



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Beja & 2 others (Criminal Case 36 of 2017)  
[2026] KEHC 1546 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1546 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL CASE 36 OF 2017  
WM KAGENDO., J  
FEBRUARY 12, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**RAMA LENGA BEJA ..... 1<sup>ST</sup> ACCUSED**

**FELIX MWONGOVI MVUGA ..... 2<sup>ND</sup> ACCUSED**

**JAMES MWAMUYE CHARO ..... 3<sup>RD</sup> ACCUSED**

**JUDGMENT**

**Background**

1. Electoral violence has, regrettably, been a recurring feature in Kilifi South Constituency. According to the sitting Member of Parliament, Hon. Richard Ken Chonga (PW10), during the 2013 election cycle there were multiple incidents of violence in which houses were burnt, leading to the deaths of an Administration Police officer and a member of his committee, with several other persons sustaining injuries.
2. In the aftermath of those events, a vigilante group was formed with the stated objective of preventing a recurrence of such violence during subsequent 2017 elections.
3. According to PW10 and PW4, Jimmy Ngala Boga, the group's and then their NYS youth chairman, comprised twenty-five (25) members. Its mandate was to patrol the area and report any suspicious activities to the police. For this purpose, members were supplied with mobile phones.
4. The group maintained communication with Chasimba Police Station, the Administration Police particularly Inspector Paul Achima and local village elders.



5. On the eve of the 2017 general elections, 7/8/2017, eighteen (18) scouts were dispatched on six (6) boda bodas, each motorcycle carrying one rider and two pillion passengers. Two motorcycles were assigned to each of the following routes: Banda la Salama, Mwarakaya/Kaoyeni, and Kizingo.
6. The remaining members retreated to the Member of Parliament's homestead to plan for the elections scheduled for the following day.
7. The deceased, Nicodemus Karima Shikahili, was one of the pillion passengers and was being ferried by Nicholas Mmbuyu Kalama (PW7). Their team did not initially encounter the rival group; rather, they were later called to assist in recovering a confiscated motorcycle. In the ensuing confusion, the deceased was left behind, leading to his tragic death.
8. What began as a peacekeeping initiative thus culminated in yet another violent confrontation, resulting in the loss of a young life.
9. It is hoped that this case will yield lessons capable of breaking the cycle of electoral violence, particularly as the country approaches future election cycles.
10. Evidence before the court suggested that the vigilante group was drawn exclusively from one political side, namely ODM.
11. The accused persons were associated with the opposing Jubilee side. The first accused (A1) was alleged to have been the chief agent of the late MP, Hon. Mustaffa Idd; the second accused (A2) was contesting for a Member of County Assembly position; and the third accused (A3) was a driver.
12. In their defence, all three accused testified that they had spent the day moving agents for mapping and training purposes and had just dropped them at their respective homes when the incident occurred.

### **The Charges**

13. The three accused persons: Rama Lengwa Beja (A1), Felix Mwangovi (A2), and James Mwamuye Charo (A3), were jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars alleged that on 8th August 2017 at Kaoyeni Village, Mwarakaya Location, within Kilifi County, jointly with others not before court, they murdered Nicodemus Karima Shikahili.

### **The Law**

14. Article 26 of *the Constitution* safeguards the right to life and protects against the arbitrary deprivation thereof. Article 6(3) is also relevant in considering the coordination of community security initiatives across national and county governments.
15. Section 203 of the Penal Code provides that: "Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder."
16. In *Anthony Ndegwa Ngari v Republic* [2014] eKLR, the Court of Appeal held that the prosecution must prove the following elements beyond reasonable doubt to secure a conviction for murder: a. The death of the deceased and the cause of that death; b. That the accused committed the unlawful act or omission which caused the death; and c. That the accused acted with malice aforethought.
17. Accordingly, the prosecution was required to establish: i. Proof of death and its cause; ii. Proof that the death resulted from an unlawful act or omission attributable to the accused; and iii. Proof that the unlawful act or omission was accompanied by malice aforethought.



## The Evidence

18. The prosecution called thirteen (13) witnesses, namely: Joyce Musachupa (PW1) Edward Murima Jembe (PW2) Uchi Paskal Nwongoro (PW3) Jimmy Ngala Boga (PW4) Moses Chonga Mwambogo (PW5) Lenny Chandugu (PW6) Nicholas Mmbuyu Kalama (PW7) Bosco Mangundza Chirume (PW8) Karogo Chikadzo Anderson (PW9) Richard Ken Chonga (PW10), Area Member of Parliament Irene Mwaringa (PW11) Dr. Swaleh Mansoor Hussein (PW12) No. 235038 C.I. Maria Mweni (PW13)
19. The defence called five (5) witnesses, namely: Rama Lengha Beja (DW1) Felix Mwangovi (DW2) James Mwamuye Charo (DW3) Claris Tinga (DW4) Ali Khamis Said (DW5)

## Analysis of Evidence

20. Regrettably, no prosecution witness testified as to what triggered the initial violent confrontation. The only uncontested fact is that one of the six motorcycles ended up in the possession of the accused persons.
21. PW8, Bosco Mangundza Chirume, testified that one rider reported sighting a suspicious vehicle within their stronghold and was advised to follow it and report its activities. This information was circulated among the other riders, after which they heard that the rider and his team had been attacked.
22. The said rider, known as Jonathan, did not testify, nor did any of his pillion passengers. Consequently, the court was denied a first-hand account of how the confrontation began.
23. Evidence from PW4, PW5, PW6, PW7, and PW8 indicates that they were later called to assist in recovering the confiscated motorcycle, and the deceased was among those who responded.
24. Upon arrival, they encountered a hostile crowd and were forced to retreat.

Unfortunately, the deceased was left behind. According to the investigating officer (PW13), the deceased was heavy-set and could not run fast enough. It was also noted that he had recently travelled from Nairobi and was unfamiliar with the local terrain.
25. The accused persons' account, corroborated by A3, was that they were dropping off agents when they noticed motorcycles trailing their vehicle, causing apprehension.
26. One motorcycle allegedly overtook them, while another collided with the rear right side of their vehicle. The riders reportedly threatened them, saying, "You people of Mghanga leo mtatuacha."
27. Following the collision, A1 advised A3 to knock down the motorcycle, causing the riders to fall into a ditch. The riders then advanced towards them while armed with pangas and rungs. A1 and A3 raised an alarm shouting "wezi, wezi," prompting the attackers to flee, leaving behind a panga.
28. A1 and A3 took possession of the motorcycle and the panga and called the police, as well as A2, who had been dropped about 500 metres away.
29. Members of the public responded to the alarm, and when the riders returned to retrieve their motorcycle, the crowd repulsed them.
30. According to the accused, it was this crowd that attacked the deceased. A1 testified that upon hearing calls to lynch the deceased, he intervened to rescue him.



## Death and Cause of Death

31. The death of the deceased is not in dispute. The body was preserved at Kilifi Mortuary, where a post-mortem examination was conducted on 14th September 2017.
32. PW1 (the wife) and PW2 (the brother) identified the body, which was later released for burial. The investigating officer confirmed the death.
33. The deceased was initially taken to St. Teresa Catholic Hospital. PW5, PW6, and PW7 testified that his face was bloodstained and that he had a deep cut at the back of the head.
34. The post-mortem report revealed the following injuries: External Injuries: Head: Cut wound measuring 4 cm × 2 cm on the frontal bone with brain exposure; cut wound measuring 8 cm on the occipital region with brain exposure; raccoon eyes observed. Right upper limb: Bruises on the arm and forearm. Right lower limb: Bruise on the leg.  
Internal Injuries:  
Head: Fractured skull measuring 8 cm posteriorly and 4 cm × 2 cm frontally.
35. The cause of death was haemorrhage secondary to severe head injury.
36. These injuries were not self-inflicted. A bloodstained rungu and panga were recovered and produced as exhibits.
37. No lawful justification was advanced. The death was therefore unlawful.

## Whether the Accused Caused the Death

38. None of the thirteen prosecution witnesses testified to having seen any of the accused inflict the fatal injuries upon the deceased.
39. The principal evidence against A1 was that he was seen by several witnesses supporting the deceased from a dark area and placing him on the ground near the vehicles.
40. A1's red T-shirt (PEXH 4) was found to have bloodstains. DNA analysis (PEXH 5) revealed that the blood belonged to A1 himself and not to the deceased.
41. A1 explained that he rescued the deceased from a lynch mob and supported him to safety. This account was not materially contradicted.
42. Although some witnesses alleged that A1 was armed with a panga and rungu and prevented evacuation, A1 explained that the weapons were recovered from the scene and later handed to the police.
43. There was no evidence that the accused persons were armed, nor was there eyewitness testimony regarding the moment the deceased sustained the fatal injuries.
44. PW7, who ferried the deceased to the scene, gave no explanation as to how he became separated from his passenger.
45. Consequently, there is no evidence establishing how or by whom the deceased was injured.
46. The failure by the prosecution to call the initial riders, whose identities were known, constituted a serious investigative lapse. Their absence invites an adverse inference under section 119 of the *Evidence Act*, as articulated in *Bukenya & Others v Uganda* [1972] EA 549.



## Causation and Delay

47. The court considered whether any delay in taking the deceased to hospital contributed to his death.
48. Witnesses gave inconsistent timelines, ranging between 15 and 45 minutes. The place and time of death were also unclear.
49. In these circumstances, it was not proved that any delay caused or materially contributed to the death.

## Determination

50. The court is not satisfied that there was sufficient evidence to prove beyond reasonable doubt that any of the three accused inflicted the fatal injuries.
51. The prosecution case rested largely on circumstantial evidence which did not meet the requisite threshold set out in *Sawe v Republic* [2003] eKLR. Circumstantial evidence is as good as any evidence if properly evaluated, as held in *Musili Tulo v Republic (Criminal Appeal No. 30 of 2013)* [2014] eKLR and *Ndurya v Republic* [2008] eKLR.
52. Although the accused were present at the scene, their defence was credible and raised reasonable doubt.
53. In the absence of proof of participation, the issue of malice aforethought does not arise.
54. In a criminal trial, the prosecution has a legal burden to prove its case against an accused person beyond reasonable doubt. The court should only convict where it is satisfied that the evidence on record has established the guilt of the accused beyond reasonable doubt. It should not admit of plausible possibilities (*Stephen Nguli Mulili v Republic* [2014] eKLR; *Pius Arap Maina v Republic* [2013] eKLR; *Festus Mukati Murwa v Republic* [2013] eKLR).
55. Accordingly, the prosecution failed to meet the required standard of proof.
56. The three accused persons are hereby acquitted under section 322 of the Criminal Procedure Code of the offence of murder contrary to sections 203 and 204 of the Penal Code
57. They are set at liberty, their sureties discharged and any security deposited may be released to them.

## Observations and Orders

56. This case illustrates both the necessity and the risks inherent in informal community-based security initiatives during elections. The court acknowledges and commends the Member of Parliament for Kilifi South Constituency for the efforts made to promote peace and prevent a recurrence of electoral violence within the constituency, with caution that such initiatives must be inclusive and firmly under lawful supervision.
57. Under Articles 238 and 239 of *the Constitution*, national security is the responsibility of the State and is to be exercised in compliance with *the Constitution* and the law, with the National Police Service bearing the primary mandate to maintain law and order and to protect life and property. Article 6(3) emphasizes coordination across national and county governments in delivering security and public services.
58. Part XI of the *National Police Service Act*, Cap. 84 provides the legal framework for community policing. Section 96 provides for the object of community policing; section 97 for the role of County Policing Authority in community policing; section 98 provides for establishing of area community



- policing committees and other structures; section 99 for functions of community policing committees and other structures; and section 100 on procedural matters on community policing committees.
59. Community participation in security is permissible only within the aforementioned legal framework and must remain inclusive, non-partisan, accountable, and firmly under lawful oversight. There remains significant room for improvement in aligning local peace initiatives with these constitutional imperatives.
60. In light of recurring incidents of election-related violence within Kilifi South and neighboring constituencies, the Police Officer in charge of Kilifi County, working with the area community policing committees within Kilifi County, the Independent Electoral and Boundaries Commission (IEBC), relevant civil society organisations, the Court Users Committee (CUC), the National Cohesion and Integration Commission (NCIC), and the Area Member of Parliament, shall initiate structured, inclusive, and non-partisan electoral peace and security engagement forums to come up with proper security structures for the election period which can be replicated in the election violence hot spots.
56. Such engagement shall be undertaken not later than six (6) months from today so as to be concluded in good time prior to the next general election and shall include: a. Inclusive participation of all political actors and community stakeholders across party lines; b. Clear coordination frameworks between community actors and formal security agencies; c. Civic education on lawful political participation and non-violent dispute resolution; and d. Safeguards to ensure compliance with *the Constitution* and applicable electoral and security laws.
57. It is the court's considered view that, if faithfully implemented, these measures will contribute meaningfully to the prevention of electoral violence and ensure that the death of Nicodemus Karima Shikahili will not have been in vain.
58. A status report on compliance with these directions shall be filed in court by 30th September 2026.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 12TH DAY OF FEBRUARY 2026.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**WENDY KAGENDO MICHENI**

**JUDGE**

In the presence of:

The three accused persons and their advocate Mr. Magia

Mr Sirima For The State

Bebora – Court Assistant

A copy of this judgment shall be served by The Deputy Registrar upon all the relevant agencies for compliance.

Signed By/for:

**HON. LADY JUSTICE WENDY MICHENI**

