

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CRIMINAL MURDER CASE NO. E005 OF 2024

REPUBLIC.....PROSECUTOR

VERSUS

BONAYA ABKULA.....1st
ACCUSED

HALAKHU DIDA Alias SHULKA.....2nd
ACCUSED

JUDGMENT

A. INTRODUCTION

- 1.The accused persons were charged with the offence of murder contrary to **section 203 as read with section 204 of the Penal Code (Cap 63)** of the Laws of Kenya. The particulars of the offence were that on the 13th day of September 2024, at ***Manayatta Jillo location*** in Marsabit Central Sub - County within Marsabit County jointly murdered **“GUYO JALDESA.”**
- 2.Both the accused person denied the charge faced and pleaded not guilty. The case proceeded to full trial

with the prosecution calling Eight (8) witnesses in support of their case.

B) PROSECUTION CASE

3. **PW1 Tiya Dabasso** testified and stated that the deceased was her husband of four year, while both accused persons were their neighbours and person well known to her for a period of over ten years. On the 12.09.2024 at about 9.00am she went to her neighbours home to undertake domestic work for pay, and later at about 1.00pm, the deceased walked in to check on her and also told her that he was feeling unwell. She decided to give him a lesso from the hanging line to cover his throat and neck to prevent him from feeling cold and later saw him at about 7.00pm when he came to check on her and her children, before he retreated back to his parents' home for the night.

4. Later at about midnight she heard noise outside her house and also heard the 1st accused person demanding from someone, *"to return what he had taken from the 2nd accused home."* Alarmed by what was happening, she got up took a panga and together with her 10 years old son, (**Guyo Dabasso**), gathered courage to go outside the

house to see what was happening and was shocked to find the 1st accused person beating up the deceased all over his body using a wooden plank (fimbo).

5. As a result of this vicious assault the deceased suffered severe injuries to the chest, back, his limbs, head and was bleeding through his nose, mouth and the wounds on his head. PW1 also confirmed that the 2nd accused too was present at the scene and was also assaulting the deceased using her hands and kicking him too. Both her and her son tried to intervene to stop the assault but the accused persons pushed them away and continued to assault the deceased despite her offer to refund them Kshs100, which the 1st accused kept on repeatedly demanding from the deceased.
6. Eventually the deceased got a reprieve, when three (3) motor cyclists came from the Manyatta and stopped to see, what was happening. When the 1st accused stopped the assault to go talk to them, the deceased got up and staggered away towards his Manyatta. She returned to her house and on the following day at about 1.00pm went to check on the deceased at his parent's house and was shocked, when her mother in law informed her that the

deceased had succumbed to the injuries which he had sustained on the previous night.

7.PW1 reiterated that she was sure it was both accused person who had assaulted the deceased as “moon” was out on the material night and enabled her to clearly see what occurred. She had also spoken to both accused persons and also recognized them by their voice.

8.Under cross examination she confirmed that she was blessed with six children, and had been in a four years relationship with the deceased, though he was not her, “official husband.” She reiterated that on the material day, she undertook domestic work for the 2nd respondent and that the deceased had passed by the 2nd accused home, while complaining of throat infection. Further, later on the same night she had witnessed as both accused persons assaulted the deceased just outside her compound and as a result, he had sustained severe injuries. She also did not have means of taking the accused to hospital on the material night and on the following day learnt that he had succumbed to the injuries suffered.

9.**PW2 Kabale Jaldesa** testified that she was the deceased mother, and on the material, night had

taken supper with her son, who mentioned to her that his death would come from the hands of both accused, but failed to elaborate why he was making such a prophecy. Later she retired to sleep and when she woke up on the following morning, she did not find her son. At about 1.00pm, PW1 came and informed her of what had transpired on the previous night and this prompted her to shout for help and mobilized her neighbours to go look for the deceased.

10. As the search party walked along the road at the extreme end of her "Shamba", they found the deceased lying just off the road and was in bad shape, but he had not died. They mobilized for help and she got her son in law, *Abdul Dulacha*, to rush the deceased to Marsabit Level 5 County hospital, where he was pronounced dead on arrival.

11. Under cross examination PW2 confirmed that her son resided with her in the same manyatta but would occasionally visit PW1 and stay with her since they were lovers. She reconfirmed that it was PW1 who informed her of what transpired the previous night, though the deceased had also prophesized his death at the hands of the accused person's.

12. **PW3 John Sora Wako** testified that he also resided within Quita Korane manyatta and had known the deceased for a period of over 30 years having grown up together in the same neighbourhood. On 13.09.2024 at about 12 noon he was at home, when he heard screams emanating from the village and out of curiosity went to check on what was happening. He discovered that it was PWII who was screaming and she informed him that she had found her son lying by the road side, injured and was in critical condition.

13. He proceeded to the scene, where he found the deceased, who had injuries to his ribs and face but could still talk. On inquiry, the deceased told him that he had been assaulted the previous night by both the accused persons but did not mention what was used to assault him. He thereafter called, "*Abdul Dulacha*", who was the deceased family bread winner and urged him to urgently come home to assist to take the deceased to hospital. Later at about 4.00pm he was informed that the deceased had succumbed to his injuries. He confirmed that he knew both accused persons and identified them on the dock.

14. PW4 Guyo Dabasso (Minor -14 years)

underwent voir dire examination and gave sworn evidence. He confirmed that PW1 was his mother and they resided together with the deceased, who was a friend to his mother. He also knew both accused person, since childhood as they were neighbour's within their manyatta. Back to the incident, he recalled that on the material evening he came back home from school and after supper started to do his homework until about midnight, when he distinctively heard the 1st Accused ask someone, ***“Wapi pesa ile ulichukua kwa shuka.”***

15. Due to the commotion he, while accompanied PW1 decided to go check on what was happening and found 1st Accused assaulting the deceased who was lying on the ground, while being hit continuously/ all over his body using a jembe stick (fimbo). The 2nd Accused also participated in the assault and was kicking and also hitting the deceased using her hands. He confirmed that though it was at night, he could clearly see both the accused persons and what they did as the “moon” was out shining. Further they did try to intervene to stop the assault but the 1st accused pushed them away and continued to assault

the deceased, while demanding Kshs.100, which they allege the deceased had stolen from the 2nd accused person.

16. The bodily assault went on for some time until three (3) boda boda riders passed by and stopped to inquire on what was going on. The deceased got an opportunity to crawl away and they did not help him as they were afraid of 1st Accused wrath. They thus returned to their home and slept. The following day he did go to school and later learnt that the deceased had passed on.

17. **PW5 Abdul Dulacha**, confirmed that the deceased was his brother in law and also knew both the accused persons as they all resided within one Manyatta. He recalled that on 13.09.2024 at about 2.00pm, he was on his motor cycle enroute to Marsabit town, when he received a call from PW2, who informed him that the deceased was missing and that they were looking for him. After about one hour she called again and informed him that they had found him critically injured and was lying by the road side and thus requested him to urgently get a taxi, which could ferry him to hospital.

18. He acted expeditiously and went back with a taxi, which they used to ferry the deceased to hospital but unfortunately, he died while receiving treatment at the emergency room of Marsabit county Level 5 hospital. He also confirmed that while in the taxi, the deceased had told him that he had been assaulted by both the accused persons. On the following day he did attend the post mortem examination and identified the deceased body to the doctor who performed the autopsy.

19. Under cross examination he reiterated his earlier evidence and confirmed that the deceased had injuries all over the body, which had not resulted from a fall but were inflicted by person's who assaulted the deceased. He also contradicted himself by stating that the accused never told him who assaulted him nor did he see the accused persons assault the deceased.

20. **PW6 Mr Guyo Qura Halake**, confirmed that he was a retired prison officer, a village elder residing within Manyatta Jillo and recalled that on 13.09.2024 at about 5.00pm, he was called by PW5, who informed him of the incident that had occurred and requested him to coordinate the arrest of both

accused persons on suspicion that they were the ones who had assaulted the deceased. He did proceed to their home, while accompanied by other villagers and managed to arrest both accused persons and later handed them over to the police, who took over the investigations.

21. **PW7 Dr Hassan Dika Abdi** of Marsabit referral hospital stated that he was a Medical doctor, and had 4 years work experience. On 14.09.2024, he was requested by the police to performed an autopsy on the body of the deceased at the county referral hospital mortuary and noted that the deceased had sustained injures to his; upper lip, had blood clot on the right fore head, lacerations on the knee and a cut wound on the left sheen. Based on his observation's he confirmed that the deceased died due to internal bleeding consistent with assault. He prepared and signed the post mortem report dated 14.09.2024 and produced it in court as Exhibit 1.

22. **PW8 Constable Baricha Isaac Adan** of DCI-Marsabit Central police station confirmed that a murder report incident was reported at the station on 13.09.2024 and they were assigned to investigate the said case. They organized for the post mortem to

be done, visited the scene of crime, which was about 15 m from the Accused home and after interrogating several witnesses and taking their statements all fingers pointed at both accused persons as perpetrators of the assault, which resulted in the deceased demise. Based on the evidence gather, he charged both accused persons with the offence before court.

23. Under cross examination, PW8 confirmed that both accused person were arrested by member of the public and were brought to the station on 13.09.20204 in the evening. He did obtain custodial orders to detain them for 2 weeks and eventually charged them before court once investigations were complete. He further confirmed that though the assault weapon was not recovered, key witnesses saw what transpired and charged both accused persons based on cogent evidence pointing to their guilt.

24. The prosecution closed their case and upon considering the prosecution evidence, the court placed both accused on their defence.

C. DEFENCE CASE

25. The 1st Accused (DW1) opted to give sworn evidence and stated that he was wrongfully arrested on 14.09.2024 and locked up at Marsabit central police station concerning the murder that had occurred but strenuously denied being involved in the same. On the material day he was away working at Mayatta Gidha- Stone quarry and upon arriving home in the evening, he had showered and went to attend a local wedding ceremony. He insisted he had been wrongly linked to the said crime and urged the court to acquit him.
26. The 2nd accused person (DW2) also strenuously denied being involved in assaulting the deceased and confirmed that she was at her residence with her children and did not go outside on the said night. Later on, the following day at about 4.00pm she had learnt that the deceased had been assaulted and had passed on. She reiterated that she did not harm the deceased and had been falsely implicated by the witnesses who stated so. She prayed that she be acquitted of the offence faced.

D. DETERMINATION

27. I have read through and considered the evidence adduced by both parties and given due consideration to the submissions filed by both Counsels. The question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein murdered **GUYO JALDESA**, the deceased herein.

28. **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.”

29. In **Joseph Kimani Njau vs Republic (2014) eKLR**, the Court of Appeal, in concurring with an earlier finding of that Court (but differently constituted) in **Nzuki vs Republic (1993) KLR 171**, held as follows: -

Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused; -

- i. The intention to cause death;***
- ii. The intention to cause grievous bodily harm;***

iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed The mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into a crime of murder. (See Hyman vs. Director of Public Prosecutions (1975) AC 55".

30. The Court of Appeal at Nyeri in **Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari vs. Republic [2014] eKLR**, summed up the elements of the offence of murder as follows: -

- a. the death of the deceased and its cause;**
- b. that the accused committed the unlawful act which caused the death of the deceased; and**

c. that the accused had malice aforethought.

31. I will now proceed to interrogate each issue.

(i) The death of the deceased and its cause.

32. It is common ground that **GUYO JALDESA** died on the 14.09.2024 at Manyatta Jillio location, within Marsabit Central Sub county having suffered severe bodily injury inflicted all over his body largely caused by blunt force trauma. This was confirmed by all prosecution witnesses, who either witnessed the assault and/or tried to assist the deceased get medical attention on the following day. **PW7 Dr Hassan Dika Abdi** did also conduct the autopsy on the deceased body and produced the post-mortem examination report dated 14.09.2024 (Exhibit 1). He did confirm that the deceased died as a result of internal bleeding secondary to assault.

33. Death and its cause were thus proved.

(ii) Whether it has been proved that the accused committed the unlawful act which caused the death of the deceased:

34. From the evidence adduced, it is clear that PW1 and PW4, who were the accused neighbours and

persons well known to them squarely placed both accused person and the scene of the crime, and clearly saw both of them continuously assaulted the accused, while demanding that he returns the *Kshs.100/=* he was alleged to have taken from the lesso that was within the 2nd accused home. They both tried to intervene but the said assault did not stop until three (3) “boda boda riders” who were passing by stopped to check on what was going on, is when the deceased took that opportunity to stumble away.

35. Further before he died the deceased had also made a death bed declaration to PW3 and he stated categorically that it was “**Bonaya**” and “**Shukla**” who has assaulted him on the previous evening. In defence both accused made feeble attempts to distance themselves from the crime, with DW1 stating that he was at a wedding, while DW2 alleging that she was at home with her children, but their alibi fails in light of the cogent evidence present against them and they also did not call any independent witness to support their assertions.

36. In summation, based on the direct evidence adduced, the inculpatory facts proved herein are incompatible with the innocence of the accused

person and incapable of any other explanation/ reasonable hypotheses other than that of their guilt as the person's who, without doubt, attacked and fatally injured the deceased person on the material night.

(iii) Malice Aforethought

37. Having found that the prosecution has proved ***actus reus***, the other issue for determination is whether malice aforethought can be inferred from the prosecution's evidence presented. The offence of murder is complete when "***malice aforethought***" is established. **Section 206** of the **Penal Code**, provides that:

“(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.”

38. It is sufficient to say that the mental element required by **section 206 of the Penal Code** can be equated to broad guidelines set out in the case of **Tubere s/o Ochen vs. Republic [1945] 12**

EACA 63:

“The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”

39. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or substantial risk and the consequences of targeting the part of the body

that may result in the fatal injuries suffered by the deceased.

40. A similar statement of Law was made in the persuasive authority of **S. vs. Sigwahla 1967 4 SA 566**, in which the court stated:

“The expression intention to kill does not in Law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such a result. This form of intention is known as a dolus eventualis as distinct from dolus directus.”

41. From an analysis of the injuries inflicted, it is clear that the accused did not have any other intention other than to inflict grievous harm upon the deceased as they repeatedly hit him with a “jembe handle/ fimbo” and also physically assaulted him by hand and despite being requested to stop by PW1 and PW4, they refused to do so and ultimately inflicted grievous harm upon the deceased, who later on succumbed to the injuries sustained.
42. It is my finding that both accused persons knew or ought to have known that their action would result in death, and it can be safely inferred from the

nature of the injury inflicted on the deceased that the accused person's action was premeditated.

43. In the circumstances, I am persuaded beyond reasonable doubt that the prosecution has proved their case, and specifically, the presence of malice aforethought on the part of both the accused, too, has been proved.

E. DISPOSITION

44. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, **BONAYA ABKULA & HALAKHU DIDA Alias SHULKA**, beyond reasonable doubt and accordingly convicted both of them under ***section 215 of the Criminal Procedure Code***.
45. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.
46. It is so Ordered.

Judgment, signed at MARSABIT this 22nd day of JANUARY, 2026.

FRANCIS RAYOLA OLEL
JUDGE

**Judgment read and delivered in open court on
22nd day of JANUARY 2026.**

In the presence of:-

Both present in courtAccused

Mr. MburuguFor O.D.P.P

Mr. JarsoCourt Assistant