

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL CASE NO. E004 OF 2025

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS
VERSUS
STEPHEN EGESA OMUKAGA.....ACCUSED

JUDGMENT

1. The accused, Stephen Egesa Omukaga, faces a charge of murder, contrary to section 203, as read with section 204, of the Penal Code, Cap 63, Laws of Kenya. It is alleged that he killed Fredrick Juma Masinde, jointly with others, on 26th January 2025, at Okilundu Sub-Location, Teso South, Busia. He denied the charges, and the prosecution presented 6 witnesses.
2. PW1, Japheth Jumba, was a son of the deceased, a minor at Class 5, at Ojamoong Primary School. A group of people invaded their home, being children of the accused, intent on attacking the deceased. The deceased was not at home at the time, so PW1, and his siblings, closed the doors. The deceased came, and told the invaders to kill him, and he was hit on the neck by a person identified as Koli, with a *panga*, and he fell down. PW1 and his siblings raised alarm. The deceased was removed to hospital. PW1, identified the assailants as Koli, Deri and Jomba. Kamaa and Eliza, the wife of Koli, were also said to be in the group. The accused, identified as Ipete, was said not to have been at the scene, but at the road, allegedly monitoring what was happening. PW1 asserted that the killers were Deri, Koli and Jomba.
3. PW2, Evans Wanyonyi Khamala, was a brother of the deceased. He heard commotion outside, of people quarrelling, and of someone asking his father to get up. He rushed to the scene, and found the deceased on the ground bleeding. He took him to hospital, where he spent the night. PW2 went to report to the police at Adungosi. When he went back to hospital, he established that the deceased had died. He was informed by Jefu, that his father had been assaulted by the accused and his family. He stated that he did not find the accused at the scene, when he responded to the commotion, adding that he, PW2, was not at the scene, when the deceased was injured, and he did not see the accused assault him.

4. PW3, John Kundu Masinde, was another brother of the deceased. He was informed that the deceased had been assaulted, and was in hospital. He went home, and found a lot of blood. He was present at postmortem.
5. PW4, Dr. Dixon Mchana, was a consultant pathologist. He conducted autopsy on the body of the deceased, which was identified by PW2 and PW3. He identified a laceration at the top of the head, and a graze on the right elbow. Internally, there were injuries to the scalp blood vessels, 2 bruises on the right side of the scalp, 2 complex fractures on the right half of the skull, and an epidural blood clot below the brain covering. He noted a moderate swelling of the brain. He formed the opinion that the cause of death was a severe head injury, secondary to mixed force trauma, following assault, by both sharp and blunt objects. He stated that there was a stitching of the lacerated area, suggesting that there was recent medical intervention.
6. PW5, Francis Masiga Barasa, was a farmer. He was at a *chang'aa* joint, where both the accused and the deceased were. The deceased was accompanied by a young woman, who appeared to be underage. The accused, a village elder, questioned the deceased about it, and the deceased got angry. The young woman, herself, appeared uneasy in the environment. The accused left the drinking place, leaving the deceased behind, who was still incensed and quarrelling. PW5 later got information, that the deceased went to the home of the accused, to attack him, but as he, PW5, was not at that scene, he could not tell what happened there.
7. PW6, No. 68020 Police Corporal George Kamande, was a scene of crime personnel, from the Directorate of Criminal Investigations, Adungosi Police Station. He rushed to the scene of the killing, and processed it. He was later instructed to carry out investigations. The accused was arrested by police officers from Busia Police Station, and he only re-arrested him from them.
8. I placed the accused on his defence, in a ruling that I delivered on 18th July 2025, on the grounds that, although an eyewitness had testified that the accused did not deliver the killer blow, and was not among those who assaulted the deceased, he was said to have been within the vicinity. There was a suggestion that he might have been the force behind the actual assailants.

9. The defence hearing happened. The accused testified, on 8th October 2025, as DW1. He called 2 witnesses: Mercy Egesa, who testified as DW2, and Sellah Simiyu, who testified as DW3.
10. DW1 testified to being at the bar, on 26th January 2025, and identified those present as the deceased and PW5, among others. The deceased was in the company of a girl. He confronted the deceased about it. DW1 was advised to leave him alone. He telephoned the area Assistant Chief and the Officer Commanding Station, OCS. DW1 talked to the girl, who said she was in school, at Grade 7, and the deceased had given her a lift on his motorcycle. He advised the accused to return her to where he had found her, lest he got into trouble over defilement. The revellers even fundraised, for fare, for him to take her back to where he had gotten her from. In the midst of that, the girl disappeared, and the deceased began to blame the accused for that. At that point the accused left the bar, and went home.
11. While at home, he telephoned PW5, who informed him that he had also left the bar, leaving the deceased there, still, seething with anger. As he was moving between houses, within his compound, in the course of the evening, he was hit by the deceased, on the neck. He was also kicked on his testicles. He was also strangled. He lost consciousness, and only came to at the Busia County Referral Hospital. He said that he was not present, when the deceased was assaulted.
12. DW2 was a minor daughter of the accused, attending secondary school. On the evening of 26th January 2025, the accused came home, and enquired from her, whether she and her sister had eaten. He left them, and went to get them food, from their stepmother, who was in another house. As he was traversing the compound, between the 2 houses, he was attacked, and he screamed. She responded to the screams, by rushing out of her house. She saw the deceased running away. The accused was on the ground. Her stepmother and neighbours came to the scene, and the accused was removed, and taken to hospital. She said that she did not know what happened to the deceased.
13. DW3 was a clinician, at the Busia County Referral Hospital. She produced medical records, of the treatment that the accused received, on 26th January 2025, at the Busia County Referral Hospital.

He was received at the hospital unconscious, and came to at 12.00 midnight. The history given was of assault with a wooden rod, by a person known to him, and strangulation. The witness was not the one who made the medical notes, she was testifying on, but she had retrieved them from the computer systems of the Busia County Referral Hospital.

14. The accused person, through his Advocate, filed written submissions, which I have read and noted the arguments made.
15. The offence of murder has 4 elements, which the prosecution is required to prove, to establish it. These are proof of the death, the cause of it, the role of the accused in the causation, and the presence of malice aforethought on the part of the causer or perpetrator.
16. On proof of the death of the deceased herein, there are the testimonies of PW2 and PW3, his brothers. PW2 found him injured, at his home, and took him to hospital, where he died. PW3 came in after the body was moved to the mortuary, but he confirmed the death. Both PW2 and PW3 identified the body to the pathologist, PW4, for the purposes of postmortem. There is overwhelming evidence, therefore, that the deceased in fact died.
17. On the cause of death, the testimony of the pathologist PW4, is crucial. He noted multiple injuries on the body, which he attributed to assault multiple times. What caused the death, according to him, was head injury, caused by a combination of blows, from both sharp and blunt objects.
18. On the causation, the relevant evidence is that of PW1. He was the sole eyewitness, that the prosecution presented. He identified the persons that he saw assaulting the deceased, as Koli, Deri and Jomba. Kamaa and Eliza were also seen around the 3, but they were not said to have done anything to the deceased. PW1 did not identify the accused as an assailant. Indeed, he stated that the accused was not present, when the deceased was hit.
19. So, why was the accused charged with the murder, if he was not present when the killing happened? PW1 testified that the accused, while not at the scene, was nearby, within the vicinity, at the road, "checking on what the children were doing." That would suggest that he was either the mastermind of what was happening, or

he was of common intention and purpose with his children, that is to say Deri, Koli and Jomba, those who allegedly fatally assaulted the deceased. It was on that account that he was put on his defence.

20. Did his defence displace the prosecution evidence, which suggested that he was at the scene? I believe that it did. He testified that after his own assault, by a person he identified as the deceased, he lost consciousness, and was rushed to hospital, where he regained the same. His testimony was corroborated by his daughter, DW2, and by the clinician, DW3, who presented medical records establishing that he had, indeed, lost consciousness, and that he was in that state, when he was brought to hospital. The conclusion to be drawn, then, would be that he had been so badly injured, to the extent of not being in a position to mastermind and command a counterattack on the deceased, as suggested by the prosecution. The defence evidence would point to the accused person not being able to be present at the scene, when the deceased was fatally attacked.
21. The testimony, by PW1, that the accused was within the vicinity, at the road, monitoring what his children were doing, should also be subjected to close scrutiny. PW1, was not positive, that he, himself, PW1, was at the road, where the accused allegedly was, at the material time. He did not talk about going to the road, but of being ambushed in the house, where it all happened. He was positive that the accused was not present when it happened. He claimed that he had heard the voice of the accused, prior to the events unfolding, alleging that the deceased wanted to kill him, but other than that, he did not see the accused physically, at the scene, and, it would appear, that he assumed that the accused was somewhere out there, at the roadside. This was a case of voice identification, at night, in the midst of a chaotic scene. The evidence is tenuous, and cannot possibly find basis for conviction of the accused herein, for the killing of the deceased, especially when taken together with evidence that the accused had just been seriously injured, to a point of losing consciousness.
22. Based on the analysis above, it would be my conclusion that there is inadequate material, upon which it can be concluded that the accused had a role in the causation of the death of the deceased.
23. On malice aforethought, the law is section 206 of the Penal Code. It is about intention to cause death; or knowledge that an act

could cause death but the perpetrator is indifferent to the consequences; or an intention to commit some felony, and death is caused in the process.

24. Consideration of the existence of malice aforethought, in a given situation, would only arise in a case where the accused is said to have had a role in the causation of the murder charged. That was not the case here. The material, on record, raises doubts, as to the complicity of the accused in the causation.

25. Overall, there is inadequate evidence, upon which the accused could be convicted for the murder charged herein. The case, against him, has not been established beyond reasonable doubt. Consequently, I hereby acquit the accused herein, Stephen Egesa Omukaga, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya, of the murder of Fredrick Juma Masinde, contrary to sections 203 and 204 of the Penal Code. The surety is hereby discharged, and any security, deposited, shall be released to the depositor. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON
THIS 2ND DAY OF FEBRUARY 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onanda, instructed by the Office of the Director of Public Prosecutions, for the Republic.

Ms. Nabulindo, Advocate for the accused person.