



**Republic v Barak (Criminal Case E046 of 2022)  
[2026] KEHC 1563 (KLR) (Crim) (17 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1563 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E046 OF 2022  
K KIMONDO, J  
FEBRUARY 17, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**KEVIN ODUOR BARAK ..... ACCUSED**

**JUDGMENT**

1. The accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars are that on 4<sup>th</sup> July 2022 at Githaturu, Korogocho area, Starehe Sub-County within Nairobi County he murdered Medrine Magova alias Mama Manu.
3. The prosecution called six witnesses. the first was Phylis Imali (PW1), a sister of the deceased. On 4<sup>th</sup> July 2022 at about 16:00 hours, a young son of the deceased, ENS (PW2) [particulars withheld], came to her house in Kariobangi. He told her that he had been sent by his mother (deceased). He left at around 20:00 hours.
4. However, the minor did not give her any clues about what had transpired. She testified that the deceased and accused had a difficult relationship and used to fight; and, that on one occasion she came to her house with a bloodstained T-shirt.
5. At about 23:00 hours, she got a call from her other sister notifying her of the homicide. She went to the scene and saw the deceased's body. It had a stab wound on the thigh. The scene was processed by the police and the body removed to the City Mortuary. She attended the postmortem examination on 19<sup>th</sup> July 2022 and noted that the body's skin was glazed on the right side of head.
6. Dr. Simon Omuok (PW3) conducted the post mortem. There were bruises on the left-upper back area; defensive bruises on the left-upper limb on the back and right elbow area; and, multiple abrasions on



anterior neck and right side of the neck. There was also a small wedge-shaped laceration below the skin on the right thigh area. When cross examined, he said the stab-wound did not reach the major blood vessels. In his opinion death resulted from “head injury due to blunt force trauma”.

7. Like I stated, PW2 is a minor and was aged 9 years when he testified in this matter. After conducting a detailed voir dire examination, I formed the opinion that he was intelligent and understood the proceedings but he did not appreciate or know the nature of an oath. He thus gave unsworn evidence.
8. He stated that he saw his father (the accused) fighting with his mother (the deceased) outside their plot; and, that the accused picked a piece of wood which had a nail and hit deceased with it. He said the deceased was throwing stones towards his father. She advised him to go to his aunt’s (PW1’s) place.
9. He went there and stayed until 20:00 or 20:30 hours when he returned home. That is when he found the lifeless body of his mother lying on the sofa with a pool of blood on the carpet. He screamed for help. A neighbor responded and stayed with him until the police arrived at the scene. PW2 now lives with PW1.
10. Under cross examination, he said the parents fought at about 13.00 hours and that he reached his aunt’s house at 16.00 hours. He added that there were people at the plot who witnessed the fight.
11. PW4 was Police Constable Martin Mwenda Njeru. He is a scenes of crimes officer and produced 11 pictures of the body taken at the scene on the date of the incident (exhibits 2 (a)-(k)).
12. Police Constable Athman Ali was PW5. When he got to the scene, there was a crowd milling outside. He notified I.P. Maina who came to the scene with other officers. He said the body was lying on a seat and there was a lot of blood on the floor. The accused was present and was arrested.
13. Under cross examination, he stated that no significant recoveries were made at the scene. In his opinion, the injury on the thigh looked like a stab wound made by a knife.
14. PW6 was the investigating officer, SSP Simon simiyu and gave a general summary of the evidence from 8 witnesses who had recorded statements. He also escorted the accused for a mental assessment test.
15. On 12<sup>th</sup> March 2025, a medical report dated 19<sup>th</sup> July 2022 by Dr. Kemunto, Consultant Psychiatrist at Mathari Teaching & Referral Hospital, was admitted into the evidence by consent. It certified that the accused was mentally fit.
16. When the accused was placed on his defence, he denied that he attacked the deceased or hit her with a piece of wood. He also claimed that he last saw the deceased at lunch hour only to find her lifeless body when he returned at 20:30 hours. He stated as follows in the material part-

On 4/7/2022 I was having lunch at home with my wife and child. My wife had prepared lunch. She left, took changaa and returned late. I also used to drink but not that day. She claimed I had another wife. She started throwing stones and sticks at me. There were people at the scene. I could not beat her in public. I went back to work at 14.30 hours and stayed there until 20.30 hours. When I returned I found deceased on the sofa and blood on the floor. I screamed. Neighbours came. One said she was dead.

When I returned to the house at first, the caretaker said deceased was looking for me with a knife and had said if she didn’t, she would kill herself. I never left the scene or ran away. That is where I was arrested. I never hit the deceased with a piece of wood with a nail. My son lied that he saw me fighting or hitting the deceased. I last saw deceased at lunch time... I do not know what befell the deceased.



17. Learned counsel for the defence, Mr. Nzomo, filed extensive submissions with a list of authorities dated 7<sup>th</sup> December 2025. The case for the defence is that the prosecution's case revolved around the unsworn testimony of a child of tender years, E.N.S (PW2). Learned counsel submitted that it would be unsafe to rely on his uncorroborated evidence. He relied on section 124 of the Evidence Act as well as *Thuo v Republic* (Criminal Appeal 45 of 2013) [2022] KECA 461 (KLR).
18. Learned counsel also argued some material witnesses such as Jane Adoyo, who is alleged to have witnessed the fight between the deceased and the accused, and that of Anne Mary Wanjiru (D4). Relying on *Kamau v Republic* (Criminal Appeal 58 of 2013) [2024] KECA 314 (KLR) and *Ochieng v Republic* (Criminal Appeal 153 of 2017) [2023] KECA 1461 (KLR), I was implored to draw a negative inference.
19. The other limb of the submissions is that the contradictory evidence of the six witnesses failed to prove the twin elements of actus reus and mens rea. Paraphrased, that there was no evidence that the accused killed the deceased or was of malice aforethought. Reliance was made on *Sawe v Republic* [2003] KLR 364 for the proposition that the evidence did not irresistibly point to the guilt of the accused.
20. It was further submitted that the accused raised an alibi, fully co-operated with the police and never left the scene. I heard counsel to say, that his conduct did not display any guilt. The totality of the submissions is that the evidence is unreliable, fails to connect the accused with the homicide and falls far short of the threshold of proof.
21. My findings are as follows. The burden of proof that the accused murdered the deceased lay squarely with the Republic. *Woolmington v DPP* [1935] AC 462, *Bhatt v Republic* [1957] E.A. 332.
22. Section 203 of the Penal Code provides that any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
23. There are three key ingredients that must be present: first, the prosecution must prove beyond reasonable doubt the death of the deceased and the cause of that death; secondly, that the accused committed the unlawful act that led to the death; and, thirdly, that the accused was of malice aforethought.
24. The death of the deceased is no longer in doubt. It was confirmed by her sister (PW1). There is also the emphatic evidence of Dr. Simon Omuok (PW3) who conducted the post mortem.
25. I thus readily find that the death was unlawful. The next question then is whether the Republic proved beyond reasonable doubt that the accused, of malice aforethought, killed the deceased.
26. The eye-witness of the fight between the deceased and the accused on the material day is PW2. He is a son of the accused. The fight was during the broad daylight. I find that this is evidence of recognition. See generally *Wamunga v Republic* [1989] KLR 424; *Maitanyi v Republic* [1986] KLR 198 at 201.
27. Like I stated, PW2 was a child of tender years and gave unsworn evidence. According to him, he saw his father (the accused) fighting with his mother outside their plot; and, that the accused picked a piece of wood which had a nail and hit the deceased with it. He said the deceased was throwing stones towards his father. She advised him to go to his aunt's (PW1's) place. He stayed there until 20:00 or 20:30 hours when he returned home. That is when he found the lifeless body of his mother lying on the sofa with a pool of blood on the floor.
27. I have closely analyzed his statement. As I noted on the record, he came across as an intelligent boy. One gap in his evidence is that when he got to his aunt's place, he never mentioned to her about the



- fight. The defence has seized on this issue as well as the failure by the Republic to call other eye-witness including Jane Adoyo who reported the matter to the police.
28. I cannot second guess why the minor chose not to tell her aunt about the incident. Regarding the failure to call other eye-witnesses, I remain alive that under section 143 of the *Evidence Act*, no particular number of witnesses is required to prove any particular fact. I am also unable to say that in all the circumstances of this case, I can draw a negative inference against the prosecution.
29. So, is the evidence of PW2 corroborated? The answer is in the affirmative. Firstly, the fight is supported by the findings of the pathologist: There were bruises on the left-upper back area; defensive bruises on the left-upper limb on the back and right elbow area; and, multiple abrasions on anterior neck and right side of the neck. There was also a small wedge-shaped laceration below the skin on the right thigh area. When cross examined, he said it did not reach the major blood vessels. In his opinion death resulted from “head injury due to blunt force trauma”.
30. Secondly, PW2 was asked by the deceased to go to PW1’s place as the fight was going on. He was emphatic that the accused hit the deceased on the head with a nailed piece of wood; and, that she was throwing stones back at him. When PW1 she was summoned to the scene, she found the deceased’s body lying on the sofa with a stab wound on the thigh. From the evidence of PW1, the couple had a difficult relationship and used to fight; and, that on a previous occasion, the deceased came to her house with a bloodied T-shirt.
31. The third important corroboration of the evidence of PW2 emanated from the defence. Like I stated, the accused denied engaging in any such fight with the deceased. On the contrary, he claimed that the deceased made lunch and that he, PW2 and the deceased ate in harmony. She then left on a chang’aa drinking spree. The accused then left only to return and find her lifeless body on the sofa.
32. But the accused in his sworn evidence gave further corroboration of PW2’s evidence when he stated-
- “She [deceased] left, took changaa and returned late. I also used to drink but not that day. She claimed I had another wife. She started throwing stones and sticks at me. There were people at the scene. I could not beat her in public. I went back to work at 14.30 hours and stayed there until 20.30 hours. When I returned I found deceased on the sofa and blood on the floor”
29. I thus find that the unsworn evidence by PW2 that he witnessed the fight and that his mother was throwing stones at the accused is clearly corroborated by the accused as underlined above.
30. I have then considered his alibi. It was raised well after the close of the prosecution’s case. But it did not shift the burden of proof to the accused. See Republic v Johnson [1961] 3 ALL E.R. 969, Saidi Mwakawanga v Republic [1963] E.A. 6. Like I stated earlier, the legal burden of proof lay throughout with the prosecution. Woolmington v DPP [supra] Bhatt v Republic [supra].
31. I have weighed the alibi against the evidence of PW2 above and readily find that it was a lie: The accused concedes that the deceased was throwing stones and sticks at him. Like I have stated, the post mortem examination revealed the deceased had extensive bruises including defensive bruises on the left-upper limb on the back and right elbow area. I thus readily find that the accused engaged in a fight with the deceased and then conveniently left the locus in quo leaving the deceased behind nursing serious injuries. As he states, the deceased accused him of having another wife as she threw stones at him.
32. It is true that the police found him at the scene from where he was arrested. That fact alone does not exonerate him.



33. Regarding mens rea, the accused inflicted extensive life-threatening injuries on the deceased. He thus knew or ought to have known that it was likely to cause grievous harm or death. I thus find that the accused had malice aforethought as defined in section 206 (b) of the Penal Code. From the nature of injuries and all the surrounding circumstances, it is also clear that the death was premeditated.
34. The conduct of the accused is inconsistent with his plea of innocence. The deceased died as a direct consequence of his unlawful conduct. The entire corpus of direct, circumstantial and documentary evidence points irresistibly to his guilt.
35. The upshot is that the prosecution has proved the charge beyond reasonable doubt. The accused, of malice aforethought, caused the death of the deceased by an unlawful act. I accordingly enter a finding of guilty and convict him of murder contrary to section 203 as read with section 204 of the Penal Code.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF FEBRUARY 2026.**

**KANYI KIMONDO**

**JUDGE**

Judgment read virtually on *Microsoft Teams* in the presence of-

Accused.

Ms. M. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. P. Nzomo for the accused instructed by Mwirigi Nzomo & Company Advocates.

Mr. E. Ombuna, Court Assistant.

