

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. E007 OF 2021**

**REPUBLIC .....**  
**STATE**

**VERSUS**

**STEVEN MARIGI NGARE .....**  
**ACCUSED**

**JUDGMENT**

1. **Steven Marigi Ngare** hereinafter referred to as the accused is charged with the offence of Murder contrary to section 203 ad read with section 204 of the penal code. The particulars are that the accused on 30<sup>th</sup> January, 2021 at Shogocho village in Elburgon Molo sub-county within Nakuru county, murdered Margaret Wanjiru Muchiri.
2. He denied the charge and the case proceeded to full hearing with the prosecution calling a total of seven (7) witnesses. The accused gave an unsworn statement of defence without calling any witnesses.
3. PW1 - **Annah Muthoni Muchiri** is a former wife of the accused. It was her evidence that on 30<sup>th</sup> January, 2021 at 8.30pm she met the accused near the kitchen as she washed her legs. That the accused was holding a knife. She screamed and went back to the house and reported to her mother (the deceased). The accused took off. Her brother

came with his friend asking what was going on. Shortly thereafter the accused returned and stabbed her brother Karanja (PW2) on the hand, rib areas and mouth. His friend Mbuthia was stabbed twice.

4. Their mother (the deceased) followed the accused who stabbed her and she fell down and bled from the chest and she never woke up. PW1 went outside and screamed. PW2 and Mbuthia were taken to hospital. PW1 explained the problems she had had with the accused due to heavy alcoholic drinking. That the knife the accused had used to assault these people broke and the police took it. She stated that there was electricity at the home.
5. PW2 - **Reuben Karanja Muchiri** told the court that on 30<sup>th</sup> January, 2021 at 10pm he was with Mbuthia and when they arrived home he heard his mother (the deceased) screaming. PW1 informed them that the accused was threatening the mother. As he went to relief himself he found the accused at the kitchen door. The accused stabbed him four (4) times and he fell on the ground and collapsed. Mbuthia was stabbed on the mouth. He explained that the accused first stabbed the deceased before turning on him.
6. When recalled he said he did not witness the deceased being stabbed, but he saw the accused being beaten the deceased and PW1.
7. PW3 - **Muchiri Francis Kithinji**, testified that on 30<sup>th</sup> January, 2021 he was at his place in Mau Summit when he

was notified by Abraham Wainaina by phone that his mother had been killed by the accused. He later met Abraham and they went to his mother's place. They found her lying down in the kitchen. There was blood on the floor and a broken kitchen knife outside the kitchen door. He said the deceased used to stay with PW1 and PW2 and he used to visit them. He was told by PW1 what happened. He confirmed that the relationship between the accused and deceased was bad. Further that the accused and PW1 had separated for about a year.

8. In cross examination he said there was no electricity at their home. He had seen a knife with blood near the kitchen. He stated that the accused was his brother in-law and he loved drinking alcohol.
9. PW4 - **Dr. George Biketi** a doctor at Naivasha sub-county hospital conducted the post mortem on the deceased's body. He observed the body and found it to have bruises on the left side of the head, defence wounds on both wrists, a big stab wound on the chest, broken 2<sup>nd</sup> rib on the left side, plus a cut wound on the forehead. He found the cause of death to be excessive bleeding in the chest and heart. He produced the signed post mortem form as Exb 1.
10. PW5 - **Monica Wangechi Chege** a neighbor to the deceased testified that on 30<sup>th</sup> January, 2021 at 8.00pm she heard screams from the deceased's home. She headed there and met with George Mbutia another neighbor and they

went there together. They found the deceased with PW1 and PW2. She told them she was screaming because the accused had come threatening to stab PW1. The accused was not there. She advised her to report the matter to the chief the next day. She went back to her home. After a short while she again heard screams from the deceased's home. She came out and screamed twice. She left and met other people at her gate.

11. Before reaching the deceased's gate she met PW1 who told her the mother had been killed. She found the deceased lying down in the kitchen. She also met Ngotho a neighbor and PW2 who had 4 stab wounds.

12. In cross examination she said she never saw the accused that night. She did not also see any weapon as she did not enter the house.

13. PW6 - **No. 112846 P. C Peterson Ondieki** was the investigating officer. He testified that on 30<sup>th</sup> January, 2021 around 2100 hrs he was called by Mr. Hassan the DCIO, who informed him of a murder case at Elburgon location. He accompanied the deputy DCIO (I.P Tobias Otieno) to the scene and they were received by C. I John Were the O.C.S Elburgon police station. They met there a crowd plus police officers, and the deceased's body was near the door of a small house. They used their flashlights to examine the deceased's body. Her clothes and the floor were full of blood. He saw a stab wound on the upper chest of the deceased.

14. PW6 stated that the small house was a single room with things scattered all over. They checked the house but were not able to recover the murder weapon. They came to learn that the suspect was the accused who was a son-in-law to the deceased. He also learnt that PW2 and George Mbutia who had tried to intervene had been injured by the accused. Before leaving, the in-charge Kapsita police post called and informed them of the arrest of the suspect who had been pursued by angry villagers. He was bleeding from the head and face, and had injuries on the legs, foot etc. He was taken to Elburgon sub-county hospital. PW2 and another were also taken to hospital. He took photos of the scene.
15. In cross examination he said there was no electricity at the scene. He said P3 forms were filled for PW2 and another. He admitted that PW2 had mental challenges. That traditional lanterns were being used that night in the home.
16. PW7 - **No. 235224 Simon Kamore Wahome ASP** is the in-charge Crime Scene Investigations Nairobi. On 4<sup>th</sup> April, 2022 while at Crime Scene Investigations Nakuru he was requested by P. C Ondieki to process six (6) photos he had put in a CD. He did that and attached a certificate reference DCI/NKR/CSI/B/21 dated 4<sup>th</sup> April, 2022 which he stamped and signed. He produced the photos as Exb 2a - e, the certificate Exb 3, Exhibit Memo - Exb 4 and CD Exb 5.
17. In cross examination he said he was not able to identify the person in the photo Exb 2e.

18. In his unsworn statement of defence the accused stated that on 30<sup>th</sup> January, 2021 morning he went to work and after work he went home where he arrived at 7pm. After doing his things he went to sleep, and heard a knock at his door. He asked who it was and a familiar voice responded. Before he opened, the person asked if he had a cigarette as he was thirsty and the kiosks were closed. He took a cigarette and matchbox and then opened the door. On opening the door, he found Simon plus a group of people unknown to him. They beat him until he lost consciousness, and later found himself at Elburgon Hospital. He was later handcuffed by a police officer.
19. Referring to PW1's evidence he asked why she never screamed if at all she saw all that she told the court. He wondered how PW1 knew he was drunk though not so much. He asked why PW1 threw away the knife. In respect of PW3 he said the witness claimed to have disposed of the blood-stained knife. He denied killing the deceased.
20. Mr. Kihara SC for the prosecution relied on their earlier submissions on case to answer dated 25<sup>th</sup> February, 2025 and filed by M/s Emma Okok. It was counsel's submission that the evidence against the accused is direct evidence and the accused was placed at the scene by PW1 and PW2. That he was well known to the witnesses, and PW1 saw him stabbing the deceased.

21. On whether the accused had malice aforethought counsel referred to section 206 of the penal code which 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.*

22. It is his submission that the accused had an intention of killing or causing grievous harm to the deceased. He argues that the accused arrived at the deceased's homestead while armed with a knife and stabbed PW2 and another before stabbing the deceased.

**23.** The submissions by the defence were filed by Ooga & Co. advocates and are dated 17<sup>th</sup> November, 2025. Counsel

highlighted on the burden of proof in criminal cases as he referred to section 107 of the Evidence Act and the cases of **Stephen Nguli Mulili V Republic [2014] eKLR; Bakare V State [1987] I NWLR (T 52) 579; Ramanlal Trambaklal Bhatt V Republic [1957] E.A 332; Elizabeth Waithiegeni Gatimu V Republic [2018] eKLR.**

24. Counsel further gave a summary of the prosecution case. He referred to the case of **Joan Chebichii Sawe V Republic [2003] eKLR** where the Court of Appeal stated:

*“Before a court of law can convict a person/accused upon circumstantial evidence, such evidence must be where the inference of guilt, the inculpatory facts are incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. That such evidence must be so mathematically accurate as a basis of conviction in exclusion of any other co-existing circumstances weakening the chain of circumstances relied on by the prosecution. These principles articulate the position in law that the question as to the cause of death may either be answered by way of medical or circumstantial evidence”.*

25. He thus submitted that the prosecution witnesses were inconsistent in their testimonies, pointing to gaps in the prosecution case which was displaced by the accused’s solid defence. Counsel pointed out the inconsistency on the issue

of electricity on the compound/homestead. That PW1 and PW2 said there was electricity while PW3 and the investigating officer (PW6) said there was no electricity. He thus submitted that PW1 and PW2 who were key witnesses lied under oath thereby denting their credibility.

26. Referring to identification counsel cited the case of **Sango Mohamed Sango & another V Republic [2015] KECA 1978 KLP** where it was stated:

*“The necessity of close scrutiny of evidence where a conviction is based solely on identification, particularly under difficult or unfavourable conditions, cannot be gainsaid. This court has stated time and again that even honest witnesses tend to make genuine mistakes when it comes to identification of close relatives and friends. (see **Wamunga V Republic [1989] KLR 42**). It is on that basis and to mitigate the risk of unsafe convictions that close evaluation of identification evidence is insisted upon, including the need for the trial court to warn itself of the danger inherent in such evidence”.*

He thus contended that the evidence led does not show the nature of light or illumination used to identify the accused. He further submitted that the accused was not placed at the scene.

27. Additionally, he submitted that if there are witnesses that were injured by the accused and subsequently treated as

alleged by the prosecution there were no medical records to prove the claims.

28. On malice aforethought he referred to section 206 of the penal code and the cases of **Republic V Tubera s/o Ochen [1945] 12 EACA 63**, **George Ngotho Mutiso V Republic [2010] eKLR**, **Karani & 3 others V Republic [1991] KLR 622** among others. He pointed out that the murder weapon said to have been a knife was never produced in court as an exhibit.

29. Finally, counsel submitted that the prosecution has failed to prove its case beyond reasonable doubt. Reference was made to the case of **Sekitoleko V Uganda [1976] E. A 53** where it was stated:

*“As a general rule of law, the burden of the prosecution of proving the guilt of a prisoner beyond reasonable doubt never shifts whether the defence set up is an alibi or something else”.*

He urged the court to acquit the accused.

### **Analysis and determination**

30. I have carefully considered the evidence on record, submissions by both counsel and the law. The main issue for determination is whether the charge of murder has been proved against the accused person. Section 203 of the penal code defines the offence of murder as follows:

*“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”*

Further section 204 of the Penal Code provides for the punishment of the said offence as follows:

*“Any person convicted of murder shall be sentenced to death”.*

31. For a charge of murder to be proved the following ingredients ought to be established.

- (i) Death and cause of death of the victim
- (ii) That the death was caused by the accused’s unlawful act (actus reus)
- (iii) That the accused had the intention to kill (malice aforethought mens rea)

(see **Republic V Gedion Wambua Koko & 2 others [2019] eKLR**)

**32.** The burden of proof in criminal cases rests on the prosecution and the proof must be beyond reasonable doubt. See **Ramanlal Trambaklal Bhatt** (supra) & **Elizabeth Waithiegeni Gatimu** (supra).

33. I now wish to consider each ingredient alongside the evidence adduced.

**The fact of death and its cause**

34. There is no dispute about the fact of death. PW1, PW2, PW3, PW5, PW6 all confirmed to having seen the deceased's body. PW4, Dr. George Biketi who conducted the post mortem found the cause of death to be excessive bleeding in the chest and heart. Together with the injuries he detected as per the post mortem (EXB 1) it is very clear that the injuries were not natural ones. So, death and its cause were proved.

**Whether the death was caused by the accused's unlawful act**

35. From the evidence by PW1, PW2, PW3, PW5 and PW6 it is clear that the incident took place at night, around 8.30pm. The investigating officer (PW6) who visited the scene that night with the deputy DCIO, and even the OCS Elburgon police station who received them stated this:

*"We used our flashlights to examine the body"*

For this to be done, meant there was no light or sufficient light at the scene.

36. PW1 and PW2 in their evidence said there was electricity at their home. PW3 who is a brother to PW1 and PW2 denied there being electricity in the home. For sure PW6 and the other officers could not have used flashlights to examine the body if there was electricity in the home and in particular in the house where the body was lying. I therefore find on this point that PW1 and PW2 lied to the court. Besides lying

about the presence of electricity at their home they never said how else they were able to see what was happening.

37. The next issue then, is how PW1 and PW2 were able to identify the attacker that night. The evidence on record shows that PW1 was the accused's former wife and so PW2 was the accused's brother in-law. In the case of **Cleopas Otieno Wamunga V Republic Criminal Appeal No. 20 of 1989 (Kisumu)** (unreported) the Court of Appeal said:

***“Whenever the case against a defendant depends wholly or to a great extent on the correctness of one or more identifications of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance of the correctness of the identification”.***

38. Further in **Republic V Turnbull [1956] 3 All ER 549 at page 552 Lord Widgery** then CJ stated thus:

*recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made”*

Also see **Sango Mohammed Sango** (supra), and **Wamunga V Republic [1989] KLR 424**

39. None of these witnesses mentioned any form of light that was available for proper identification of the accused. It is

true that accused and PW1 had been husband and wife before the occurrence of this incident. That alone does not satisfy the need for the witnesses to state the circumstances under which any identification was done.

40. In his evidence PW2 at one point said the deceased was stabbed before he was stabbed. At another point he said upon being stabbed he fell down and collapsed and did not witness the deceased being stabbed. So, which is which? And in any event, this was all done in darkness. I however, noted that PW2 seemed to have a mental health challenge as his evidence was not well coordinated. I even noted this in the proceedings. One, George Mbutia who was PW2's friend and was with him on the material night did not testify and the investigating officer (PW6) told the court that Mbutia would take off when police went to bond him. It is only Mbutia knows why he was not willing to testify yet he was said to have been at the scene.

41. The accused in his defence denied coming to the deceased's home on the material night. He said he was attacked by a group of people while at his house. It may be true or not true but bottom line, it was the duty of the prosecution to place the accused at the scene.

42. PW1 made mention of the murder weapon being a knife that got broken and which was taken by the police. PW3 also made mention of a blood-stained knife without a handle which he had seen near the kitchen door. The investigating

officer (PW6) never made mention of the recovery of any knife, or murder weapon and none was presented to the court.

43. The above being the position I find that proper investigations were not conducted in this case. There were a lot of assumptions made. The accused may or may not be the culprit. It was the duty of the prosecution to place the accused at the scene but that has not been done. That being the position, I will not move to the next stage of proving malice aforethought.

44. The upshot is that the charge of murder against the accused has not been proved to the required standard. The end result is the acquittal of the accused under section 322(1) of the Criminal Procedure Code which I hereby do. The accused shall be set free unless otherwise lawfully held under a separate warrant.

45. Orders accordingly

**Delivered, dated and signed this 18day of December, 2025 in open court at Nakuru**

**H. I. ONG'UDI  
JUDGE**