

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. E056 OF 2022

REPUBLICPROSECUTOR

VERSUS

WESLEY KIPLANGAT TANUI ACCUSED

JUDGMENT

1. **Wesley Kiplant Tanui** hereinafter referred to as the accused is facing a charge of murder contrary to section 203 as read with section 204 of the penal code. The particulars are that the accused on 8th October, 2022 at Aqua Centre in Rongai sub-county within Nakuru county, murdered Alex Yego.
2. The accused denied the charge and the matter proceeded to full hearing with the prosecution calling nine (9) witnesses. The accused gave an unsworn statement of defence and called no witness.
3. PW1 **Joseph Kangogo Yego** is a brother to the deceased who did boda boda business. On 7th December, 2022 at 12 midnight he was asleep when he was called by Ismael a watchman from Afya Bora Centre. He asked him to rush to the centre as the deceased had been injured. He went with his wife Lydia to the place. He found the deceased in pain

and he was oozing blood from the chest. An ambulance was called but unfortunately, he passed on. Police came and took away the body.

4. He said two boys who were there one being Simon mentioned the accused as the culprit. PW1 and the police went to the accused's home but he took off. The police entered his house and recovered the knife which was the murder weapon and they also took his motorcycle. They later received information that the accused had been arrested. On 12th October, 2022 he witnessed the post mortem. He said he had known the accused for 15 years.
5. PW2 **Dr. Titus Ngulungu** a Pathologist conducted the post mortem on 12th October, 2022 after the body had been identified by Joseph Yego (PW1) and Philemon Chebii. Some of the injuries he had were blood loss, lack of oxygen wound on left armpit (3 x 1cm). The left lung was collapsed with a stab wound on the upper inferior lobe. The cause of death was severe chest injury involving the lung and the heart with haemothorax due to a single sharp blade trauma to the chest. Blood and finger nails were taken for DNA profiling. He produced the post-mortem report as Exb 1.
6. PW3 - **Simon Okal** (minor aged 17 years) testified that on 7th October, 2022 midnight he was from Rafiki area which was near the club (scene). He was with Alex (deceased) and Simon (PW4). Near the club as they chatted someone called Wesley came from the bar appearing drunk. He came wanting to start his motorbike. There was electricity light on

at the place. Wesley came to Alex demanding that he gives him the helmet he had. Alex declined saying the helmet was for Robert.

7. Wesley then kicked Alex who slapped him. Some man came and separated them. Alex left and went at the bar door while he drove Alex's motorbike near the bar. Wesley removed a Maasai knife from his motor bike and pushed it in his sweater's sleeve. He went to where Alex Yego was and started talking to some people. Wesley touched Alex who repulsed him. He stabbed Alex on the side of his ribs and then went back to his motorbike which he started and left.
8. Alex fell down and the people there took off. He gave PW4 the keys to Alex's motorbike. They took Alex to Afya Bora Hospital but he later died after a while. Police later arrived and took their names. He said he had known Wesley whom he identified as the accused since childhood.
9. In cross examination he said the deceased's motorbike was next to that of the accused. He did not alert the deceased about the knife. The ambulance came after an hour. In re-examination he said the accused came from the bar while annoyed but the deceased had not gone to the bar.
10. PW4 **Simon Kiprop** testified that on 7th October, 2022 at 11.30pm he was with his friends Simon Lokale (PW3) and Omar Oseko, heading home on foot when they saw Alex (deceased) who had just dropped some clients. They stopped and started chatting. While still there the accused appeared from the bar while drunk. Alex gave Simon (PW3)

his motor bike key asking him to move it for him. Alex remained with his helmet. The accused began demanding for the said helmet. The rest of what happened is similar to what PW3 told the court. This witness said he rushed to warn Alex about the knife but the accused had already reached him.

11. He described the knife as being similar to a Maasai one. i.e its neither thick nor slim. The accused then pushed Alex who resisted and that is when he stabbed him and he went back to his motorbike. Alex gave him (PW4) the key to his motorbike and he went and moved it. Him and others assisted Alex and took him to Afya Bora Hospital. He was later pronounced dead.

12. In cross examination he said Wesley's bike was parked next to that of the deceased. The deceased had come from Kambiya Moto not from the bar. He said they were at the scene for 30 minutes before the take off to hospital. At the hospital there were no doctors at first. The accused overtook him as he went to tell the deceased about the knife.

13. PW5 **Julius Kipkoeh Too** was working at Aqua Lodge Nakuru as a security guard on the night of incident. He knew the deceased and accused as boda boda riders. On 7th October, 2022 midnight he was patrolling at the Fast Food Venue when he was called by the Manager Cosmas Rono, who told him of people fighting. This was on the veranda. He went and heard the deceased say he had been stabbed on the stomach and was unable to stand. The boda boda guys,

PW5 and the manger rushed him to Family Bora Hospital, and also went to report the matter to Kambi ya Moto police station.

14.The witness said on their return they found the patient dead. He later saw the knife on CCTV. He said he had never collided with the accused. He further stated that before he died he mentioned Wesley (accused) as the culprit.

15.In cross examination he said on the material night he was also acting as a waiter as they had less staff. The deceased had been injured on the left side of the stomach. He was bleeding as he held his stomach. He was at the police station when the report was made by the manager.

16.PW6 **No. 111633 P. C Joseph Esepon Ekamais** of Menengai police station said on 8th October, 2022 01.20am he was attached to Kambi ya Moto patrol base of Menengai police station when he received a report form Cosmas Ngetich and another in respect of a fight between two boda boda riders at Aqua Lodge. During the fight one rider was stabbed. They went to the scene led by I. P. Edward Odhiambo. While on the way they were informed that the victim had been rushed to hospital.

17.They reached the hospital and he saw the victim who was bleeding profusely from a wound on the left side of the chest. After a while the victim passed on. He knew both the victim and assailant. The body was taken to the mortuary as they proceeded to the scene with I. P Edward Odhiambo, Sgt

Michael Gachau, P. C Alex Angwenyi, Cpl Pamela Rono and P. C Gitau Muriithi.

- 18.They interrogated those present and accused's name was mentioned as the attacker. They went to his home which was not far from the Patrol base. About 100m from the suspect's home they saw someone disappear into the darkness. They entered accused's house and found 2 children. They recovered an I. D Card in accused's names, a Maasai sword (Exb 2) under the mattress. They impounded his motor bike registration No. KMEV make TVSHMX. All these were handed over to DCI - Rongai. He said the person who disappeared was not identified by them. He had met the suspect at the lounge before and he even greeted the police officers. He did not see him again that night.
- 19.In cross examination PW6 confirmed they went to the suspect's home and he did not identify the person who ran away from the house. It's the children who told them their father had left the house. Further that when they spoke to the accused it was before the incident and it was a friendly talk. That the sword they handed to the investigating officer had blood stains.
- 20.PW7 - **Godwin Khamala Waliana** is a government analyst based at Kisumu government chemist. He testified that two exhibits were submitted to them by No. 56785 Cpl Jared Omusugu from DCI Rongai. The exhibits were:
- (i) Fingernail cutting and Blood samples from Alex Yego (deceased)

- (ii) A rusted sword with a leather handle with a plastic scubud

These exhibits were covered by a red leather lining labelled as B1 and B2 respectively. They were to examine the exhibits and determine whether there was any biological evidential material and to establish its origin if any.

21. His finding was that the sword (EXB 2) and Scubud (EXB 3) were lightly stained with blood of human origin. The DNA profiles generated from the items are in the report at page 2. His conclusion was that the DNA profiles generated from the blood stains on Exb 2 & 3 are identical and matched the DNA profile generated from the reference sample of Alex Yego, the deceased. He produced his signed report as Exb 4a and the Exhibit Memo as Exb 4b.

22. In cross examination by M/s Chebet for the accused he said they received the samples on 17th January, 2023 but did not know when they were extracted or if there had been any previous handling of them. He confirmed having received the sword (EXB 2) which had blood stains. He only dealt with what was presented to them as is the practice.

23. PW8 **No. 56785 Cpls Gerald Omusungu** of CCIO's office Vihiga formerly of DCIO's office Rongai is the investigating officer herein. He testified that acting on instructions from his boss S. P. Donata Otieno he visited a murder scene at Kampi ya Moto with Cpl Naibei on 8th October, 2022 at 10.00am. They gathered information from the scene at Aqua

grove. They were taken through the CCTV footage which was saved as evidence. He also learnt that the suspect had surrendered himself to the Menengai police station. The CCTV was saved in a flash disc which he kept in a safe. He then prepared an exhibit Memo form and took it to the Cyber Crime. The flash disc (EXB 6) was played in court. It showed the accused assaulting the deceased who fell down.

24. This witness identified the sword (EXB 2) recovered by PW6 who visited the accused's home. He said EXB 2 had blood stains. After the post mortem the doctor extracted finger nails and blood samples which he gave to the witness who prepared an exhibit memo (Exb 4b) and forwarded the samples, finger nails and sword (Exb 2) to the Government chemist. The witness produced the sword (EXB 2), Scubud with maroon cover (EXB 3) accused's I.D Card (Exb 5), Exhibit Memo dated 1st January, 2023 requesting for the photos of the suspect and the footage to be processed as (Exb 7a).

25. In cross examination he said the CCTV footage was only recovered at the scene. The scene had been interfered with since business was ongoing. He did not take the accused for sampling or fingerprint taking. The delay in sending the exhibits to the government chemist was due to logistic challenges but he added that the samples were intact. He said the accused surrendered himself to the police. He said he identified the accused's face from the footage as he

caught and stabbed the deceased. He did not however identify the sword.

26. PW9 – **No. 239268 C. I. P Timothy Bett** of DCIO National HQ which is under the section on Imaging and Accostic said he does imaging analysis, work he has done for 8 years. He was appointed by ODPP under Gazette Notice No. 4328 on 14th March, 2023. It was his evidence that on 20th January, 2023 the Lab received an Exhibit Memo from DCIO Rongai Nakuru signed and dated 19th January, 2023. It was accompanied by a flash disk with a CCTV footage from Aqua shop. He subjected it to a check and confirmed it was genuine. He captured 25 images on the disc, which were captured by 2 cameras. This was around 0031 hrs.

27. The following are his observations:

- Both cameras captured a person holding a helmet while standing in a veranda with others.
- It also captured another person dressed in a yellow reflector, walking towards the person in a helmet. He tapped him on the shoulder.
- Seconds later a scuffle ensued between the two people. They could be seen fighting and on lookers came.
- The person with the reflector is seen lifting his right hand to the victim and hits him and the victim is thrown to the other side.
- The victim is captured lying on the ground.
- The other person left onto his motorbike and took off.

- The victim is captured writing in pain. More people surrounded him.
- He tried to stand up but he jerked and fell on the ground.
- He was then carried away on a motor bike

28.PW8 produced the 25 processed photos as Exb 8a - y. He did a report which he produced as (Exb 7b) and the flash disc as Exb 6.

29.In cross examination he said he is an expert in this work. He explained how the positioning of the images and all other things they do are done. He said after receipt of a flash disc they do a back up to preserve the exhibit. He was very sure of there being no error in the assignment. He confessed that he could not physically identify the two who were fighting let alone the suspect.

30.In his unsworn defence the accused said he is a boda boda rider with a motorbike and his ID is No. 26402226. He stated that on 7th October, 2022 at 7.00pm he was home and took supper before returning to the stage with a passenger he had carried. At midnight he got two (2) customers (Mother and daughter). He took and dropped them at Aqua drop. He waited outside for payment for about ten minutes. He was then paid shs 100/= after he followed them.

31.He was given alcohol by the clients. It's then he remembered he did not have the keys to the motorbike. He excused himself to go and get the keys. Reaching the motorbike he found three (3) young men there who had put

it on. On inquiring on why they were there, one slapped and kicked him. On further asking they followed him and they started struggling. He pushed one who fell down. He switched on his bike and went home and slept after eating.

32. He explained that around 4.00am his wife woke him up saying she was hearing people calling out his name. He told them Wesley's home was ahead. He went to his neighbour's and stayed there. In the morning his dad asked him what he had done. He asked if he had pierced someone with a knife which he denied. His dad called the police who came and arrested him.

33. The prosecution relied on its submissions on case to answer dated 22nd May, 2025 and filed by M/s Emma Okok Principal Prosecution Counsel. In the said submissions counsel gave a summary of the evidence adduced by the nine (9) witnesses. It was counsel's submission that the three (3) ingredients for proving a charge of murder had been established by the prosecution. That death and its cause had been proved by the witnesses and the post mortem report. (Exb 1).

34. Secondly that it was the accused's unlawful act which caused the deceased's death. Counsel submitted that the accused was placed at the scene by PW3 and PW4 who saw him stabbing the deceased. The two (2) witnesses knew the accused well. There was electricity light at the scene. Further, that PW6 recovered the blood stained Maasai sword (Exb 2) in the accused's house and the same was confirmed by PW7 to be the murder weapon.

35. On malice aforethought counsel referred to section 206 of the penal code. She thus submitted that the use of a Maasai sword in stabbing the deceased in the chest was clear evidence that he wanted to kill him. He never assisted the deceased to get medical attention and instead fled the scene.

36. The accused filed his submissions dated 21st November, 2025 through the firm of Odundo, Kiumbuku & Associates. Counsel submitted that the evidence adduced by the prosecution was naught with inconsistencies, procedural lapses and gaps in forensic proof rendering any conviction unsafe. On this counsel referred to the cases of:

(i) Republic V Josephat Kipchirchir Meli [2005] eKLR

(ii) Bhatt V Republic [1957] EA 332

37. She further pointed out that the post mortem report by the medical doctor (PW2) was not clear on what weapon caused the injuries leading to the deceased's death. That this was further contradicted by the contradicting evidence of PW3 and PW5 who saw the deceased from the time of incident to the time of death. Reference was made to the case of **Republic V Samuel Karanja Kira [2007] eKLR.**

38. Counsel argued that there was no evidence of any witness who directly saw the accused stab the deceased. That the evidence of PW1, PW3, PW4 and PW5 and the CCTV footage could not be relied on by the prosecution. She referred to

Republic V David Mwangi Mungai & another [2014] eKLR in support.

39. Additionally, counsel submitted that the allegedly recovered murder weapon did not have the accused's genetic material i.e no fingerprints, sweat or anything else linking him to the object. Besides this, she argued that the crime scene was compromised and this was admitted by the investigating officer (PW9). Lastly on this issue it was her submission and while relying on the case of **Republic V Kipkening arap Koske & another [2049] 16 EACA 135** that the evidence of the prosecution is so distorted and cannot sustain a conviction.

40. On the issue of Mens rea counsel submitted that the procedural irregularities highlighted created a reasonable doubt in the matter. The rest is a repetition of facts already submitted on in relation to actus reus. Counsel called on the court to acquit the accused.

Analysis and determination

41. The accused is facing a charge of murder contrary to section 203 as read with section 204 of the penal code. Section 203 of the penal code provides as follows:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

On sentence section 204 of the Penal Code provides thus:

“Any person convicted of murder shall be sentenced to death”.

42. From the above definition of murder, I find the following elements to be the ones for proof in a charge of murder.

- (a) The fact and cause of death
- (b) That the accused committed the unlawful act that caused the death (actus reus).
- (c) That the accused had the intention to kill the deceased (mens rea)/malice aforethought.

43. I have considered the charge, evidence by both the prosecution and defence, both submissions and the law. I therefore proceed to analyze the evidence on record to determine whether the prosecution has proved the accused's guilt beyond reasonable doubt.

The fact and cause of death

44. PW1 - PW6 and PW8 all testified confirming the death of the deceased. There is no dispute to this fact of death. Dr. Titus Ngulungu (PW2) the pathologist who did the post mortem found the cause of death to be severe chest injury involving the lung and the heart with Hemothorax due to a single sharp blade trauma to the chest. The deceased had blood loss, and lack of oxygen. This is all stated in the post mortem report (Exb 1) which was filled and signed by PW2 upon examination of the deceased's body.

45. My finding therefore is that the deceased's death was not a natural one.

Whether the death was caused by an unlawful act committed by the accused

46. The direct evidence pointing at the accused as the perpetrator of the killing is that of PW3 and PW4. Both witnesses stated that they were with the deceased (a rider) and another outside the club chatting, when the accused came out of the bar while angry. PW3 and PW4 had wanted the deceased who was a rider and had just dropped a customer to give them a lift home.

47. Both witnesses said there was electricity light outside the club, which enabled them to see what transpired as the accused who appeared drunk demanded for the deceased's helmet claiming it to be his. He later picked a knife/sword from under his motor bike's seat hiding it under the sleeve of his sweater. He thereafter stabbed the deceased in the ribs.

48. In his unsworn statement of defence the accused denied committing the offence. From his evidence he claimed to have been the victim as he was attacked by three (3) young men at Aqua drop where he had dropped two (2) clients. That the young men had switched on his motorbike as he did not have his keys. He was slapped and kicked by one of them as he inquired as to why his bike was on. He struggled with the three and dropped one down. That's how he managed to take off with his motorbike and went home.

49. PW5 was a security guard at Aqua Lodge (club) Nakuru on the material night. He knew the accused and deceased as boda boda riders. He confirmed being on duty on the

material night. He found the deceased already stabbed but there was mention of Wesley as the culprit.

50. PW6 and other officers went to the accused's home within Kambi ya Moto the same night at around 3.00am. As they approached the accused's house they saw some unidentified person disappear into the darkness. Reaching the accused's house, they did not find him. They only found his two (2) children who told them their father had left. In the said house they recovered the accused's I.D card (EXB 5) plus a Masaai sword knife (EXB 2) which had blood stains.

51. The sword/knife (EXB 2) was later taken to the government chemist with the deceased's blood samples and finger nails for examination. PW7 who did the examination found as follows:

- (a) The sword/knife (EXB 2) and Scubud (EXB 3) were both lightly stained with blood of human origin.
- (b) The DNA profiles generated from the blood stains on EXB 2 & 3 were both identical and matched the DNA profile generated from the reference profile of the deceased Alex Yego. The report which was produced by PW7 is EXB 4a while the Exhibit Memo Form is EXB 4b.

52. Counsel for the accused had submitted that PW3 & PW4 testified that visibility at the scene was poor and the PW5's evidence was inconsistent. This is not correct since PW3 clearly indicated that there was electricity light outside the club where they were and where the incident occurred. The

incident did not occur where the accused's bike was where there was no light as he had moved from there. Counsel did not point out what was inconsistent in PW5's evidence. The witness was clear that he did not witness the fight and only stated what roles he played and the deceased's condition.

53. It is true that the examination of the murder weapon (EXB 2 & 3) did not include the presence of the accused's DNA profile. The reason is that no blood samples of the accused were taken for the said purpose. That is not disputed.

54. What has however been clearly established is that the murder weapon (EXB 2 & 3) was recovered from the accused's house under his mattress. How did it find its presence in the accused's house? The accused did not say anything about this in his defence.

55. Secondly, is the fact that this was his house which is confirmed by the finding of an I.D card in his full names WESLEY KIPLANAT TANUI No. 26402226. He equally did not say anything about this ID Card nor produce any other ID Card to contradict what the prosecution witnesses had stated.

56. Thirdly, the accused surrendered himself to Menengai police station. On 10th October, 2022 he was taken to Molo Law Courts where PW8 sought for more time to complete investigations. Again, the accused never in his defence explained why he surrendered himself to the police station if he was never involved in this crime. In his defence he said it was his father who called the police who arrested him. How

could his father call the police to arrest him for something he had not done?

57.PW9 **C.I. P Timothy Bett** of DCIO National HQ under the section on Imaging & Accostic, does imaging analysis and is gazetted under Notice No. 4328 of 14/3/23. He analysed the Flash disc with CCTV footage from Aqual Grove Shops (Scene of incident). The CCTV footages were also watched by this court. It was admitted that the culprit's face was not clearly captured. This is also confirmed by the 25 photos produced in court as EXB 8a - y.

58.The CCTV evidence is not the main evidence upon which this charge is based. It cannot also be said to be contradicting the evidence by the other witnesses. It was availed as supportive evidence. These photos and the clips clearly confirmed there having been a confrontation and a person was injured. This is the person who eventually passed on, who is the deceased in his case. It does not therefore displace nor contradict the evidence by PW3, PW4, PW5, PW6, PW7 and PW8.

59.I do not find any procedural lapses, contradictions as submitted by the defence in this case. My finding is that the evidence by PW3, PW4, PW6, PW7 and PW8 clearly places the accused at the scene of crime at Aqua Grove Rongai. It is him who inflicted the injury that caused the death of the deceased.

Whether the offence was committed with malice aforethought

60. Section 206 of the penal code provides as follows on malice aforethought

- (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;*

61. Malice aforethought as defined above requires proof of an intention to kill or cause grievous harm or foresight that death/serious harm was highly probable. This can be inferred from the weapon used, the nature of injuries or premeditation. Several cases have addressed this issue based on the various circumstances. See

(i) Roba Galma Wario V Republic [2015] eKLR

(ii) Republic V Edan (Criminal Case No. E001 of 2023) [2025] KEHC 15124

(iii) Republic V Njoroge (Criminal Case No. 19 of 2019) [2025] KEHC 12653

(iv) Republic V Kibet (Criminal Case No. E013 of 2022) [2025] KEHC 4371. Amongst many others.

62. From the evidence on record, it's clear that there was a confrontation between the accused and deceased before the accused went for the sword/knife, which he used to stab the deceased. Secondly, from the evidence of PW3 and PW4 the accused stabbed the deceased on the ribs. This was confirmed by PW2 who conducted the post mortem.

63. Considering the weapon used to cause the injury and the targeted part of the body that was stabbed it is clear that the aim was to cause a fatal injury. After the stabbing, the accused took off, not bothering to assist the deceased to get medical attention. It all points to his ill intention.

64. I am therefore satisfied that the prosecution has proved its case against the accused whose defence was a mere denial. For my part, I find the accused guilty of the offence of murder contrary to section 203 of the penal code and convict him accordingly.

Dated and signed this 22nd January, 2026 by:

**H. I. ONG'UDI
JUDGE**

**Delivered this 17th February 2026 in open court at
Nakuru by:**

**MOHOCHI S. M.
JUDGE**