



**Republic v Mutai (Criminal Case E035 of 2021)
[2026] KEHC 1840 (KLR) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1840 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CRIMINAL CASE E035 OF 2021
JR KARANJA, J
FEBRUARY 19, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

ISAAC MUTAI ACCUSED

JUDGMENT

1. Pursuant to the information dated 22nd May 202, filed herein by the Director of Public Prosecution the Accused, Isaac Mutai is charged with murder of Patrick Kipleting Kimei [deceased] on 3rd May 2020 at Chepkunyuk Village, Nandi County.
2. The case for the prosecution was that the Accused and the deceased and others including James Kiprotich [PW1], Stephen Choge [PW2], and Joshua Kipkoech Samoei [PW4] were all village mates and neighbours. On the material date during the day time they converged at a neighbouring homestead which was known as an illicit liquor [changaa] den to partake the stuff. In the process, they became argumentative and abusive to each other, more so, the accused and the deceased.
3. Most of the revelers became intoxicated and left for their respective homes leaving the deceased behind. In the evening hours, the area chief Silvanus Koros [PW3] received a phone call from one Abraham regarding a person found lying down on a road and bleeding. The chief proceeded to the scene and confirmed that the person had already passed away and was the deceased herein.
4. Police officers arrived at the scene and removed the body of the deceased to the mortuary at Kapsabet Referral Hospital where a post mortem was carried out by Dr. Evans Kibiwott [PW5] on the 5th May 2020, after which he compiled and signed the necessary post mortem report [P. Exhibit 1] showing that the deceased died from severe brain trauma caused by repeated blow with a heavy object.
5. The police investigations carried out by Sgt. Benjamin Nyongesa [PW6], indicated that at the changaa drinking den the deceased picked a quarrel with the Accused over allegations of defamation. He



[deceased] then walked away without any confrontation. He was however followed from behind by the Accused who then attacked and assaulted him. The Accused was therefore arrested and charged with the present offence.

6. In his defence, the Accused denied the offence and indicated that he was at the changaa den on the material date with other revelers. He remained at the place upto 5:00pm when he left and proceeded to his home in a state of drankardness.

He lay on a sofa set and was overcome by sleep. He was awakened by screams and shouts in the neighbourhood. He left his house and proceeded to where the screams emanated but on the way he approached a group of people who were crying and viewing a dead body. He viewed the dead body and identified it as that of his neighbour, the deceased. The police arrived at the scene and removed the body. However, on the following day while at his place of work he was confronted and arrested by police officers before being charged in court with the present offence which he did not commit.

7. A consideration of the evidence in its totality reveals that it was not in dispute that indeed the deceased was on the material day attacked and fatally injured by an individual or individuals after leaving a changaa drinking den. The attack was gruesome such that the seriousness and degree of the fatal injury left no doubt in the mind of this court that the assailant/ assailants was driven by malice aforethought into committing the offence.
8. The basic issue presenting itself for determination was whether the Accused was the person who attacked and fatally injured the deceased. The fact that they were together with others at a changaa drinking den was not disputed. Neither was it disputed that the revelers became intoxicated, argumentative, quarrelsome and abusive with each other while at that place.
9. There being no obligations on the part of the Accused to prove his innocence, the burden to prove his guilt beyond reasonable doubt fell squarely on the prosecution. In that regard, none of the key prosecution witnesses i.e. James [PW1], Stephen [PW2] and Joshua [PW4] linked the Accused to the attack on the deceased, hence to the present offence.
10. Although the investigations officer [PW6] indicated that the investigations revealed that the deceased was attacked and fatally injured by the Accused after leaving the changaa drinking den, the prosecution did not call any witness to confirm as much thereby implying that the investigations officer relied on hearsay to connect the Accused with the fatal attack and charge him with the present offence.
11. In essence, there was no evidence at all to link the Accused with the offence. The prosecution did not therefore discharge its burden to prove beyond reasonable doubt that the Accused was the person who attacked and fatally injured the deceased. In the circumstances, this court finds the accused not guilty as charged and acquits him accordingly.

DATED AND DELIVERED THIS 19TH DAY OF FEBRUARY 2026

HON. J. R. KARANJAH,

JUDGE

