



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Arengenyang (Criminal Case E012 of 2022)
[2025] KEHC 17764 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL CASE E012 OF 2022
RPV WENDOH, J
NOVEMBER 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MONICHA ARENGENYANG ACCUSED

JUDGMENT

1. By the information dated 24/8/2022, the accused, Monicah Arengenyang was charged with the offence of Murder contrary to Section 203 as read with 204 of the Penal Code.
2. The particulars of the charge are that on 30/7/2022, at Siyoi Location in West Pokot Sub-County, murdered Kennedy Poriot. The accused denied committing the offence and the case proceeded to full trial with the prosecution calling a total of five (5) witnesses.
3. Upon being called upon to defend herself, the accused testified on oath and did not call any other witness.
4. PW1 William Pkite Arengenyang testified that he was at his home on 30/7/2022 when he was called on phone by one Mercy, accused's daughter who informed him that accused had killed the deceased. The deceased was the son of PW1's brother, that is a nephew. PW1 said that accused is an aunt to the deceased and they lived near each other but in separate houses. PW1 found the deceased's body at Kapenguria Referral Hospital. He said that the deceased had been stabbed on the chest. He was not aware of any dispute between accused and the deceased.
5. PW2 Mery Chemtai recalled that on 30/7/2022, at about 2.30p.m., she was at home with her mother, the accused and Kennedy Poriot. PW2 said that the deceased was her uncle's son, therefore a cousin; that they lived together with the deceased since deceased's parents died in 2015. She went to do some work leaving accused and deceased and other small children at home. About 4.00 p.m., she heard screams from her home and noticed, that it was her mother screaming and ran there. She found



Kennedy lying on the floor near the door and the accused was asking why he had come to beat her. PW2 asked Kennedy what happened and he told her he was injured and showed her the left side of the chest. PW2 observed and saw a small hole with blood oozing from the chest; that her mother was injured and bleeding on the left hand – four fingers;

that Kennedy did not tell her who injured him. PW2 also denied asking the accused how she got injured. Somebody assisted PW2 to carry the deceased to the motorcycle which took him to Kapenguria hospital.

6. PW3 PC Wilfred Githumbi of DCI Kapenguria recalled 30/7/2022 when a murder report was made that one Monicah had caused a murder. He found the deceased's body at Kapenguria Hospital. He later found the accused at the police station having been arrested by other police officers.
7. Dr. Luke Ambuka recalled that on 5/1/2022, he performed a post mortem on the body of Kennedy Poriot after the body was identified to him. He observed two stab wounds, one on the left lateral border of the chest below the clavicle and the second one was on the left lateral chest wall below the axilla or armpit; that both wounds perforated the rib cage and were consistent with a sharp object. On internal observation, he found haematoma on the left anterior chest wall; a stab wound to the apex of the left lung with massive haemothorax in the left chest. He formed the opinion that the cause of death was left haemothorax with exsanguination secondary to stab wounds.
8. When called upon to defend herself, the accused testified on oath and confirmed that she killed Kennedy Poriot who was her brother's son, therefore her nephew; that the deceased's father died in 2016 and she was left taking care of his cattle. Her house and the brothers were in the same compound; that accused used to eat in her house; that the accused was admitted to university in 2017 but he stayed there for a month and returned home and did not return to college again; that the deceased started selling the father's cattle which she did not approve of. On 25/7/2022, she went to help a neighbour who had a funeral and on returning home at 3.40 p.m. while at the gate, she met the deceased coming from her house. Accused asked him why he had not gone to assist at the funeral and he claimed to be drunk but would help next day. He then asked the accused why she was preventing him from selling the father's cattle. She asked why he was doing that yet he had half-brother called Abel. The deceased alleged that the accused had just picked up the boy and they parted as deceased went to his house. When busy cleaning her beans on a sack, the beans were suddenly kicked. She then saw accused who had a knife and he threatened to kill her; that they had a scuffle over the knife which was sharp about a foot. She got hold of the blade as she screamed. She pushed him with the knife and he fell on the ground with the knife. She was injured on the left finger and small finger; that PW2 Mercy arrived, saw them and she went to call a motor cyclist to take the deceased to hospital. She went to look for money to pay for the hospital and before she went, police officers arrested her from her house.
9. In cross examination, the accused admitted that she was holding the knife when she pushed him and that he got injured but later changed her narrative to say that the deceased died after both of them struggled over a knife and he fell and was injured.
10. The defence counsel Mr. Ndinyo filed closing submissions where he urged that Section 17 of the Penal Code recognizes the defence of self-defence; that a person who is attacked can use reasonable force to defend themselves. He relied on the decision of *Palmer -vs- Republic* [1971] AC814 and *Ahmed Mohammed Omar & 5 others -vs- Republic* [2014] eKLR where the Court of Appeal held that even fatal force may be justified to avert death or grievous harm. He urged the court to find that the accused acted in lawful self-defense and acquit her under Section 215 of the Criminal Procedure Code.



Determination: -

11. The accused faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. This being a criminal charge the standard of proof that the prosecution need to discharge is that of beyond reasonable doubt. The term beyond reasonable doubt was aptly defined in the English case of Woolmington -vs- DPP 91935] AC 462 where the court said:-

“Throughout the web of the English Criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoners’ guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If at the end and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether (the offence was committed by him), the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”

The court of appeal in Moses Nato Rapheal -vs Republic [2015] eKLR considered what is reasonable doubt and expressed itself thus; “what amounts to reasonable doubt? This issue was addressed by Lord Denning in Miller -vs- Ministry of Pensions [1947] 2 All ER 272 where the said “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 a 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”.

12. Proof beyond reasonable doubt does not proof beyond a scintilla of doubt but the court should determine whether the defence raises reasonable doubt that the offence may not have been committed by the accused. If any doubt arises, it must be resolved in favour of the accused.
13. Under Section 203 of the Penal Code, for a charge of murder to be proved, the prosecution must establish beyond reasonable doubt the following:-
1. The death of the deceased;
 2. That the death was caused by the unlawful act or omission of the accused;
 3. Proof that the accused had malice aforethought.

Of Death

14. The death of Kennedy Poriot is not in dispute. The testimony of PW1 and PW2 were corroborated by PW4, the doctor who performed the post mortem on the deceased’s body. The deceased had sustained deep stab wounds to the chest which caused the death.

Whether the accused caused the unlawful act or omission that caused the death.

15. The accused was alone with the deceased at the time the deceased was injured. Whatever happened prior to the injury is derived from the deceased’s version of events since there was no eye witness. The accused has raised the defence of self-defence.

Section 17 of the Penal Code provides as follows:-



- “17 Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.”
16. The Common Law Principles on self-defence were clearly espoused in the Privy Council decision of *Palmer -vs- Republic* [1971] AC 814. The decision was approved and followed by the Court of Appeal in *Republic -vs- Macinnes*, 55 Cr. App. Republic 551 Lord Morris delivered himself as follows:-
Ahmed Mohammed Omar & 5 others -V- Republic KECA
- “It is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, but may only do, what is reasonably necessary. But everything will depend upon the particular facts and circumstances.Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in immediate danger, he may have to avert the danger by some instant reaction. If the attack is over and no sort of peril remains, then the employment of force may be way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may be no longer any link with a necessity of defence. The defence of self-defence either succeeds so as to result in an acquittal, or it is disproved, in which case, as a defence, it is rejected. In a homicide case the circumstances may be such that it will become an issue as to whether there was provocation so that the verdict might be one of manslaughter. Any other possible issues will remain. If, in any case, the view is possible that the intent necessary to constitute the crime of murder was lacking, then the matter would be left to the jury.”
17. The test whether the force used in self-defence is reasonable was stated in *Archbold criminal pleadings, evidence and practice 2002* and restated in *Republic -vs- Deana*, 2 Cr. App. R 75, CCA as follows:-
- “That there is no rule of law that a man must wait until he is struck before striking in self defence”.
18. It means that the test of whether the self-defence is reasonable is a subjective one, depending on the circumstances of each case.
- The English common law has been applied in Kenyan courts in *Robert Kinuthia Mungai -vs- Republic* and *Ahmed Mohammed Omar and 5 others -vs- Republic* [2014] KCCA.
19. In the instant case, the accused stated that after they had had the altercation with the deceased and he left, he suddenly came back while armed with a knife threatening to kill her and that during a scuffle over the knife, the deceased fell and injured himself whereas she was injured on the fingers for holding the blade of the knife. Later, she changed and said that at the time the accused was injured, she was holding the knife but she denied it again. Overall, she admitted to killing the deceased.
20. The accused’s version of the events was inconsistent with the injuries that the deceased sustained. The deceased sustained two separate stab wounds to the chest – one to the lateral border of the chest below the clavicle 3 cm wide and deep. The second injury was the left lateral chest wall below the axilla 5 cm wide and deep. Both perforated through the rib cage. If the deceased fell on the knife when he was allegedly pushed by accused, then there would have been only one stab injury. The accused did not say that the deceased got up and fell on the knife a second time.



21. In my evaluation of the accused's defence, she was not truthful. She did not tell the court exactly what happened. Accused was alone with the deceased. Because of the nature of the injuries, this court finds that the accused inflicted on the deceased two deep stab wounds to the chest.
22. What is surprising is that the knife used in the attack was never found. The deceased was injured and fell at the scene. When PW2 came to the scene she did not see the knife. The accused who inflicted the injuries must have gotten rid of the knife. If she was genuinely attacked, the court wonders why she would conceal the knife. Her conduct leaves many questions unanswered.
23. Even if indeed the accused may have been attacked, yet stabbing the deceased twice in the chest was use of excessive force. I find that the accused unlawfully caused the death of the deceased. I therefore acquit him of the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. Instead, I find accused guilty of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convict her accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAPENGURIA ON THIS 28TH DAY OF NOVEMBER, 2025.

R. WENDOHO

JUDGE

In the Presence of:-

Mr. Mokaya for State Counsel

Mr. Ndinyo for Accused

Accused – present

Juma/ Hellen Court Assistants

