



**Republic v Nyatindo (Criminal Case E012 of 2022)
[2025] KEHC 16739 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16739 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E012 OF 2022
WM KAGENDO., J
NOVEMBER 13, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ISAIYA NYATINDO ACCUSED

JUDGMENT

Background

1. The deceased, Lazarus Barasa, was an orphan who had been raised by his uncles (PW6 and PW7). It appears they had not heard from him for some time, as he had moved away to this coastal city of Mombasa, in search of better opportunities.
2. In Mombasa, the deceased seemed not to have settled well. It was alleged that he worked as a guard, although that was not clearly established. There were claims that he used to guard the premises where the incident occurred, but PW2, the owner, did not acknowledge him as such.
3. Interestingly, PW2 expressed sympathy for the accused, whom she described as very obedient.

The Charge

4. The accused, Isaya Nyatindo, was charged with murder, contrary to Sections 203 and 204 of the Penal Code.

The particulars are that on the 13th day of May 2022, at Coast General Hospital Area in Mvita Sub-County within Mombasa County, he murdered Lazarus Barasa Nyongesa alias “Waingo”.

The accused pleaded not guilty. The State called nine (9) witnesses, PW1–PW9.



Law

5. Article 26 of *the Constitution* of Kenya guarantees the right to life and provides that no person shall be deprived of life intentionally except as authorized by law.
6. The ingredients of the offence of murder were articulated in *Republic v Andrew Omwenga* [2009] eKLR, namely:
 - i. Proof of the fact and cause of death;
 - ii. That the accused's act or omission caused the death (actus reus);
 - iii. That the act was accompanied by malice aforethought (mens rea).

The Death

7. The fact of death is not in dispute. The accused stated that he learnt of the deceased's death on 14th May 2022 and he later surrendered to the police. PW2 also testified that they were informed of the death and subsequently went to the police station.
8. They met the investigating officer, who had visited the scene the previous day. Together they went to the Coast General Hospital, where they confirmed the death. A postmortem was conducted on 25th May 2022, and PW6 and PW7 identified the body. They confirmed that the body was later buried at a Muslim cemetery, as they could not afford to transport it upcountry.

Cause of Death

9. The postmortem revealed the following injuries:

Head: Massive scalp hematoma; generalized skull fracture; left temporo-parietal region linear fracture on occipital region.

Nervous System: Massive subdural hematoma at the parietal region; brain edema; basal skull fracture.
10. The cause of death was severe traumatic brain injury with massive subdural hematoma and nasal skull fracture, secondary to blunt force trauma to the head.

Whether the Death Was Unlawfully Caused

11. The accused admitted that he had a physical confrontation with the deceased on 13/05/2025. He, however, testified that it was the deceased who went to his place of work, made threats, and created a disturbance by pouring water and flour on the floor. The deceased allegedly poured githeri on him and tried to pull down the kiosk. In the process, the tent was cut and the deceased fell onto the tarmac, sustaining the injuries.
12. Two eyewitnesses, PW1 and PW8, testified to the contrary. They were both guards working nearby. PW8 stated that on 13/05/2022, around 6:00 p.m., the deceased borrowed his bicycle and returned after an hour while drunk. The deceased allegedly uttered the words, "Leo afe dereva ama afe gari" (Today the driver will die or the car will die), and "Leo utajua, leo ni mimi" (You will know today who I am).
13. PW8 later heard some commotion and, ongoing outside, found the deceased struggling with two people. PW1 testified that he was on the balcony, when he had heard two people arguing and went downstairs to separate them when they approached the vehicles he was guarding. After separating them, the deceased walked away but later returned and continued to abuse the accused.



14. PW1 stated that the accused then went into his kiosk and emerged holding a large piece of wood. PW1, who had returned upstairs, went down again only to find the deceased lying on the ground bleeding, while the accused held a broken piece of wood.
15. PW8 also confirmed that he saw the accused holding the broken piece of wood. Although the scene was visited that evening, the weapon was never recovered. PW6 mentioned that photographs were taken but never developed. The officers appeared not to have handled the matter with the diligence it deserved.
16. The injuries noted by the medical witnesses were inconsistent with a single fall. They are external appearance of body, facial swelling generalized, bilateral conjunctural hemorrhage blood- stained nose, facial bruises and head numerous bruises and cippa limbs, multiple linear bruises posteriorly (at the back) loinear bruises on the side of the chest and multiple bruises on lower limbs more consistent with the fight described by PW1.
17. PW2, the kiosk owner, did not notice any damage to the tent roof, casting doubt on the accused's claim that the deceased fell when the tent tore.

Provocation

18. There was evidence that the deceased was drunk and hurled insults at the accused. The deceased also stated that githeri was poured on him, though he sustained no injury.

Self-Defence

19. The law allows a person to defend themselves, but the force used must be reasonable. In this case, the accused used a plank of wood to strike the deceased on the head until it broke. That was not reasonable force. The court is satisfied that the accused, having been seen by PW1 and PW8 holding the weapon, was the one who inflicted the fatal blow.
20. I therefore find that the death was unlawfully caused, and the defence of self-defence does not avail the accused.

Malice Aforethought

21. Although there was mention of job rivalry, it was not proved. PW1 and PW8 both confirmed that the deceased initiated the verbal exchange. PW1 even separated them, but the deceased returned and continued provoking the accused.
22. Having considered the entire episode, I find that the accused did not have the intention to kill. He may have used excessive force, but clearly, the deceased was the aggressor that evening.

Conclusion

21. Accordingly, I find that there was no malice aforethought. However, the excessive force used by the accused led to the loss of life. I therefore acquit the accused of murder contrary to Section 203 as read with Section 204 of the Penal Code, and convict him of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA, IN OPEN COURT AND ONLINE VIA MS TEAMS, THIS 13TH DAY OF NOVEMBER 2025.



HON. LADY JUSTICE W. K. MICHENI JUDGE

In The Presence Of;

The Accused Person And His Advocate For The Prosecutor Mr Ngiri Court Assistant Ms Bebora

