



**Republic v Konde (Criminal Case E023 of 2023)
[2026] KEHC 1548 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1548 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E023 OF 2023
WM KAGENDO., J
FEBRUARY 12, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK MBOGO KONDE ACCUSED

JUDGMENT

1. The accused, Patrick Mbogo Konde, was indicted on one charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on 19th September 2023, at Maunguja Village in Kisauni Sub-County within Mombasa County, he murdered Zilpa Habwoya Kombo.
2. At the hearing, the accused pleaded not guilty, thereby placing the prosecution under a duty to prove all the essential ingredients of the offence of murder beyond reasonable doubt. To prove its case, the prosecution, led by Mr. Sirima, called the following witnesses, who were cross-examined by learned counsel Mr. Khamisi. The summary of the evidence is as follows:

Prosecution Case

3. PW1 Patricia Nzingo Ubogo told the court on oath that on 19/9/2023 at about 2.30 pm, she was at home with her late mother (the victim) and her brother Patrick Mbogo (the accused). Her mother left to go and look for firewood with PW1's elder sister (Hildah Riziki), who is married nearby. The accused also followed the deceased, leaving PW1 at home. Shortly thereafter, the accused came back running, saying "nimeua." She ran out and found that the accused had cut the deceased at the back of her head with a jembe. They contacted their father, who arranged for an ambulance, but their mother passed on before the ambulance arrived.



4. On cross-examination, she stated that she saw the accused kill the deceased. She was only a few meters away from where the incident occurred. She further stated that there were no other people present at the time; others came later after the accused said he had killed.
5. PW2 Said Ngingo Salim testified that he is the chairman of a boda boda group in Bamburi. He knows the accused, who was a member of their group. On the material day, after dropping a passenger and on his way back, he found fellow boda boda riders gathered at the crime scene. When he went closer, he found the accused, who said he wanted to be taken to the police station because his life was at risk. PW2 took him to Kiembeni Police Station and handed him over to the OCS.
6. On cross-examination, PW2 stated that he did not witness the incident and knew nothing about the death. He only escorted the accused to Kiembeni Police Station.
7. PW3 Dr. Gabriel Ngala testified that he works at Coast General Referral and Teaching Hospital (CGRTH). He produced a post-mortem report in respect of Zilpa Habwoya Kombo. The post-mortem was conducted on 27/10/2023 by Dr. Ethan Omar at CGRTH. The body was identified by Japhet Benjamin and Ayub Mwanadiri Benjamin. The request for the post-mortem originated from DCI Kisauni.
8. PW3 stated that the deceased's fingers were blue due to lack of blood flow; there were bruises in the infraorbital area, bruises and lacerations on the nose, blood stains at the ear and nose, a deep sharp penetrating cut wound at the right temporoparietal region, a fracture of the left temporoparietal region, and multiple linear fractures with a basal skull fracture. The examining doctor formed the opinion that the cause of death was severe traumatic brain injury secondary to high-force sharp and blunt trauma to the head. The post-mortem report was produced as PEX-1.
9. PW4 Jackson Nebogo Charo testified that the deceased was his wife and that they were blessed with nine children, including the accused. On 19/9/2023, he was at home with the accused, the deceased, Patricia, and Shali. He later left for work at Mikindani. While there, he received a call from Shali informing him that Patrick had hit his mother on the head with a jembe and she was bleeding. PW4 rushed home on a boda. Upon arrival, he found his wife lying on the ground bleeding and unable to speak. The jembe was still at the scene (produced as PEX-2).
10. On cross-examination, PW4 stated that he did not witness the incident. When he arrived, the deceased was unconscious. She had been attacked approximately 30 meters from the house. The jembe was taken by the police. He stated that the accused and the deceased were very close and that they were shocked by the incident.
11. PW5 PC Oscar Mgale from DCI Kisauni testified that he was the investigating officer. On 19/9/2023 at about 3.00 pm, he received information from the DCIO that a young man had hit his mother on the head with a jembe and she had passed on. He visited the scene at about 8.30 pm with PC Chari Mwandawiro and PC John Njoroge. They found a lady lying down, covered with a lesa and bleeding, with a jembe next to her.
12. He found the area chief, the deceased's children, and other members of the public at the scene. He drew a sketch map showing the body lying in a south-east direction (produced as PEX-3).

Defence Case

13. At the close of the prosecution case, the accused was placed on his defence under Section 306 as read with Section 307 of the Criminal Procedure Code.



14. The accused gave a sworn statement. He stated that he had a good relationship with his family and was the one taking care of the deceased. He said he was in a relationship with a girl and that one Amiri Dzilano was also pursuing her and had threatened him.
15. On the material day, he was at home with his sisters Patricia and Rehema. He later visited another sister nearby. Patricia informed him that lunch was ready. After lunch, he was seated with the deceased when she informed him that she had seen Amiri passing by. The deceased said she would escort him as she was also leaving the house.
16. According to the accused, Amiri jumped on him and pushed him into an incomplete building. Amiri threw a log at him, which he shielded himself against. There was noise and his mother came screaming. He stated that Amiri threw his mother to the ground when she intervened. The accused then picked up a jembe and threw it at Amiri. Unfortunately, his mother got up at that moment and the jembe hit her. Amiri ran away. The village elder later called a boda that took him to Kiembeni Police Station.

Analysis and Determination

17. The accused is charged with murder contrary to Section 203 of the Penal Code, which provides:

“ Any person who, of malice aforethought, causes the death of another person by an unlawful act or omission is guilty of murder.”
18. The prosecution must prove beyond reasonable doubt:
 - a) The death of the deceased and its cause;
 - b) That the accused committed the unlawful act causing death;
 - c) That the accused had malice aforethought.

Death and Cause of Death

19. The death of the deceased and its cause were proved beyond reasonable doubt through the post-mortem report (PEX-1). The cause of death was severe traumatic brain injury due to high-force sharp and blunt trauma to the head.

Unlawful Act

20. PW1 testified that the accused admitted to killing the deceased and that she saw him shortly before and after the attack. PW2 escorted the accused to the police station. The accused himself admitted throwing the jembe, which struck the deceased.
21. The accused person admitted in his sworn evidence in court that he threw the jembe that caused the fatal injury to his mother. The act was therefore proved by admission under Section 17 of the *Evidence Act*.
22. It is therefore clear beyond reasonable doubt that the deceased's death resulted from an unlawful act committed by the accused.
23. That takes us to the realm of causation and malice aforethought.

Malice Aforethought

24. Under Section 206 of the Penal Code, malice aforethought includes intention to cause death or grievous harm, or knowledge that the act would probably cause death or grievous harm.



25. In the case of Nzuki – vs – Republic (1993) KLR 171, the Court stated that malice aforethought is a term of art and emphasized that:

“Before an act can be murder, it must be aimed at someone and, in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused: The intention to cause death; The intention to cause grievous bodily harm; Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts and commits those acts deliberately and without lawful excuse, with the intention to expose a potential victim to that risk as the result of those acts. It does not matter in such circumstances whether the accused desires those consequences to ensue or not, and in none of these cases does it matter that the act and the intention were aimed at a potential victim other than the one who succumbed. The mere fact that the accused’s conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into a crime of murder (see Hyman – v – Director of Public Prosecutions [1975] AC 55).”

26. In this case, the accused person knew that throwing a sharp jembe would cause grievous harm.

27. Further, the court does not believe that there was a third party involved, going by the testimony of PW1.

28. The injuries sustained, including a deep penetrating wound, skull fractures, and a basal skull fracture, demonstrate high-force trauma to a vulnerable part of the body.

29. Although the accused claims he aimed at Amiri, throwing a jembe, a lethal weapon, at a person demonstrates knowledge that death or grievous harm was a probable consequence.

30. Considering the weapon used, the manner of its use, and the severity of the injuries, I find that malice aforethought was established.

Conclusion

31. I find that the prosecution has proved the charge of murder contrary to Section 203 of the Penal Code beyond reasonable doubt.

32. Consequently, the accused, Patrick Mbogo Konde, is hereby convicted of the offence of murder contrary to Section 203 of the Penal Code.

33. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF FEBRUARY 2026.

WENDY KAGENDO

JUDGE

In The Presence Of:

The Accused Person Mr. Khamisi, Advocate for the Accused Mr. Ngiri for the State Ms. Bebora, Court Assistant

Signed By/for:

HON. LADY JUSTICE WENDY MICHENI

THE JUDICIARY OF KENYA.

