



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CRIMINAL CASE NO. 34 OF 2023

REPUBLIC.....PROSECUTOR

VERSUS

WILLIAM MURIUKI NYAGA.....1ST ACCUSED

FRANCIS MURIITHI NGARI.....3RD ACCUSED

JUDGMENT

1. William Muriuki Nyaga and Francis Muriithi Ngari are charged with murder contrary to section 203, as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the night of 24th day of May 2020, at Equator Springs Hotel in Gwa Kung’u township, Nyandarua North Sub-County within Nyandarua County, jointly with another, they murdered Stephen Githinji Ndiuni.
3. On 23rd May 2020, an attack took place at Equator Springs Hotel, also known as Kinyumba. The attackers were repulsed, and the deceased, suspected to be one of them, was badly beaten. He later succumbed to his injuries. The two accused, and another person who remains at large, were implicated in his beating and subsequent death.
4. William Muriuki Nyaga contended that he was asked to join other officers at Equator Springs Hotel, which he did. When he arrived, some youths were demanding to know the whereabouts of Gichuki, who was supposedly hiding in the hotel. Police persuaded them to consent to a search, and after it was conducted, they were informed that Gichuki was not present. The accused left at approximately 10 p.m. Subsequently, the manager stated that a suspect had been arrested. He denied any involvement.
5. Francis Muriithi Ngari denied involvement in the beating of the deceased. He explained that on his way home- about 100 metres from Equator Springs Hotel, where he worked as a bartender- he saw a crowd at the hotel. He went over, and they were claiming that a thief was hiding inside. After the police dispersed the crowd, the manager sent him to fetch the store keys and offered him a drink. He left the premises at 8:30 p.m. and only learnt of the death the next day.
6. The issues to be determined are:

- a) Whether either of the accused was involved in beating up the deceased;
 - b) Whether the prosecution's evidence displaced the alibi defence of the accused or not; and
 - c) Whether the offence of murder was proved against any or all the accused.
7. William Muriuki Nyaga, accused 1, was linked to the crime through Miriam Wanjiku Wairegi's (PW11) testimony. She stated that after the police dispersed the crowd, Nyaga remained at the bar drinking. Hours later, a knock on the door was heard, and the watchman reported that three men were outside. Since it was during the COVID-19 curfew, Nyaga went out and claimed that the trio had fled and that he had fallen while trying to chase them.
 8. After a short while, the three men returned and were chased away by Nyaga, Ndegwa, Mureithi, and the watchman. The watchman arrested the deceased. When he brought him to the hotel, Nyaga beat him with his boots and a stick until he fainted. Then, he dragged him to the restaurant entrance. Later, when she asked Nyaga to make arrangements, he claimed he had not found him upon going out. The next morning, she learned from Nyaga that he was lying at the scene.
 9. Francis Muriithi Ngari, who was present at the scene as per PW11's evidence, was not proven to have taken part in the beating of the accused, aside from chasing the three men, including the deceased. I therefore acquit him of the offence of murder.
 10. In his defence, William Muriuki Nyaga presented an alibi. When an accused person claims an alibi, they are not required to prove its truth. This principle was confirmed in the case of **Kiarie vs Republic [1984] KLR**, where the Court of Appeal stated:

An alibi raises a specific defence, and an accused person who puts forward an alibi as an answer to a charge does not, in law, thereby assume any burden of proving that answer, and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.

11. In the instant case, the defence was displaced by the evidence of PW11, the hotel manager.
12. To convict for murder based on the evidence on record, the prosecution must prove the existence of malice aforethought. In **Black's Law Dictionary, 10th Edition**, malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).

13. Section 206 of the Penal Code gives instances when malice aforethought may be proved. It 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.

14. Dr George Biketi performed a post-mortem on the body of the deceased. The body had multiple injuries on the head and on the back of both hands. His opinion was that the cause of death was severe head injuries due to massive blunt force.

15. The prosecution has not proven malice aforethought for murder. However, it has clearly established the offence of manslaughter under section 202, read with section 205, of the Penal Code. Therefore, I acquit the accused of murder but convict him of manslaughter.

Delivered and signed at Nyandarua, this 4th day of February 2026

**KIARIE WAWERU KIARIE
JUDGE**