



**Republic v Ali alias Salo (Criminal Case E021 of 2023)
[2025] KEHC 17700 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17700 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E021 OF 2023
WM KAGENDO., J
NOVEMBER 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SALIM ADINAH ALI ALIAS SALO ACCUSED

JUDGMENT

The Charge

1. The accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63 Laws of Kenya. The particulars are that on the 21st day of September 2023 at Sirigoi House in Mwembe Tayari area, Mvita Sub-County within Mombasa County, he murdered Nassor Abdalla.
2. He pleaded not guilty. The State called six (6) witnesses:
 - i. Fahad Farouq Ibrahim
 - ii. Hassan Mohammed Ahmed
 - iii. Hussein Ali
 - iv. Abdulaziz Bwanamkuu
 - v. Dr. Aisha Ali
 - vi. No. 74802 Sgt. Allan Adaga



The Law

3. Article 26 of *the Constitution* guarantees the right to life and provides that no person shall be deprived of life intentionally except as authorised by law.
4. The elements of murder were set out in *Republic v Andrew Omwenga* [2009] eKLR, namely:
 - i. Proof of the fact and cause of death;
 - ii. That the accused committed the unlawful act or omission that caused the death (actus reus);
 - iii. That the act was accompanied by malice aforethought (mens rea) as defined under Section 206 of the Penal Code.

The Death

5. The fact of death is not in dispute. A report was made at the DCI – Mombasa Urban. Sgt. Allan Adaga (PW6) accompanied the deceased’s relatives to Coast General Teaching and Referral Hospital. They observed the deceased at the ICU. The postmortem was conducted on 24th September 2023 by Dr. Ommisiti Mbarak. The body was identified by Ibrahim Hemed Omar and Nasan Abdalla.
6. The postmortem report (PEXT 2) was produced by Dr. Aisha Ali (PW5). It revealed that the cause of death was severe traumatic brain injury due to penetrating brain injury secondary to high-force sharp trauma.
7. The fact and cause of death were therefore proved.

Whether the Death was Unlawfully Caused

8. The accused admitted that he knew the deceased and that they had a confrontation on the material day. He stated that what began as a verbal exchange escalated into a physical altercation.
9. PW1 and PW2 testified that they, together with the accused and the deceased, were seated at the base known as Maskani, where they would watch movies. The accused, PW1 and PW2 were already seated when the deceased arrived.
10. Both PW2 and the accused testified that the deceased asked the accused, “What did you say yesterday?” and a verbal exchange ensued. PW2 attempted to de-escalate the tension by sending the accused to a nearby shop. During this time, the deceased occupied the accused’s seat and refused to move when the accused returned.
11. According to PW2, the accused slapped the deceased twice, and as the deceased attempted to rise, the accused retrieved a pair of scissors (PEXT 1) and stabbed the deceased on the left side of the face. PW1 corroborated this account.
5. The accused stated that he could not clearly recall what transpired once the struggle began, claiming he “saw red.”
6. PW3, the village elder, recovered the scissors. PW4 transported the deceased to the hospital, where he remained admitted until he succumbed on 24/09/2023.
7. The postmortem confirmed a left frontal-parietal penetrating wound with leakage of blood and brain matter, consistent with a forceful stabbing using a sharp object.



8. The evidence of two eye-witnesses, PW1 and PW2, was clear, consistent, and remained unshaken on cross-examination. Both placed the accused at the centre of the assault using the fatal weapon.
9. I therefore find that the prosecution proved that the deceased's injuries were unlawfully caused by the accused.

The Defence of Provocation

10. The accused raised the defence of provocation, claiming the deceased bullied him, provoked him verbally, occupied his seat, and slapped him.
11. Under Sections 207 and 208 of the Penal Code, provocation may, in limited circumstances, reduce murder to manslaughter where:
 - the provocation is sudden,
 - the accused is deprived of self-control, and the killing occurs before passion cools.The test is both objective (would an ordinary person lose self-control?) and subjective (did accused actually lose self-control?). See *Peter King'ori Mwangi v Republic* [2014] eKLR; *Republic v Mohammed Abdow Mohammed* [2019] eKLR.
12. In the present case, the alleged provocation consisted of: a verbal confrontation, refusal by the deceased to vacate a seat, and an alleged slap by the deceased.
13. Verbal quarrels, minor insults, or a refusal to give up a seat do not, in law, constitute provocation sufficient to deprive an ordinary person of self-control (see *Wero v Republic* [1983] eKLR). Even if a slap occurred, the accused's response—stabbing the deceased with force sufficient to penetrate the skull—was grossly disproportionate. Both PW1 and PW2 were clear that it was the accused who initiated physical violence by slapping the seated deceased.
14. I find that the accused's actions were not the result of a sudden loss of control but were deliberate and targeted. The defence of provocation therefore fails.

Malice Aforethought

15. Section 206 of the Penal Code defines malice aforethought as including the intention to cause death or grievous harm. The nature of the weapon used (a sharp pointed object), the part of the body targeted (face/head), and the severity of the injury (penetrating brain wound) clearly demonstrate an intention to cause at least grievous harm.
16. The accused aimed at a vital part of the body and applied high force. Even if he did not intend to kill, he intended to cause serious bodily harm. Malice aforethought is therefore established.

Conclusion

17. The prosecution proved beyond reasonable doubt all the ingredients of the offence of murder:
 - the fact and cause of death;
 - that the accused unlawfully caused the death; that he acted with malice aforethought;
 - and the defence of provocation is unavailable.
18. Accordingly, I find the accused guilty of murder contrary to Section 203 as read with Section 204 of the Penal Code under section 322 of the Criminal Procedure code.



19. He is hereby convicted.

Orders

20. The matter shall be listed for sentencing upon receipt of a pre-sentence report and mitigation.

DATED, SIGNED AND DELIVERED IN OPEN COURT / ONLINE VIA MS TEAMS THIS 27TH DAY OF NOVEMBER... 2025.

HON. LADY JUSTICE W. K. MICHENI JUDGE

In the presence of:

The Accused Person And His Advocate Mr Salim Mr Ngiri And Sirima For The State

Ms Bebora Court Assistant

Top of Form Bottom of Form

