



REPUBLIC OF KENYA



**Republic v Selebu (Criminal Case E016 of 2022)
[2026] KEHC 535 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 535 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E016 OF 2022
SM MOHOCHI, J
JANUARY 26, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

VINCENT LEDAMA SELEBU ACCUSED

JUDGMENT

1. Vincent Ledama Selebu is accused of murdering his son in a house they both resided in.
2. The accused was charged with the offence of murder contrary to Section 203 as read with 204 of the Penal Code. The particulars of the offence are that on the 2nd day of March, 2022 at Sarambee Village in Rongai Sub-County within Nakuru County murdered Dominic Kibet Selembu.
3. The accused was arraigned on the 21st of March 2022 and on the 22nd March 2022 answered to the charge to which he pleaded “Nakataa Sio Ukweli” (I refuse. It is not true) plea of “not guilty” was entered. The matter then proceeded for hearing with the Prosecution availing Nine (9) witnesses in support of its case.

Prosecution’s Case

4. PW1 Nancy Selemu testified that, the deceased Dominic Kibet Selemu was the son to her husband’s brother; deceased referred to her as aunty. Accused is brother to her husband.
5. That on 2nd March, 2022 she was at home going to bed before alarm was raised screaming constraining her to go out and asked her kids if they heard alarm and she went back to sleep, the accused arrived at 9.10p.m. and asked to be opened for and there was delay but when they opened the accused came and said “nime ua Domi” meaning deceased.



6. That the accused was carrying a torch, panga and rungu, he said that, we call Simon my husband to take him to the police as he had murdered the deceased and asked Rose Chellagat to help her call her husband then we sleep. That the panga was bloodied which she identified as MFI 1.
7. Within few hours they heard motor bike sound and went to the compound where deceased was still alive laid on the ground and with injuries on the neck and it was in the accused compound.
8. The vehicle never arrived as the deceased succumbed to his injury and they stopped the vehicle from coming. That the deceased could not talk all this time. Police were summoned.
9. She admitted in cross-examination to have known accused very well since she was married to the family and that the accused and deceased are all heavy drinkers of alcohol.
10. That when she heard alarm it was from the accused compound and that, the accused came told her he had killed the deceased then went back to his house.
11. That the deceased had been laid down while bleeding heavily. It was in darkness but she saw injuries on the neck. They could not offer any health assistance. The deceased never spoke about the incident. The accused was drunk on the material day.
12. PW2 Simon Lelei Selemu brother to the accused testified how on 2nd March, 2022 at 9. 45p.m he was in his boma within the same vicinity he got call from his daughter Rose asking that he should go there. He asked them to fasten their doors from inside. he did not hear clearly. He called back later and was told the incident was at his brother's place (accused).
13. He went to his brother's compound and saw a flash light and went inside. He found accused seated outside on a stool and asked him what was the issue, the accused asked him to go in the house and see for himself. Inside the house he found deceased on the floor bleeding.
14. The witness was using the torch on his phone and saw bleeding from the head on the forehead and deceased was alive but unconscious. He tried to arrange for means to take him to hospital, called family members. He called someone with a vehicle and removed deceased outside and cleaned him before the vehicle arrived.
15. The deceased succumbed to his injuries while they were cleaning him up. Accused was still seated there all along and he had rungu and panga. They reached the assistant chief who called the police.
16. Witness identifies the panga in cross examination the witness admitted that the deceased was his nephew and accused his brother. That the Deceased was a silent person when sober and when inebriated he would insult people. Accused was also alcohol taker. He went to the accused and found him seated, he was calm, he spoke to him he had taken alcohol early. Deceased never spoke.
17. Accused said that, the deceased had gone to his house up to where he sleeps and he (accused) took the panga and cut the intruder. That when deceased came they had conversation with accused. He never saw or knew the reason for a fight between accused and deceased. The deceased and accused have had arguments relating to inebriation. In the accused compound he was using torch and there was no light in the house.
18. PW3 Daniel Kipkurui Selemu brother to the deceased and resident of Saramei within Rongai, testified how on 2nd March, 2022 he was at junction trading centre and he received call from Rose asking him to go back home.
19. It was at 10p.m he found deceased who he saw at a distance, he was down bleeding or with bloodied cloths. Police came to the scene and accused was all along seated.



20. PW4: Rose Chelagat Selembu, testified how on 2nd March, 2022 at 9.00p.m. her uncle Vincent Ledama (the accused) came to her home and called her mother who switched on the light and went out she accompanied her. They saw it was the accused, he had a panga and torch and told them that, he killed his son, asked they call his brother, their father who was not in. She called her father and explained what the accused had told as well as the brother of the deceased too.
21. Thereafter they saw lights from the accused house and went there 200 meters away and found the deceased laying outside the house and accused was there. He never went close to the deceased. After sometime the police responded and took away the body. She identified the panga the accused had.
22. The witness admitted in cross-examination that, the accused is her uncle and that the accused came and notified them. That the deceased and uncle had finished vurugu.
23. That she never witnessed what happened between deceased and accused. Just as he told them as she was at a distance.
24. That her uncle was a drunkard and a person prone to fighting. On the material day both accused and deceased were drunk.
25. That on the said day the accused was not violent when he came to notify us and was awaiting the police.
26. PW5 Ronald Kibet Kirwa recalled in testimony that, on 2nd March, 2022 at 9.00 p.m., he was in Sarambei, at Simon Serem (his friend) in his house in Sarambei – Kwa Owino, as they were to travel the next morning to Rumuruti. That, after supper, after 8p.m. he went to sleep Kwa nyumba ya vijana, and heard a motorcycle leaving. That Simon called him to go up to his brother's house whom he knew as Vincent Ledama (the accused) and he went there using his motor cycle and it took him 10 minutes. Upon arrival he saw lights, his brother Simon was seated outside on a water container and he had rungu and panga.
27. Simon called him into the house and found deceased still alive, bleeding, his head was under the bed, he lay next to the bed. His head was bloodied. Chief was called and by the time the chief came the deceased had succumbed and police came. Witness identified the accused (dock identification) as well as the murder weapon Exhibit 1.
28. In cross-examination the witness admitted that never saw them fighting, never knew who started the fight and that there was no light.
29. PW6 Salim Sonkoyo Assistant Chief for Ngumbeketi Sub-Location testified that, the deceased is his nephew as accused is his cousin-brother. He recalled that, on 8th March, 2022 he identified the body of the deceased at the county mortuary, he was there with Simon Selembu. That the doctor said there were head injury "cut".
30. PW7 Dr. Titus Ngulungu, a Pathologist and Forensic Pathologist for Nakuru County conducted a post-mortem examination on the body of Dominic Kibet Selembu on the 8th March, 2022 at 2.00 o'clock at the request from DCI Rongai.
31. The circumstances (history) given was that, the deceased fought with his father (suspect) Vincent Ledama Selembu and attacked him with a panga and injuries sustained led to the death.
32. That, the body was identified by Salim Sungoya (uncle) and Simon (brother), it was a male african, age (estimate) 27 years in good nutritional status. Height of 175cm and preserved by embalming. He conducted a General Examination revealing the following; Body had signs of blood loss. Body



not getting enough oxygenBody smeared on right glabrousHead had (6) six slash wound on head as follows: -

- i. Front x 1 – 70 cm
 - ii. Side x 1 – 50 cm
 - iii. Vertex x 2 – 50 mm
 - iv. Occipital x 1 – 50mm
 - v. Right Occipital x 1 – 25 mm
 - vi. Left elbow x 1 – 100m
- Right lower leg x 3Blood smeared on left hand.

33. He opened body and came-up with the following finding(s): -

- i. Lungs were collapsed
- ii. Severed vertebral artery sub-ocilar region.
- iii. Slashed meninges
- iv. Stashed skull

34. That the other systems were essentially normal. He formed opinion that, the cause of death was massive blood-loss, following soft tissue injuries due to multiple slash injuries. He took samples for toxicological test. He prepared post-mortem dated 8th March, 2022 which he produced as PEXH.2.

35. In cross-examination the witness estimated the wounds to have been fresh, and associated with death and that no attempted healing would necessitate assessment.

36. PW8 Polycarp Luta Kwenu, aPrincipal Analyst working at Government Chemist Kisumu recalled in testimony that, on 4th May, 2022 P.C. Boniface Wambua of DCI Rongai submitted the following 3 items: -

- a. A panga with black rubber handle “P1”
- b. Blood sample of Dominic Kibet Selema (deceased) “P2”.
- c. Finger nail of deceased marked as “P3”

37. A request for DNA analysis to determine presence and origin of biological evidential material had been made and upon examination and analysis he came up with following findings: -

Panga “P1” was lightly stained with blood of a human being. By comparing DNA profile, he arrived at conclusion and opinion that, based on finding, the DNA generated from panga “P1” matched with that of deceased.

38. He prepared report dated 4th October, 2022 that he produced as EXH.3A and the Exhibit memo dated 3rd March, 2022 received on 04/05/22 produced as ‘EXH. 3b’.

39. PW9 No.70528 Cpl Boniface Wambua, currently attached at DCI Rongai Sub-County, he was the investigating officer in this case recalling in testimony that on 3rd March, 2022 at 8 a.m. he had just arrived at their main office at Salga Trading Center when DCIO Madam Donata Otieno S.P and her Deputy Inspector Harrison Njomo came and reported of a case of murder at Sarambe area in Rongai Sub-County within Nakuru County. She instructed him to take up matter and investigate.



40. She told him that the accused was already placed in cells in Menengai Police Station. he proceeded to Menengai Police Station with Cpl. Naibei and took accused on Misc. 039 of 2022 at Molo Law Courts that granted a fourteen (14) days pre-arraignment custodial orders.
41. He thereafter took an officer Florence Kieti, we went and witnessed post-mortem examination at Nakuru County mortuary conducted by Dr. Titus Ngulungu who formed opinion of cause of death was massive bleeding due to injuries inflicted by sharp object namely panga.
42. They proceeded to Salambi area to visit scene. At the scene and found out the accused was biological father of deceased Dominic Kibet Selembu. Accused had separated with his wife and was staying in one house where deceased and the accused started quarreling.
43. He recorded statements from witnesses who stated that, accused was at his house and Accused took a panga and slashed deceased two times on the head killing him on the spot. The accused went to his brother Simon Selembu knocked door and asked his brother to take him to police station because he had killed his son.
44. The wife of Simon Selembu Nancy Selembu (PW1) came out to hear exactly what the brother-in-law was saying. The accused's (brother in law) told the witness that the accused wanted his brother to escort him to the police station because he had killed Dominic.
45. Nancy Selembu notified her daughter Dorcas Selembu who used her mobile phone to call her father. The father promised to come immediately and indeed found accused had slashed deceased twice on the head.
46. The brother planned for the deceased to be taken to the hospital as he was still alive, responding but could not talk. Before the vehicle arrived, the deceased succumbed to the injuries. PW1 called area chief who directed her to call OCS Menengai for action who reported with DCI officers at that area.
47. Before arrival of the officers, members of public had already apprehended accused and tied him with ropes. When officers arrived, they re-arrested accused and body was escorted to Nakuru County Mortuary.
48. A sharp panga was recovered at the scene and was blood-stained murder weapon. The witness identified and produced the murder weapon "panga" as EXH. 1.
49. He personally escorted the blood-stained panga to Kisumu government chemist's laboratory for analysis to ascertain if the blood on panga was the deceased's, and later got a DNA report produced as an exhibit.
50. He escorted accused for mental assessment at Nakuru County Referral where he was examined by Dr. Karanja and certified fit to stand trial and he thereafter charged accused with offence.
51. The witness confirmed visiting the scene twice and that, the incident happened at night in darkness and that they were using lamps. That the deceased and accused shared the same house. That the accused was in house first sleeping and deceased came later and started quarrelling the accused.
52. The witness agreed that the accused attacked deceased with panga and went and confessed. He could not confirm if is accused who attacked deceased and he asserted that he was aware of circumstances leading to death. That accused was not drunk and he denied giving evidence of both accused and deceased drinking. He asserted that, the deceased was taking alcohol at the center and went and found accused sleeping.



53. At the close of the prosecutions case the accused was found with a case to answer and placed to his defense.

Defence Case

54. Vincent Ledama Selebu testified of being resident of Sarambe and the deceased being his child. That on the fateful day on 2nd March, 2022 at 11 p.m., he was with deceased since morning until 7 p.m. in the evening they were partaking alcohol.
55. That at 7p.m. he left for home and left the deceased at the homestead where he was still drinking. That he thereafter “realizing they were fighting” after neighbor were asleep. That he was unconscious, the deceased knocked door seeking weapon to kill.
56. That after fighting both of them lay side by side. he realized he had cut him with a panga. he thinks deceased came with the panga.
57. That he took the panga and rushed to the neighbor asking for assistance. he asked the police be called as he was not there. A call was made and the mzee came and found him by the door. Deceased was in the house. When house was opened they found deceased injured. He never knew he was dead until the vehicle arrived. It was not his intention to kill the deceased and they were drunk.

Defense Submissions

58. The Defence submits largely on the self-defense theory as justification for his action(s), that Under Section 17 of the Penal Code, a person is justified in using force to defend themselves when under attack, provided the force is reasonable and necessary. The defence has established that the deceased was the aggressor, he was drunk at the moment having drunk the whole day, and he was armed with a panga. The accused further submits that, the deceased forcefully gained entry to the accused person’s house while he was fast asleep threatening to kill the accused. The incident occurred at night, in darkness, requiring the accused to act swiftly. The accused did not have knowledge of where he struck the deceased until after the fact and he immediately sought assistance from relatives, these facts are not consistent with malice aforethought or a guilty mind.
59. The defense relies on the Court of Appeal in Republic v Anthony Ndegwa Ngari [2014] eKLR emphasized that, sudden attacks negate malice aforethought, supporting acquittal where the accused reacts instinctively to defend themselves.
60. Reliance is placed on the case of Peter Kingori Mwangi v Republic [2014] eKLR, it was held that; accidental injury during self-defence or a sudden altercation cannot sustain a murder conviction and may amount to manslaughter only if excessive force is clearly proven.
61. That in the instant case, the accused’s actions were instinctive, defensive, and limited to warding off an attack upon him in a poorly lit environment at night thus negating the presence of Malice aforethought which is a key ingredient in a murder case. The accused stated that he had no intention whatsoever of killing his own son with whom he had spent the better part of the day drinking. Malice aforethought cannot be inferred in the absence of premeditation, motive, or prior hostility. Further, the accused’s immediate steps to seek help demonstrate absence of any intent to kill.
62. That, it is trite law, that the burden of proof lies with the prosecution, and the standard is that of proof beyond reasonable doubt. This is well enshrined under Article 50(2)(a) of *the Constitution* and reaffirmed in the case of Woolmington v. DPP [1935] AC 462, and adopted locally in Republic v. Ismail Hussein Ibrahim [2018] eKLR. The accused bears no burden to prove his innocence. The principle



was further emphasized in *Miller v. Minister of Pensions* [1947] 2 All ER 372, that if the evidence is such that a reasonable tribunal could conclude the accused may not have committed the offence, then the standard has not been met.

Analysis and Determination

63. I have carefully considered all the evidence availed before court and the only issue in question in this case is whether the prosecution have proved whether the accused persons caused the death of the deceased persons and was there actual malice?
64. The offence and punishment for murder is provided for under Section 203 and 204 of the Penal Code. The said provisions provide that;
 - “ 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
 204. Any person who is convicted of murder shall be sentenced to death.”
65. To establish the offence of murder, the prosecution is required to prove beyond reasonable doubt, proof of death, proof that the death was caused by the accused, by an unlawful act or omission and that, the unlawful act or omission was through malice aforethought.
66. Section 206 of the Penal Code defines Malice aforethought as follows:
 - “ 206. 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.”
67. It is mutually agreed that the deceased died as a result of injuries inflicted by the accused the prosecution have equally demonstrated the same in evidence.
68. However, the accused in his defense evidence embraced the doctrine of self defense in justification for his action.
69. The central issue for determination is whether the accused’s actions fall within the legal parameters of self-defense.
70. Under Kenyan law, self-defense is recognized as a complete defense where the force used was necessary and proportionate to the threat faced.



71. Section 17 of the Penal Code (Cap. 63, Laws of Kenya) provides that:
- “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 defense of person or property shall be determined according to the principles of English Common Law.”
72. Under common law principles, a person is justified in using reasonable force to repel an unlawful attack, provided that the force used is proportionate to the danger posed.
73. In *Republic v. Gusambizi s/o Wesonga* [1948] 15 EACA 65, the court stated that that;
- “self-defense is a lawful defense if the accused believed on reasonable grounds that their life was in danger and that the force used was necessary to avert that danger”.
74. In *Republic v. Silas Magongo Onzere alias Fredrick Namema* [2017] eKLR, the court held that;
- “the law does not require a person under attack to measure with mathematical exactness the degree of force necessary to repel the attack. A person acting in self-defense is permitted to respond instinctively to an unlawful attack”.
75. Similarly, in *Ahmed Mohammed Omar & 5 Others v. Republic* [2014] eKLR, the Court of Appeal emphasized that;
- “The Court of Appeal emphasized that where a person is faced with imminent danger, they may use reasonable force to avert it, even if such force results in the death of the aggressor”.
76. The principles derived from the above cases reinforce the doctrine that self-defense is a valid legal defense when:
- i. The accused reasonably believed they were in imminent danger;
 - ii. The force used was necessary to avert the threat; and
 - iii. The force applied was proportionate to the danger posed.
77. In the present case, the evidence establishes that the deceased did not unlawfully enter the accused’s home at night, in fact he lived there with the accused, the room was dark but the accused had a torch enabling him to see clearly who he had cut with the panga. The accused was armed with a panga, indicating a predisposition to violence and a potential threat to the live of the deceased. Both the Accused and the Deceased were habitual drunkards and there is evidence of the deceased being well behaved when sober and being abusive when drunk.
78. The accused, was not responding to any imminent danger, used excessive force to neutralize the threat. The key question is whether the force used was proportionate to the threat posed.
79. The totality of the Accused’s evidence cannot be termed as defense of “self-defense”.
80. The Accused admitted that he had been drinking with the deceased for over ten (10) hours leaving the deceased who later joined him in the house. According to the accused he was unconscious, the deceased knocked door seeking weapon to kill then he realized they were fighting, that he thought the deceased came with a panga and finally that it was not his intention to kill.
81. While the accused was inebriated he was of full faculties as to who he attacked with a panga, that there was a fight and that he never intended to kill.



82. To this court this cannot be a case of self-defense, the deceased resided in the said house, the accused had a torch and cannot claim to have reacted from a slumber to an intruder.
83. There was a “vurugu”altercation, arguments, scuffle, screams and the accused cannot feign ignorance as to who he was with and he did admit. A “vurugu” cannot be sudden and cannot occur with an unlawful entry by a stranger as was in this instant case.
84. Notwithstanding the lack of eyewitnesses this court has the duty to determine based on circumstantial evidence whether the accused had malice aforethought in the case of Bonaya Tutut Ipu and Another vs R, [2015] eKLR the Court cited with approval the persuasive authority of the Ugandan Court of Appeal case of Chesakit vs UG, Criminal Appeal 95 of 2004 where the court held:
- “In determining a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person.”
85. And in its decision in the Case of Rex vs Tuper S/O Ocher [1945] 12 EACA 63 the predecessor of this Court held:
- “It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily, an inference of malice will now more readily from the case, say of a spear or knife than from the use of a stick...”
86. Furthermore in the cases of Katana vs Republic (Criminal Appeal 48 of 2021) [2024] KECA 463 (KLR); and Ali Salim Bahat & another vs Republic [2019] eKLR this Court observed that:
- “...their vicious attack on the deceased was also a clear indication that they intended the consequences of their actions, that is, the death of the deceased Equally, it established malice aforethought on the part of the appellants”
87. The vicious nature of the attack and the resultant injuries as exhibited by PW6 in exhibit number 1 indicated that the deceased suffered the following injuries Head had (6) six slash wound on head as follows: -
- “Front x 1 – 70 cm, Side x 1 – 50 cm, Vertex x 2 – 50 mm, Occipital x 1 – 50mm Right Occipital x 1 – 25 mm, Left elbow x 1 – 100m, Right lower leg x 3, the Lungs were collapsed, there was Severed vertebral artery sub-ocail regio, Slashed meninges and Stashed skull”
88. The magnitude and seriousness of the injuries inflicted establishes the malice aforethought and is indicative of the depth of violence the deceased suffered at the hands of his father.
89. The Accused was not only awake, next to the deceased and seen bearing weapons proven to have been the murder weapons on the fateful night.
90. The Accused was the last person to be seen together with the deceased and his theory in defence did not in any way displace the well corroborated evidence of PW1 PW2 and PW3 who gave a corroborative evidence in support of the circumstantial evidence.
91. The DNA profiling of the bloodied weapon produced in exhibit positively matched the blood samples of the deceased.



92. The principles guiding the finding of guilt on circumstantial evidence as espoused in the cases of R v Kipkering Arap Koskei [1949] EACA 135; Sawe v R [2003] KLR 304; and R v Taylor Weaver & Donovan [1928] 21 Cr Appr 205, were satisfied and that

“there existed inculpatory facts that were incompatible with the innocence of the appellant and incapable of any explanation upon other reasonable hypothesis other than that of guilt”.

93. This court finds the appellant’s defence as uncorroborated, weak and a belated attempt to try divert the courts attention to an imaginary self-defence theory.

94. The Prosecution have proved the case of murder against the accused person beyond reasonable doubt.

95. Accordingly, the accused is hereby found guilty and convicted for the offence of murder.

96. Sentence shall await a presentence inquiry report

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 26TH DAY OF JANUARY, 2026

MOHOCHI S.M.

JUDGE

