



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Bogomba (Criminal Case E043 of 2021)  
[2025] KEHC 19080 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19080 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E043 OF 2021  
HI ONG'UDI, J  
DECEMBER 19, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MICAH NYABERI BOGOMBA ..... ACCUSED**

**JUDGMENT**

1. Micah Nyaberi Bogomba hereinafter referred to as the accused stands charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars being that the accused on the 27<sup>th</sup> August, 2021 at Workers area in Nakuru North sub-county within Nakuru county murdered Bonface Njangi Maina.
2. He denied the charge and the matter proceeded to full hearing with the prosecution calling a total of seven (7) witnesses. The accused gave a sworn statement of defence without calling any witness.
3. The 1<sup>st</sup> witness Harriet Mora Musuba (PW1) testified that on 26<sup>th</sup> August, 2021 she was at home with her boyfriend who is the accused. She said the accused left her at home for work. He came home and left again and returned with his friend Dickens. Later they left escorting Daniel. They later went out drinking alcohol with friends (Diana, Felisa, Dickens). They took a lot of the stuff. She left the accused and Dickens in the latter's house. She did not have the key to her house so she slept in her son's house, as she took tobacco/drugs. The accused later came and took her to the main house. She did not know what time the accused came. The police came on 27<sup>th</sup> August, 2021 at 3am. They conducted a search and she was shown a handle without scissors. As they left they found the body of Bonface (deceased) at the gate. The accused denied knowing the deceased. While in the police vehicle she saw shoes which the police said were found on their compound.



4. They were taken to the cells at the station. It was there she saw blood stains on the accused's trouser and jumper. She recorded two statements. She stated that the accused and deceased had fought severally. It was her evidence that the deceased was not in their company as they took alcohol.
5. In cross examination she said she had known the deceased for eight (8) years and the accused for over a year. She denied witnessing the accused attack the deceased. They lived on the same compound with a young man called Kamau but she did not see him that day/night.
6. PW2 Lucy Wanjiru Maina stated that she stayed at Teachers estate and is the mother to the deceased. She learnt of her son's injuries on 27<sup>th</sup> August, 2021 at 5am through Mama Nduku alias Florence Wanjiku. She took a motor bike and went near Nakuru Workers Primary school and confirmed the death of her son. He never told her of any one who may have threatened his life. She later went with the police to the scene on the road and found his phone which was still on in the next plot. The said plot was an abandoned one. She never saw any injury or blood stains on the body. She confirmed that he deceased used to take alcohol.
7. PW3 Peter Maina Njagi is the deceased's father. He last saw the deceased alive on 25<sup>th</sup> August 2021 when they had supper together. He never came home on 26<sup>th</sup> August, 2021. The next day he left for work just to be informed of the son's death by PW2 around 8am. He came home and joined the wife and other son who told him the deceased's phone was ringing. They went to the scene and traced the phone in some long grass. There were some blood stains on the grass where the phone was found and which was around 5 meters from where the body was. The post mortem was later done.
8. PW4 James Kamau Wamboi, stays at Mwariki and does watch business. He testified that on 27<sup>th</sup> August, 2021 at 2.00am he was asleep when his friend Boniface (deceased) came knocking and asked if PW4 had seen his neighbor. Suddenly his neighbor Harriet (PW1) opened the door. He confirmed that PW1 stayed with the accused. The deceased then left saying he was going where PW1 and accused stayed. The witness heard some noise from the house but watched from the window. They went outside and there was silence.
9. He said the deceased was hit on the face by the accused and he fell down. The accused pulled him outside the gate which was very near. The accused then went back to the house. After a while he went to check and the deceased was not well. There was mulika mwizi light which enabled him to see. He walked to the police station and reported. The house where the accused lived belonged to PW1. The deceased, accused and PW1 were friends, and had gone to some ceremony together. He said he heard the accused tell the deceased "I can kill you". He never heard PW1 talk. He had known the accused for long and identified him in court.
10. The witness came with the police at 5am and the accused was in the house. The gate had been closed so they jumped over it. The police recovered the scissors used to injure the deceased. They carried away the body.
11. In cross examination he said he had known the deceased for 3 years and they were friends. He did not know where he stayed. He explained that at the time of the accident he stayed in the next house and on the same plot which had 3 houses. The other house was vacant. When the deceased came he told him he had been with the accused and PW1 but they had separated. He said he saw the deceased being hit on the wall, and was pulled out. When he arrived home at 8.30pm there was nobody on the plot.
12. PW5 No. 85658 P. C. George Karani of DCIO Nakuru North is an investigator. He said on 27<sup>th</sup> August, 2021 at 5am PW4 made a report of a murder of the deceased. The report was that the accused had beaten the deceased in PW1's house. A report was made to the DCI the same morning. PW5 and



- another officer were assigned the case. They went to the scene at Mawanga area. The plot had four (4) houses. They found the deceased's body outside the plot. The Scenes of Crime officer was there. The body had blood, bruises on the forehead and a stab wound on the back.
13. They entered the plot and found a basin, duster and water outside the house. They also found a black phone (Exb 1) belonging to the deceased on the compound. PW4 identified the accused to them as the murderer. The house had blood drops while some had been wiped. There were also blood stains outside the house and on the wall. Swabs were taken. The accused and PW1 who appeared drunk were arrested. They only recovered the scissors handle (Exb 2). It was his evidence that the deceased who was drunk went and slept in PW1's house and the accused was not amused hence the fight. He produced the Black phone (Exb 1) and the scissor handle (Exb 2). He also stated that while at the police station they noted that the accused's clothes had blood stains. They were taken to the government chemist for examination.
  14. In cross examination he said they found the gate to the compound open. The phone (Exb 1) was found 10m from the scene. The accused was not arrested in PW1's house. The other friends who had been drinking with the accused, deceased and PW1 disappeared after the incident. That when the officers came to the compound PW1 was sleeping in the unfinished structure.
  15. PW6 – Dr. Titus Ngulungu the pathologist conducted the post- mortem on the deceased's body. The deceased had a stab wound on back of chest, right back of shoulder and buttocks (right). When the chest was opened it was found to have 2 liters of blood etc. He found the cause of death to be mass blood loss due to the chest injury. The blood samples were taken for DNA test, fingernails and eye fluid for further tests. He produced the post mortem report as Exb 3.
  16. PW7 – Polycarp Lutta Kweyu is a Government Analyst based at the Kisumu Government Chemist. He stated that on 30<sup>th</sup> September, 2021 he received from P. C. Kennedy Mwachi of DCI Nakuru North the following items: Blood sample of the accused Loose sand from the wall of accused's house. A white long-sleeved hooded trench coat. Blue rugged long pair of jeans trousers Blood sample of Bonface Maina Njanjgi (deceased) Eye fluid from the deceased Nail clippings from the deceased  
He was to do a DNA analysis from these items to identify the presence and origin of biological evidential material.
  17. His findings were that the stains on the sand: Matched the DNA profile of the accused Micah Nyaberi Bogomba The DNA profile generated from the blood stains from the jumper (Exb 4) and trouser (Exb 5) were identical and were mixed DNA profiles of Bonface Maina (deceased) and an unknown female The Y-filer (male) DNA profiles generated from the jumper and trouser were identical and matched the DNA profile of the deceased.  
He prepared his report dated 18<sup>th</sup> April, 2024 (EXB 6a).
  18. PW5 No. 85658 P. C George Karani when recalled produced the following items as exhibits. Blue jeans trouser Exb 5 White jumper – Exb 4 Sand Exb 7 Exhibit Memo Exb 6b
  19. In cross examination he said the accused's blood samples were taken by the pathologist Dr. Titus Ngulungu, on 30<sup>th</sup> August, 2021. Exb 4 belonged to PW1 while Exb 5 belonged to the accused. At the time of arrest Exb 4 & 5 were worn by the accused. He admitted to not having done any inventory. He further said the house he collected the sand from belonged to PW1 but he never treated him as a suspect.
  20. The accused in his sworn defence said the deceased had been his friend for give (5) years. He denied killing him. He stated that on 26<sup>th</sup> August, 2021 he came to town arriving at 8.00am. at 2pm there were



no lights so he decided to go home in Mawanga which he did. He met PW1 his girlfriend who was with her friend Damaris. They were together upto 7pm and escorted her after supper, upto the stage. They went to the house where he lived with PW1. They were later joined by Diana. Felix invited them for a drink and they left for Dicken's place where they were joined by Dicken's children. Dickens, Felix and PW1 went to get alcohol which they took. By 11pm PW1, Felix and Diana were drunk and they left for his house. He left after an hour being escorted by Dickens.

21. Reaching his house, he did not find PW1 but heard her phone ringing in an occupied house. He went and found her and brought her to their house and they then slept. The next day at 7.00am, he heard a knock on their door. On opening he found five (5) police officers. They told him of a deceased person at the gate. PW1 was woken up and they all went to the gate. He identified the dead person as Bonface Maina (deceased). The body was placed in a vehicle and they went to the police station to record statements. They were then arrested. He said him, PW1, and workers lived alone on the premises. He denied wearing the jeans & jumper (Exb 4 & 5), but said the hood jumper belonged to PW1
22. In cross examination he denied knowing PW4. He only used to see him on the matatu. He admitted being visited quite often by the deceased. He dismissed all that PW4 had told the court about him. He denied knowledge of the jumper (Exb 4) and Jeans trouser (Exb 5). He said he was framed in this case. He denied seeing any scissors that night, nor any stab wound on the deceased though he admitted seeing him bleeding. He also denied signing anywhere that the clothes were his.
23. He admitted that there was blood on the wall in his house but added that, it was his. He had been injured at one point. He further agreed that him and the deceased had disagreed one time during their drunken moments.
24. In re examination he said upon arrest he was wearing a black jacket and black trouser. That he never signed for the jeans and jacket and PW4 did not live on the same plot with him and PW1.
25. After the close of the prosecution case both counsel filed written submissions.

### **Prosecution's submissions**

26. These were filed by Mr. James Kihara Prosecution counsel and are dated 23<sup>rd</sup> November, 2025. The earlier submissions on case to answer were filed by M/s Emma Okok Principal prosecution counsel and are dated 25<sup>th</sup> February, 2025. It is the submission by counsel that the witnesses proved the occurrence of the death and its cause in respect of the deceased. Counsel Okok further submitted that the accused was placed at the scene of crime by PW4 who said he saw the accused hitting the deceased on the face. Thereafter the deceased fell down and the accused dragged his body outside the gate. She contended that the accused was well known to PW4 and there was therefore no danger of mistaken identity.
27. Counsel additionally submitted that the accused was arrested while wearing blood stained clothes. That this was well explained by PW5 the investigating officer, resonating it with the DNA results. She therefore submitted that it was the accused's unlawful act of assault that caused the deceased's death.
28. On whether the accused had malice aforethought she submitted that what the accused did to the deceased clearly showed he had a bad intention and he knew there was no chance of him surviving.
29. In his submissions Mr. Kihara addressed the accused's defence in chief and cross examination. He submitted that the accused said he only knew PW4 physically as he worked with a matatu. Further that he had not seen the deceased for six (6) months. Counsel wondered why a member of the public would call the police and direct them to the accused's house for no reason. He said the accused's defence was a mere denial.



### Accused's submissions

30. These were filed by Mr. Ooga advocate and they are dated 17<sup>th</sup> November, 2025. Counsel reiterated that the burden of proof in this case lay on the prosecution. He referred to the cases of: Stephen Nguli Mulili V Republic 2014 eKLR; Miller V Ministry of Pensions [1947] 2 All E. R 372 among others. He further referred to Article 50(2)(a) of *the Constitution* of Kenya and section 107 (1) of the *Evidence Act*.
31. He too submitted that the deceased's death and cause of death were not disputed. Counsel outlined a list of what he referred to as inconsistencies in the evidence of the prosecution witnesses. There are:
- i. Was the deceased in the company of PW1, accused and other friends? PW1 says not. PW4 says that the deceased left with PW1.
  - ii. Where was the deceased's phone (Exhibit 1) recovered from?
  - iii. Was the gate locked or unlocked?. How did the reportee, PW4 and police officers access the compound? PW 4 says that gate was locked and they jumped through the wall while the police officer says the gate was open and they walked in.
  - iv. Where was the accused arrested from? PW4 says that he was inside the house (Harriet's house-crime scene) while the investigator says he was outside the gate.
  - v. Where was PW1 arrested from? PW1 says she was woken up from the main house while the investigator says she was found in an unfinished house and/structure.
  - vi. How many houses are in the compound?
  - vii. No inventory was made to show recoveries made, if any from the accused or the house of PW1.
  - viii. PW1 better placed to have identified the recovered items did not identify them in court. One of the alleged recovered clothes belonged to her and the other alleged to have been worn by the accused. This critical aspect was skipped by the prosecution, bearing in mind that no inventory was made at the time of recovery.
  - ix. The deceased is the one who fell on the wall (according to PW4) why was the DNA from the blood from the sand on the wall not a match to his?

Counsel wondered why PW1 was not treated as a suspect yet he was at the centre of all the happenings leading to the death of the deceased. Secondly, that the prosecution failed to call the witnesses/friends who were alleged to have been in the company of the accused, deceased and PW1. He cited the case of *Bukenya & others V Uganda* [1972] E.A 547 in support.

32. On the issue of malice aforethought he referred to section 206 of the Penal Code. It was his contention that its again the prosecution's duty to establish facts that are consistent with existence of malice aforethought on the accused's part. Reliance was placed on the case of *Republic V Tubere s/o Ochen* [1945] 12 EACA 63 where the court listed the following elements as what needs to be established to determine malice aforethought:
- a. The intention to kill.
  - b. The intent to do/cause grievous harm.
  - c. 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.

- d. An intention to commit a felony.
- e. 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.

Other cases referred to are: *George Ngotho Mutiso V Republic* [2010] eKLR; *Republic V Ernest Asami Burere Abanga alias Onyango V Republic* Criminal Appeal No. 32 of 1990; *Karani & 3 others V Republic* [2991] KLR 622.

33. Counsel argued that the alleged murder weapon was not recovered for the court to make conclusive findings on its nature and any physical harm inflicted. He contended that Exb 2 was a scissor's handle and not a pair of scissors as the mentioned weapon. The remaining evidence was that of PW4 which he said was not credible. He further submitted that the accused's candid defence displaced the evidence against him. He finally urged the court to acquit the accused as the prosecution had failed to prove its case against him.

### **Analysis and determination**

34. Upon due consideration of the evidence on record, the submissions by both counsel, case law and the law I find the main issue for determination to be whether the charge of murder has been proved against the accused. This being a criminal case, the burden of proof lies on the prosecution. The proof must be beyond reasonable doubt.

35. In the case of *Mbugua Kariuki V Republic* [1976-80} I KLR 1085 the court emphasized thus:

“That the burden of proof remains on the state throughout to establish the case against the accused beyond reasonable doubt. Where the defence raises an issue such as provocation, alibi, self defence, the burden of proof does not shift to the accused, instead the prosecution must negate that defence beyond reasonable doubt and accused assumes no onus in respect of any such defence”

36. Article 50(2)(a) of *the Constitution* of Kenya 2010 provides as follows:

“To be presumed innocent until the contrary is proved”

37. It shows that an accused person is presumed innocent until proved guilty, whether its by way of direct or circumstantial evidence.

38. Section 203 of the penal code under which the accused is charged provides thus:

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

To prove the charge of murder, the following ingredients must be established:

The fact and cause of death That the unlawful act causing the death was by the accused (actus reus) The unlawful act was intentional/malice aforethought (mens rea)

See the cases of:

- i. *Anthony Ndegwas Ngari Vs Republic* [2014] eKLR
- ii. *Dickson Mwangi Munene V Republic* [2014] KLR



### **Fact and cause of death**

39. The fact of death is not disputed. PW1, PW2, PW3, PW4, PW5 and PW6 confirmed seeing the deceased's body on 27<sup>th</sup> August, 2022. Dr. Ngulungu (PW6) said the deceased had several injuries with a stab wound on the back of the chest. He thus found the cause of death to be mass blood loss due to the chest injury (Exb 3).

### **The unlawful act that caused the death and who committed the unlawful act**

40. What caused the death was the stab wound to the chest which caused heavy bleeding as a result of which the deceased died. The stabbing was therefore an unlawful act. So, who committed this unlawful act? From the evidence adduced by the lady Harriet (PW1) and Kamau (PW4) they lived on the same compound but in different houses. This is confirmed by the evidence of PW1, PW4 and PW5.
41. This is what PW1 said in cross-examination line 7-10 at page 9 of the typed proceedings:
- “I was the only tenant since power and water had been disconnected. There was another young man who stayed within the same compound. He was called Kamau. I didn't see Kamau on that day/night”.
42. This statement by PW1 reveals a lot. First, she lies that she was the only tenant on that compound because power and water had been disconnected. Then she next admits that Kamau stayed on the same compound. In her earlier evidence in chief she explained how she had taken so much alcohol to the extent that she was so drunk and left the accused behind as she went to her house. Reaching there she realized she did not have the key to the house so she went and slept in her son's house. While in her son's house she took tobacco/drugs. The accused later came and woke her and took her to the main house. She slept and he left and she did not know what time he came back.
43. I am giving this native to show the state of mind of PW1 who was in this house on the material night. When she says she never saw Kamau (PW4) that night no one can believe her, because of the drunken state she was in.
44. In his evidence PW4 gave a deep narrative of what he witnessed that night. With the help of mulika mwizi light he saw all that the accused did to the deceased. He had seen the deceased go to PW1's house where the accused lived. He saw accused hit the deceased and drag him outside the gate and leave him there. PW4 later went to check on the deceased and when he saw his condition, he walked to the police post to report. He came back with the police at about 5am.
45. PW5 P. C. George Karani (investigating officer) confirmed that it is PW4 who reported the incident, and also showed them the accused who was in the house as the culprit.
46. It was PW1's evidence that while at the police station she noticed that the clothes the accused wore including the jumper had blood stains. PW5 confirmed this and said the clothes were taken to the government chemist for examination.
47. PW7 Polycarp Lutta Kweyu of the Government Chemist found the DNA profile generated from the blood stains on the accused's jumper and trouser to be identical to the DNA profiles of the deceased and an unknown female. Secondly the Y-filer (male) DNA profiles generated from the jumper (Exb 4) trouser (Exb 5) were identical and matched the DNA profile of the deceased as per the evidence of PW7 and the report (Exb 6a)



48. In his defence the accused explained how they had gone drinking on the material night. He pleaded innocence to this incident. He claimed not to have seen the deceased for about eight (8) months while PW1 said she had not seen him for three (3) months. He even denied having been wearing the jumper and trouser (Exb 4 & 5). He added that the hood jumper belonged to PW1. It may have belonged to PW1 but who was wearing it on the material night and at the time of arrest? It is the accused.
49. From PW1's evidence the jumper was part of the accused's clothes and it had blood stains. There is therefore no way the accused will jump out of it.
50. In this analysis the evidence of PW1, PW4, PW5 and PW7 directly connects Exb 4, 5 and 6a to none other than the accused. PW4 had no reason at all to lie against the accused. He explained with such precision what he had witnessed and took his time to go and report the matter to the police without wasting any minute. The police found the accused and PW1 in their house and still in their drunken state. His defence was a mere denial and has not dislodged the evidence by the prosecution, which was direct and not circumstantial evidence.
51. As I arrive on this finding I have considered the decisions in:
- i. Cleopas Otieno Wamunga V Republic Criminal Appeal no. 20 of 1989 (Kisumu) (unreported) Court of Appeal.
  - ii. Republic V Turnibull [1956] 3 ALL E. R 549.
52. I am satisfied that the evidence before this court is direct evidence and not circumstantial. My finding is therefore that the accused is the one who inflicted the injuries that resulted in the death of the accused, and this was in the watchful eye of PW1 who was instead made a prosecution witness.

**Whether the unlawful act of the accused was intentional/ malice aforethought (mens rea).**

53. Malice aforethought is concerned with the state of mind of an accused person in the commission of an offence. Section 206 of the Penal Code sets out the circumstances under which malice aforethought may be proved. It provides as follows:

Section 206 of the of the penal code 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;



54. From the postmortem report (Exb 3) the cause of death was:

“Massive blood loss due to single stab wound (sharp trauma) to the chest sharp blade.

What was produced as Exb 2 was a red broken scissors handle. It is obvious that the real murder weapon was not recovered. Exb 2 could not have caused the sharp single stab wound that caused the fatal injury. The scissors to which the handle belonged must have been the murder weapon but unfortunately it was not recovered. PW1 and accused know where they took the pair of scissors.

55. The single stab was directed at the chest leading to massive blood loss. That cannot be said to have been an error. The intention is shown to have been very clear and there can be no guess work about that. The accused is clearly shown to have had an ill intention while attacking the deceased for reasons best known to him.

56. The upshot is that the prosecution has proved the charge of murder against the accused who I hereby find guilty and convict as charged for the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

57. Orders accordingly

**DELIVERED, DATED AND SIGNED THIS 19<sup>TH</sup> DECEMBER, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG’UDI**

**JUDGE**

