



REPUBLIC OF KENYA



**Republic v Panyako (Criminal Case 4 of 2020)
[2026] KEHC 1746 (KLR) (13 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1746 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 4 OF 2020
GL NZIOKA, J
FEBRUARY 13, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

OSCAR MWENESI PANYAKO ACCUSED

JUDGMENT

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63) of the Laws of Kenya.
2. The particulars of the charge are that, on the 18th day of January 2020, at Site Kaburi Estate within Gilgil in Gilgil Sub-County within Nakuru County he murdered Martin Kipruto Kemei.
3. The prosecution case is that, on 18th January 2020, at about 9:00pm, (PW1) Martin Kipruto Kimei was heading home from work when he heard screams near Site Kaburi. That he noticed the deceased's motorcycle outside a shop and there was a large crowd of people. That Otieno washolding the deceased by the shirt but he managed to separate them
4. PW1 Kimei stated that the accused came from inside a plot and attacked the deceased. That he intervened to assist the deceased but the deceased informed him that he had been stabbed. That at the same time the accused chased away other people who went to the assistance of the deceased as shouted: "you people will know me today".
5. (PW2) John Kiprono Bett, (PW5) Titus Baraza Mulei and (PW8) Patrick Joel Ahoko testified that they heard commotion outside the plot where they were staying and went to find out what was happening. That they found the deceased lying outside the gate on the ground with blood on his chest.
6. PW1 Kimei and PW8 Ahoko got a bodaboda and rushed the deceased to Gilgil Sub County Hospital but the deceased succumbed to the injuries he sustained.



7. Upon receipt of the report of the death of the deceased, (PW6) No. 84939 Corporal Dennis Maore went to the scene and gathered information that the accused had stabbed some. He went to the accused's house and recovered a knife stained with blood. Consequently, he arrested the accused and took him to the police station.
8. In the meantime, (PW7) Dr. Titus Ngulungu performed the post mortem on the body of the deceased and concluded that the cause of death was a myocardial injury with haemopericardium thorax due to a single stab wound due to injury on the left chest keeping with homicide.
9. At the conclusion of investigations, the accused was charged accordingly.
10. At the close of the prosecution case, the accused was placed on his defence. In a sworn statement he denied committing the offence. He testified that on 18th January 2020 at 9:30pm the deceased and four (4) other people went to the plot where he was working as a caretaker and asked him to call one Otis who was a resident in the plot. That he called Otis who went to meet those people.
11. That after a while he heard Otis say that he cannot pay. He decided to inquire as to what was happening but was told by the deceased that he was not involved in the matter. That he decided to call the owner of the plot but was attacked with a rungu causing him to plead from the mouth and so he returned to his house as he left those people fighting.
12. That police officers came and asked if he was the caretaker after which he was taken to the police station issued with a P3 form then to the hospital and treated. The accused stated that he did not witness who stabbed the deceased nor did he see the knife that was used.
13. At the close of the hearing of the case, the prosecution chose to rely on the evidence on record.
14. The defence filed submissions dated 28th May 2025, and argued that the testimonies of the prosecution witnesses were inconsistent, had contradiction and lacked credible direct evidence linking the accused to the offence. That PW1 testified to hearing screams but in cross-examination admitted he did not hear any scream. Further, he claimed to have seen the accused holding a knife but in cross-examination conceded to not seeing the knife.
15. The defence argued that there was a confrontation between the deceased and one Otis whom PW1 found holding the deceased by the shirt. Further, PW2 confirmed that the day prior the incident, the deceased was involved in an altercation with Otis while PW3 testified that the fracas only started after Otis had been called out of the gate by the accused.
16. Moreover, PW4 testified that the deceased and his group were drug users who had vowed to deal "with the Luo" meaning Otis. That the remark by the deceased was indictive of premeditated hostility. That it is the deceased who led a group of people to demand money from Otis leading to the altercation.
17. The defence further submitted that the prosecution did not call key persons of interest being: Otis, and Bonny who called PW6 about the fracas and who showed the police officers the accused house. Further, the prosecution never availed any exhibits or government analyst report. That the knife was never produced in court with PW10 the investigating officer stating that the exhibit memo could not be traced.
18. The defence submitted that the accused's defence was consistent that he had been attacked by the deceased with crude weapons and that no search was carried out in his house nor the knife found there. Furthermore, the prosecution did not controvert and/or challenge his defence.



19. That in any case, the evidence of some of the prosecution witnesses exonerated the accused. That PW10 confirmed that the accused had visible injuries when arrested and required medical attention, and that no conflict existed between the deceased and the accused making it unlikely that the accused had any motive to commit the offence.
20. That in addition, PW1's evidence was uncorroborated despite the presence of a crowd of people at the scene. That PW2, PW3, PW8 and PW9 did not witness the fracas or see the accused at the scene. Further, there is a legitimate concern that the familial relationship between PW1 and the deceased that PW1 may be biased and give skewed testimony in favour of the deceased.
21. The defence finally submitted that the prosecution had not discharged the burden of proof to warrant a conviction. That the investigations were shoddy and they are doubts whether it was the accused person or Otis who stabbed the deceased and urged the court to interpret the doubts in favour of the accused and return a verdict of not guilty.
22. At the conclusion of the trial and in considering the evidence I find that the offence of murder which the accused is charged with is stipulated under section 203 of the Penal Code as follows:

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”
23. Pursuant thereto, the ingredients of the offence are settled by various court's decision as follows; a) proof of the death of the deceased, b) that the death was caused by an unlawful act or omission of the accused, and c) that the act was committed with intent to kill or cause grievous harm, basically malice aforethought.
24. The court of appeal decisions in the case of; *Roba Galma Wario v Republic* (2015) eKLR reiterated these elements, emphasizing that proving these ingredients beyond reasonable doubt is crucial for conviction, with malice aforethought distinguishing murder from manslaughter.
25. In the instant matter, the occurrence of death and cause thereof is not in dispute. PW8 Patrick Joel Aloko assisted to take deceased to hospital and shortly after arrival he died, whereas PW9 Benson Kiptemo, the deceased's brother identified the body for post mortem.
26. Finally, PW7 Dr Ngulungu conducted the post mortem and observed on external examination; pallor on the finger nails, a convex incision wound on the left upper chest stab wound measuring 20x12mm and located 100mm to the left of suprasternal notch and 100mm above left nipple.
27. That internally the pericardium had blood clot and the heart a stab wound entering on the left aspect of the infundibulum and when probed it communicated with the left chamber. PW7 Dr Ngulungu formed the opinion that the cause of death was myocardial injury with blood loss due to a single stab wound injury to the left chest in keeping with homicide.
28. Based on the afore evidence the occurrence and cause of death is established.
29. The next question is who committed the offence and whether the death was lawful or unlawful and more so whether whoever committed the offence had malice aforethought.
30. In that regard, PW1 Martin Kipruto Kimei who was at the scene, testified that he saw the accused hit the deceased and that as he raised his hand to defend the deceased he realized that the deceased was stabbed on the chest (and head). That the accused also stabbed Joseph Maina when he intervened.



31. Further that the accused was armed with a knife and chased everyone away saying that: “you people will know me today.” In cross-examination, the witness stated that there were street lights outside the shop and witnessed what occurred well.
32. From the evidence of this witness, it is confirmed inter alia that; the accused was at the scene where the offence took place and the deceased was stabbed on the chest and head, as he stated
33. In addition, PW2 John Kiprono Bett, a Nyumba Kumi elder testified that the day before the event, the deceased and one Otis fought after Otis broke the side mirror of the deceased’s motor bike. That he intervened and told them to sort out the issue the following day.
34. That the following day, he received information people were fighting, and when he attended to the information, he found the deceased stabbed and blood flowing from the chest. That he learnt from Otis that the accused Oscar had stabbed the deceased.
35. The witness further stated that accused was present and looking confused and when he asked the accused where the knife was, he said it was in the kitchen. That later the police recovered the knife.
36. The evidence of this witness, confirms that the accused was at the scene where the deceased was lying stabbed on the chest he was said to have stabbed the deceased. Further the accused told him the knife allegedly used was in his house. This evidence corroborates the evidence of PW1 Kimei afore inter alia that the accused was armed with a knife.
37. Furthermore (PW3) Ian Macharia testified that he witnessed the accused call ‘Otis’ and they went out, then fracas broke out and although he did not witness the accused stab the deceased, his evidence corroborates that of PW1 and PW2 that the accused was at the scene of crime on the material date.
38. On her part (PW4) Lena Onsero who had employed the deceased testified that upon learning of the incident he went to the hospital to see the victim and found the deceased had passed on. That he found Jose or Joseph Maina who had also been stabbed being treated. PW4 further testified that Jose told her that the accused had stabbed him when Jose and others went to ask Otis for money to pay for deceased’s motor cycle’s side mirror that Otis had damaged.
39. Notably, the evidence of this witness corroborates that of (PW1) Kimei that the accused was at the scene and stabbed two people; the deceased and Joseph.
40. The other witness who placed the accused at the scene is PW5 Titus Baraza Mulei, a tenant at plot where incident took place.
41. In addition to the evidence placing the accused at the scene is the issue of the knife recovered. (PW6) No. 8439 Corporal Dennis Maore who arrested the accused, testified that he recovered from the accused’s house knife stained with blood. This evidence corroborates the evidence of PW2 John Kiprono Bett, a Nyumba Kumi elder, that the accused told him the knife, the weapon of murder was in his house and he saw the police officers recover it.
42. However, the knife that was recovered and taken to the Government chemist for analysis and the results of the analysis were not produced in evidence. The accused argues that the failure to avail that evidence weakens the prosecution case and exonerate him.
43. However, PW10 Inspector Kiarie Ngure, the investigating officer told the court that, the exhibits were taken for analysis by the late Sergeant Mutuku, and that the exhibit memo cannot be traced. The demise of the Sergeant and inability to avail evidence relating to the knife and analysis thereof is reasonable.



44. The accused raised several other issues in submissions. He argues that the evidence of witnesses is marked with contradictions. He faulted PW 1's evidence in several aspects; hearing or not of screams, that he didn't witness the stabbing, he confirmed deceased involved in altercation and generally his evidence is uncorroborated.
45. However, the court finds that the evidence of PW1 Kimei is corroborated by evidence of other witnesses as already stated herein. Furthermore, although no one may have seen the accused stab the deceased, it is on evidence that he was seen armed with a knife and even injured Joseph by stabbing him with a knife.
46. The accused further submitted that the evidence of PW2 was hearsay. However, it is considered in the light of other evidence in totality and has already been analyzed herein.
47. The accused further submits that, the remark by deceased and his group members that they had gone to deal with a 'Luo' was 'premeditated hostility'. However that cannot be a reason for stabbing the deceased and another. In any case, it was not directed at the accused. He is not a Luo and therefore he could not have been injured by the remark.
48. It is further submitted that the accused was attacked as confirmed by the evidence of PW10. However, by that argument it is not clear whether the accused is relying on the defence of self-defence or not. Even if he were to raise that defence, there is no evidence that the deceased was armed with any weapon or posed such danger to him that called for him to arm himself with the knife and stab the deceased. Even if the deceased was armed with a rungu as alleged, can a rungu be equated to a knife in assessing reasonable force to rebut eminent danger? Certainly not.
49. The accused further argues that, failure to call Otis and Bonny as witnesses is prejudicial to the prosecution case. The question is, would these witnesses add more value to the prosecution case? Would "Otis" have been a prosecution witness or a suspect. It is the finding of this court that the absence of that evidence is not prejudicial to the prosecution.
50. Finally, the accused argues that there was no bad blood between him and deceased, therefore no motive to commit the offence. However, motive is immaterial in a case of murder as held in the case of; Ann Waithera Macharia & 5 Others vs Republic (2019) eKLR
51. Pursuant to the aforesaid, it is the finding of this court that there is adequate evidence to sustain conviction and I find that the accused was involved in the commission of the offence.
52. The last question to consider is whether the accused had malice aforethought, when he committed the offence. In that regard Section 206 of Penal Code stipulates the circumstances under which malice aforethought may be deemed to exist as follows: -
 - 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.



53. Based on the aforesaid and in considering the evidence in the instant matter, evidence reveals that the deceased's motor cycle's side mirror had been damaged by one Otis. Indeed, when the deceased and his friends went to the plot where the accused was working and Otis staying, all that they asked the accused to do was to call out Otis and he did. His loyal duty ended there.
54. However, evidence has it that he later on got involved in the fracas that ensued between the deceased and his friends on one hand and Otis and his friends on the other part. The accused did not just join by 'speculating' but fully arming himself with a knife and stabbing the deceased who had not confronted him in any way. If the accused was injured, it is in the considered opinion of this court that he exposed himself to the risk under the doctrine of; *volenti non fit injuria*. It states that "he who exposes himself to an avoidable risk bears the consequences of risk fully".
55. Furthermore, the accused stabbed the deceased square on the chest. Scientifically, human chest or thorax (as is sometimes referred to), is a central body cavity between the neck and diaphragm cage critical for sustaining life. It is primarily responsible for respiration, circulation and immune system functions.
56. The main organs that the human chest hosts are;
- a. Heart - located in the central cavity (mediastinum) and responsible for pumping oxygenated blood throughout the body.
 - b. Lungs – the main organs of respiration.
 - c. Oesophagus – a muscular tube that passes through the chest transporting food and liquid from the throat to the stomach.
 - d. Trachea (wind pipe) – passage for air which branches into bronchi to deliver air to the lungs.
57. From the afore write up, it is clear that whoever stabs another in the chest has no intention of allowing him one more minute of life. This is a matter of public knowledge and therefore when the accused stabbed the deceased in the chest, he knew very well the consequences of his action and that, it would lead to death or grievous harm.
58. As such, it is the finding of this court that there is adequate evidence of malicious aforethought. In fact, it is further supported by the evidence of PW1 that the accused went berserk and injured Joseph Maina, chasing away anyone who tried to assist the victims and swore that the people present would know who he was, interpreted or understood to mean, he would teach them a lesson.
59. Consequently, I find the accused guilty as charged of the offence of murder and consequently convict him.

DATED, DELIVERED AND SIGNED ON THIS 13TH FEBRUARY, 2026.

GRACE L. NZIOKA

JUDGE

In the presence of;

Ms Chepkonga for the state

Mr Karanja for the accused

Accused present virtually

Ms Hannah: Court Assistant

