had a stab wound on the chest. He then made a report to the police. According to him, he did not know what transpired after the deceased left the house where they were chewing miraa.
 6. On cross examination, he stated that it was accused two who had Jamhuri's phone which the deceased grabbed.
 7. Pw2 Fatuma Nunow was on the night of 20-9-2024 sleeping in her house when at 300 a.m she heard people screaming. When she went to see using her phone light, she saw somebody lying on the ground on the road side with two people searching him. While still at the scene, she saw another man carrying water in a jericin trying to give the man on the ground to drink. She then heard one man (accused 2) asking another man known as Falcao (accused 1) why he had stabbed the man on the ground. Subsequently, she informed pw1 what had transpired and upon going back to the scene, they found the deceased had died.
 8. On cross examination, she stated that one man had accused Falcao of stabbing the deceased. That when the police arrived, she named accused 1 and 2 as the people whom she found at the scene.
 9. PW3 Abushirah Mohamed was in her house on 20-09-2024 sleeping when two people knocked her door claiming that they were from digging a grave of their relative who had been killed. In response, she and her two sons proceeded to the scene where they found somebody lying on the ground while death. She later witnessed postmortem done.
 10. Pw4, was on 20-09-2024 called by one Abshirah (pw3) who informed him that her son had been killed. He accompanied pw3 to the scene where he saw the deceased lying dead on the ground with a stab wound on the chest. He did not know what transpired.
 11. P5 Abdiwahab Biriq stated that on the 19-09-2024, he was chewing miraa in company of Yaya (accused 3) and one Zacharia at a place known as Bura Kamor. At 11.00 pm, he left for his home leaving Yaya and Zacharia chewing miraa. While at home, at 2.00 a.m, he heard a lot of noise from the neighbour's place. They proceeded towards the direction where the noise was coming from. On the way, he met one Jimale and Abdiqadir who informed them somebody had been killed and that he had seen Yaya running away. On cross examination, he said that he did not witness the attack on the deceased.
 12. Pw6, Feisal Hajio brother to the deceased stated that on 19-09-2024 at 9.00 pm he was with his brothers Abdishakur and the deceased when they fought with some people. He however went home and later got information that his brother had been stabbed. He visited the scene and found his brother dead. He confirmed that there was a stab wound on the chest.
 13. Pw7 Abdiqadir Bulle national police reservist stated that on 19-09-2024 he was at a place known as parliament with the deceased, Matan and Jimale chewing miraa. That at some point he left them and went home. He later heard that the deceased had died.
 14. Pw8, the investigating officer stated that on 19.09.2024, he was at the police lines when Cpl Macharia called him and requested that they meet at the gate with the DCIO. Together they proceeded to the



- scene of murder where they found a dead male adult lying on the ground with stab wounds on the chest. They took the body to the mortuary and later on had the postmortem done.
15. It was his testimony that upon investigation, he found out that it was one falcao (accused 1) who had stabbed the deceased after quarreling over a phone. That the 2nd and 3rd accused tried to give the deceased 1st aid using water. Later, they learnt that accused 1 and 2 had fled to Ethiopia. Arrangements were made in conjunction with Ethiopian authorities who assisted the two being arrested and returned back to Kenya. On cross examination, he stated that the 2nd and 3rd accused were not involved in the altercation with the deceased.
 16. Pw9 scenes of crime merely processed photographs of the deceased person but failed to produce the same as he was not the one who took them.
 17. Pw10 Doctor Abdullahi Makheir performed postmortem examination and formed the opinion that the cause of death was bleeding secondary to a penetrating wound.
 18. Upon close of the prosecution's case, the court delivered its ruling on 30-07-2025 thus acquitting the 2nd and 3rd accused persons under section 306 of the CPC for lack of prima facie case to enable the court put them on their defence. On the other hand, the 1st accused person was put on his defence the prosecution having established a prima facie case against him.
 19. In his defence, DW1, Abdiwahab Noor Ali (accused 1) gave sworn testimony denying causing the death of the deceased. He claimed that he did not know the deceased very well given that they had only interacted for a period of one year. According to him, the deceased used to sell bhang and diaspam. He claimed that on the date he was accused of having killed the deceased, he was infact in Ethiopia at a place known as Dolo. He asserted that in as much as he is Kenyan, he lived as a refugee in a camp known as Dolo in Ethiopia as his mother is also a refugee.
 20. On cross examination, he stated that he was arrested at a place known as Dolo in Ethiopia and on 20.09.2024, he was not at Jamhuri. He told the court that he did not run away to Ethiopia as he officially went there by himself on 04.04.2024.
 21. After the defence case, prosecution opted not to submit. They instead relied on the evidence on record. The defence however filed their submissions dated 29-09-2025. Mr. Nyipolo counsel for the accused basically submitted that prosecution did not prove to the required degree that the accused herein did commit the offence in question. That there was no proof that the 1st accused was also known as Falcao the person who was alleged to have stabbed the deceased.

Analysis and Determination

22. I have considered the evidence tendered before the court and submissions by the defence. The only issue I find discernable for determination is whether the prosecution have proved beyond reasonable doubt that the accused person murdered the deceased while possessed of malice aforethought.
23. The accused persons herein are facing the offence of murder C/S to Section 203 of the Penal Code which provides that: "Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.". Article 26(2) of *the Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by *the Constitution* or written law.
24. The prosecution's mandate is therefore to discharge this burden of proof of establishing that the accused person in this case committed the offence of murder beyond reasonable doubt. The evidential



burden is succinctly laid down in section 107(1), 108 and 109 of the *Evidence Act* and further espoused in the case of *Miller vs Ministry of Pensions* [1947] 2 All ER 372 where Denning J, stated as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least probable’ the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

25. I will therefore embark in determining whether the prosecution has discharged the burden of proof beyond reasonable doubt in respect to the following elements:

- i. whether death of the deceased occurred,
- ii. Whether the said death was unlawfully caused.
- iii. Whether the accused was the person who unlawfully committed the offence on the material day as against the deceased.
- iv. That in causing the death of the deceased unlawfully, he was possessed of malice aforethought.

26. In the case of *Republic vs W.O.O.* [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) the elements of murder were restated, as guided by the Court of Appeal in the case of *Anthony Ndegwa Ngari vs Republic* [2014] eKLR, as follows:

“For the offence of murder to be proved, 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.”

27. In the instant case, there is no dispute that the deceased Ahmed Hajjow Ahmed died. This is informed by both the direct and circumstantial evidence more precisely the post mortem report by PW10 who opined that the cause of death was bleeding due to a penetrating wound.

28. The second element is on proof of causation of death. It is trite that every homicide is unlawful unless justified or excusable as contemplated in Art. 26(4) of *the Constitution*. The landmark case of *Guzambizi Wesonga vs Republic* [1948] 15 EACA 63 addressed this element as follows:

“Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable, it must have been under justifiable circumstances, for example in self-defense or in defense of property.”

29. From the evidence of the doctor (pw 10) who performed the postmortem, the deceased died of bleeding due to a penetrating wound. Pw1 and pw2, stated that when they responded to the screams, they found the deceased lying on the ground while bleeding. According to the investigating officer, the deceased was stabbed with a knife hence the cause of bleeding. From the circumstances under which the deceased got stabbed and eventually succumbed, the injuries were unlawfully occasioned.



30. As to whether the accused person committed the offence herein, it is clear that no one saw him stab the deceased and therefore, the prosecution is relying on circumstantial evidence.
31. In the case of *Ahamad Abolfathi & Another vs Republic* (2018) eKLR, the aspect of circumstantial evidence was elaborated as follows;
- “Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”
32. From the record, the investigating officer stated that at the material time, the three accused persons and the deceased were playing games using Mohamed’s aka Jamhuri’s phone when the deceased discovered that the phone belonged to Jamhuri who owed him money. That at that point, the deceased took the phone away prompting Mane and Falkao to follow the deceased and that’s when a confrontation ensued. It was his evidence that after a short while, a loud scream was heard from the neighbourhood as the deceased screamed after being stabbed. At this time, Falkao had run away as the 2nd and 3rd accused persons were trying to help the deceased by giving him some water. Additionally, the investigating officer testified that the last people whom were seen with the deceased were the three accused persons herein. He however exonerated accused 2 and 3 from the blame.
33. According to the evidence of PW1, PW2, PW5, PW6 and PW8, the 1st accused person herein was in company of the deceased, accused 2 and 3 at the scene of murder. More specifically, PW2 testified that she heard someone ask why Falkao had stabbed the deceased and the same was corroborated by PW8 whose investigations as already enumerated above pointed to the fact that noting that Jamhuri had left his phone with him (accused one) and in his quest to prevent the deceased from taking Jamhuri’s phone, he stabbed the deceased.
34. Further, pw1 confirmed that after accompanying pw2 to the scene, he found the deceased on the ground while bleeding and Falcao (accused one) who had pursued him to recover the phone the deceased had snatched from him was nowhere. With the evidence of pw1 and pw2, the accused herein (accused one) can not purport to state that at the material time, he was in Dolo Ethiopia. His alibi defence is therefore questionable.
35. The Court of Appeal in the case of *Victor Mwendwa Mulinge vs R* [2014] eKLR while considering an alibi defence stated as follows:
- “It is trite law that the burden of proving the falsity, if at all, of an accused’s defence of alibi lies on the prosecution; see *Karanja v R* [1983] KLR 501 ... this Court held that in a proper case, a trial court may, in testing a defence of alibi and in weighing it with all the other evidence to see if the accused’s guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence of alibi at an early stage in the case so that it can be tested by those responsible for investigation and thereby prevent any suggestion that the defence was an afterthought.” (Emphasis added).
36. I am alive to the fact that it’s the duty of the prosecution to prove the guilt worthiness of an accused person but in reference to the defence as raised by the accused, it was incumbent upon the accused person to raise the issue of alibi at the earliest opportunity to enable the prosecution interrogate the same. Having raised it late in the day, it is my considered view that the accused person’s alibi defence was clearly an afterthought as this evidence did not dislodge the evidence tendered by the prosecution witnesses.



37. The claim by Mr. Nyipolo that there was no proof that one Falcao the person who was alleged to have stabbed the deceased was the same as the first accused person, the evidence of pw1 is clear. Pw1 named all the three accused persons by their official names and the Nicknames. He clearly stated that he Knew accused very well and that he was also known as Falcao. From the foregoing therefore, it is my conviction that the accused person herein was responsible for the unlawful act that caused the death of the deceased.
38. The critical question before this court is whether the accused acted with malice aforethought. Section 206 of the Penal Code provides that:
- (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.”
39. From the above therefore, it is sufficient to say that the mental element required by the above section can be equated to broad guidelines set out in the case of Tubere s/o Ochen vs Republic [1945] 12 EACA 63:
- “The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”
- [Also see the case of Republic vs Okwara (Criminal Case E015 of 2023) [2024] KEHC 1360 (KLR)].
40. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the accused person foresaw the real or substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased. That after foreseeing the possible eventualities and appreciating them, he proceeded with the said act or omission.
41. The accused person herein stabbed the deceased on the chest thus perforating his lungs. From the foregoing, it is my considered view that the accused did not have any other intention other than to inflict grievous harm or cause the death of the deceased.
42. It is thus my finding that the accused person knew or ought to have known that his action would result in death, and it can be safely inferred from the nature of the injury inflicted on the deceased that the accused person's action was premeditated.
43. In the circumstances therefore, I am persuaded beyond reasonable doubt that the prosecution has proved its case, and specifically, the presence of malice aforethought on the part of the accused. To that end, I find the accused person guilty and hence convict him of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code



DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 22ND DAY OF OCTOBER 2025

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J.N.ONYIEGO

JUDGE.

