



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
CRIMINAL CASE NO. E008 OF 2024

REPUBLIC.....PROSECUTOR

VERSUS

KELVIN KABUI WAIRIMU..... ACCUSED

JUDGMENT

1. Kelvin Kabui Wairimu 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 27th day of January 2024, at Mwireri village, Kaimbaga location, in Olkalou Sub-County of Nyandarua County, Lucy Gichia Waithera.
3. The accused was an employee of the deceased. He was found beating her with her walking stick.
4. In his defence, the accused argued that he asked the deceased for his money. The deceased quarrelled with him and struck him on the head with her walking stick. He became angry and pushed her. She fell and was hit by some stones.
5. The issues to be determined are:
 - a) Whether the defence of provocation is available to the accused; and
 - b) Whether the offence of murder was established against the accused.
6. The unfortunate incident began when only the accused and the deceased were present. Jecinta Wanjiru Miring'u (PW2) and Rufus Kamunge Mwangi (PW3) found the accused in the process of beating the deceased with her metal walking stick. PW3 held and restrained him.
7. Dr Jane Wanjira Wainaina (PW1) testified that the deceased was admitted with multiple injuries.

8. Dr. Bernard Midia (PW6) prepared the post-mortem report. The cause of death was pneumonia due to sepsis. The deceased had injuries to the face and scalp resulting from blunt trauma.

9. The prosecution must establish the presence of malice aforethought to secure a conviction based on the evidence on record. 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).

10. 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.

11. Kelvin Kabui Wairimu, the accused, pleaded provocation. Since there is no evidence to the contrary, the court will extend the benefit of the doubt in his favour.

12. Section 207 of the Penal Code provides:

When a person who unlawfully kills another under circumstances which but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool he is guilty of manslaughter.

13. Section 208 (1) of the Penal Code defines the term provocation as follows:

The term provocation means and includes, except as hereinafter stated any wrongful act or insult of such a nature as to be likely when done to an ordinary person or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in conjugal, parental filial or fraternal relation or in the relation of master or servant, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.

14. Based on the analysis of the evidence, I conclude that the prosecution has not proven the accused guilty of murder. However, they have proven the lesser charge of manslaughter beyond a reasonable doubt. Accordingly, I reduce the charge from murder to manslaughter. The accused is acquitted of murder but found guilty and convicted of manslaughter under Section 202, read with Section 205 of the Penal Code.

Delivered and signed at Nyandarua, this 26th day of November 2025

KIARIE WAWERU KIARIE

JUDGE