



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
CRIMINAL CASE NO. 36 OF 2023

REPUBLIC.....PROSECUTOR

VERSUS

EVANS MOKAYA MOTARI.....1ST ACCUSED

JAMES NJOROGE MURIITHI.....2ND ACCUSED

JUDGMENT

1. Evans Mokaya Motari and James Njoroge Muriithi are 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 April 2022, at Kandutura Trading Centre, Kaimbaga location, in Olkalou Sub-County of Nyandarua County, Paul Muriithi Mutahi.
3. It was contended by the prosecution that the deceased and the accused were friends. At one point, they were seen taking alcohol together, but later, the two accused fatally beat the deceased on the allegation of stealing from one of them.
4. In his defence, the first accused claimed that after getting drunk, he went home. He denied taking part in the events that led to the death of the deceased.
5. The second accused, on his part, contended that he went to the scene where the deceased was lying after noises from a crowd attracted him.
6. The issues to be determined are:
 - a) Whether either of the accused inflicted the injuries on the deceased, or whether the injuries he sustained were inflicted on him; and
 - c) Whether the offence of murder was established against the accused.
7. Stephen Njoroge (PW1) testified that he arrived at Mla Chake Bar around 8:30 p.m. and saw the two accused there, along with the deceased, who was dancing. He then left and went

home. At about 1 a.m., he heard some noise and a commotion. The first accused, whom he referred to as the officer, went to his door and called out to him, but he did not respond. The second accused also went to his door and called out, but he did not respond. He said he recognized their voices. The following morning, he went out, curious to find out the cause of the noises he had heard. He found the deceased in a ditch next to the door of the first accused. The two accused were at the scene. He enquired from the deceased who had beaten him. The deceased indicated that it was the two accused. When he enquired from the second accused why he inflicted the injuries on the deceased, who was his (second accused's) friend, he said he had stolen his mattress.

8. Charles Wanjuki Mwangi (PW2) went to the scene, and the deceased recognized him and identified both accused, who were present, as the ones who inflicted injuries on him.
9. PC Dickson Kimathi Nyaga (PW4) testified that while at Kandutura police post, he received a report from the deceased at about 1 a.m. that three men had chased him. He instructed him to return at about 8 a.m. At around 5.45 a.m., PC Mokaya (accused 1) and his friend Njoroge (accused 2) reported the theft of a mattress and a charger from Njoroge's residence. Since both were intoxicated, he told them he would go to the scene at about 6.30 a.m. Before he could visit, he was called by Sangoma, who informed him of a person lying in a ditch. He proceeded to the scene with PC Njoroge. They found Paul Muriithi, who was severely beaten. He stated that PC Mokaya and Njoroge had assaulted him.
10. In his defence, PC Evans Mokaya Motari (accused 1) argued that he was drawn to the scene where the deceased was lying by some noise from a crowd that had gathered there. He found the deceased in a ditch and was severely injured. He reported the incident to the OCS. He did not beat him as alleged.
11. James Njoroge Muriithi, the second accused, testified that after drinking alcohol at a pub where the deceased was present, he went home. The following morning, he was informed that the deceased had been severely beaten. He produced the statement of PC Joseph Njoroge, which the prosecution had issued to him, but did not call him to testify. In summary, this statement indicated that PC Mokaya purchased a wooden hoe stick and stated he intended to use it during the riots, as elections were approaching. PC Njoroge further noted that when he arrived at the scene where the deceased was lying, members of the public informed them that the deceased had implicated the two accused.
12. When Stephen Njoroge (PW1) asked the second accused why he inflicted the injuries on the deceased, who was his (second accused's) friend, he said he had stolen his mattress. This,

coupled with the report the two accused had made to PC Dickson Kimathi Nyaga (PW4), points at them as the perpetrators of the offence.

13. The statement of PC Joseph Njoroge indicated that the first accused bought a hoe stick in his presence. A piece of a broken wooden stick was picked up at the scene. This, however, was circumstantial evidence in respect of the first accused. 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.

14. Taking the evidence on record in totality, the only logical conclusion to make is that this was the same hoe stick that the accused one bought.
15. When the hoe stick, which was lightly stained with human blood, was analysed, the DNA profile of the second accused was generated. This placed him at the scene and suggested a fight where he bled.
16. Though both accused denied any involvement in the death of the deceased, there is overwhelming evidence on record that the deceased said that they were the ones who caused him the injuries he later succumbed to.
17. 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).

18. 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.

19. Although the accused have not pleaded intoxication, there is compelling evidence that they, along with the deceased, were consuming alcohol. Section 13(4) of the Penal Code states that the state of intoxication must be considered when establishing whether an accused person had the necessary mens rea to commit a crime. That section states that:

Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

20. The incident took place between 1 a.m. and 5 a.m., deducing from the evidence on record. From the evidence of Stephen Njoroge (PW1), by 8.30 p.m., when he went to Mla Chake Bar, the two accused were taking alcohol. Secondly, the finding of the blood of the second accused on the broken hoe stick found at the scene suggests that he was injured. Since there was no eyewitness to testify to the circumstances, the benefit of the doubt will go to the accused. The only assumption to make is that a fight occurred.

21. From the foregoing analysis of the evidence on record, I conclude that the prosecution has not proved the offence of murder against either accused. However, the prosecution has established, beyond a reasonable doubt, the lesser offence of manslaughter. I therefore reduce the charge from murder to manslaughter. I acquit each accused of murder. I find each 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 20th day of November 2025

KIARIE WAWERU KIARIE

JUDGE