

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HIGH COURT CRIMINAL CASE NO. E009 OF 2022

REPUBLIC

.....PROSECUTI

ON

VERSUS

JOSEPH MUNERIA MUTERWA.....

.....ACCUSED

JUDGEMENT

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 11th day of February 2022, at Gilgil Township within

Gilgil Sub-County of Nakuru County he murdered Geoffrey Omondi Abour.

3. The prosecution case is that, on 11th February 2022, the accused and deceased were at Black Diamond Club at Gilgil. That the accused hit the deceased on the head and the deceased fell down. That the deceased was assisted and went to report the matter at Gilgil police station.
4. Apparently, the deceased did not go to the hospital immediately as he went to return the vehicle he was driving to the owner (PW2) Edwin Ndekare.
5. PW2 confirmed that the deceased returned the vehicle but told him that he had been hit on the head and had become unconscious and that he was experiencing headaches and even requested to rest in the vehicle but PW2 advised him to go for treatment and allowed him to retain the vehicle. That the deceased returned the vehicle after two (2) hours and PW2 drove him home.

6. In the meantime, following the report made at the police station, the case was minuted to (PW6) No. 112601 PC Labia Juma Ngala to investigate. He testified that he called the deceased who was the complainant then and learnt from his witness statement that he had been assaulted by one Joseph Muneria, the accused herein and complained of headaches.

7. That, he gave the complainant a P3 form which was filed and returned to the police station. That the suspect was arrested and released on free bond to go to court on 21st March but failed to do so and a warrant of arrest was issued against him.

8. That as the police were waiting to arrest the suspect, information was received that the complainant had died. The accused was subsequently arrested and charged accordingly.

9. At the conclusion of the prosecution case, the accused was placed on his defence. In a sworn

statement he denied committing the offence. He testified that, on 12th February 2022 at 4pm he went to a bar with a friend. That at 8.00pm a customer went to the bar and started seducing the lady he was with.

10. That after 20 minutes he heard noise outside the bar, as people were fighting. He took a boda boda and went home. That, the following day, the deputy OCS one Rita called him and he went to the police station. That he was told someone had reported he had assaulted him the day before. The reportee was one Omosh.

11. However, the complainant was in Kisii and he was told to return after one week. That he returned after one week and found the deceased and the deputy OCS, and when asked about the assault, he denied committing the same.

12. That the deceased demanded to be given Kshs 100,000 to withdraw the charges but he refused to

pay. That the complainant was investigated and dismissed.

13. However, after three (3) weeks he was summoned and told that the complainant had died and he was arrested and charged. He denied committing the offence. He argued that, the deceased implicated him because of alcohol, drunkenness and the disagreement they had.

14. At the close of the hearing of the case, the parties filed their respective submissions. The prosecution filed submissions dated 18th September 2025, and relied on the case of; Antony Ndegwa Ngari versus Republic (2014) eKLR where the Court of Appeal discussed the ingredients of the offence of murder as; the occurrence of the death and cause thereof; that the accused committed the unlawful act that led to the death; and that the accused had malice aforethought.

15. The prosecution further submitted that the death of the deceased was proved by the evidence PW1 who saw the accused person assault the deceased, PW2 who escorted the deceased to hospital, PW5 the deceased's brother who identified the deceased for the post mortem and finally (PW4) who conducted the post mortem on the deceased body.

16. That Dr. Ngulungu who performed the post testified that the cause of death was severe head injury attended by massive subdural haematoma and increased cranial pressure (ICP) due to blunt force trauma to the head.

17. On whether the accused unlawfully killed the deceased, the prosecution referred the court to Article 26 of the Constitution of Kenya, 2010, which that life can only be deprived to the extent provided for therein or in accordance with any other written law.

18. Further, that every homicide is unlawful unless authorized by law or excusable and/or justifiable circumstances such as self-defence or defence to property.
19. The prosecution further submitted that, PW8 the investigating officer produced the deceased's statement confirming that the deceased reported that he had been assaulted by the accused prior to his death. That the deceased statement having been made in relation to his death is admissible under section 33 of the Evidence Act.
20. Furthermore, the deceased's statement is corroborated by the evidence of PW1 on how the deceased sustained injuries to his head. Additionally, the accused testified in defence hearing that he knew the deceased, and that they had a disagreement and that he saw him at Black Diamond Bar.

21. On whether the accused had malice aforethought, the prosecution argued that the accused knew or ought to have known that assaulting the deceased on the head would result into death or cause grievous harm. That considering the part of the body targeted and the extent of the injuries sustained by the deceased the element of malice aforethought as set out in section 206 of the Penal Code is adequately proved.

22. The prosecution argued that it has proved the ingredients of the offence of murder to the required standard of proof and urged the court to find that the accused caused the death of the deceased.

23. However, the defence in response submissions dated 23rd September 2025, referred the court to the case of; Antony Ndegwa Ngari versus Republic (supra) where the Court of Appeal also discussed the ingredients of the offence of murder.

24. The defence submitted that the occurrence of death and cause thereof are not in dispute as they were clearly established by the evidence of the prosecution witnesses including the post mortem report. However, the defence argued that the evidence herein is at best circumstantial and that the prosecution has failed to prove that the accused assaulted the deceased.

25. That PW1 Juma was the only witness present at the scene of crime and alleged that he saw the accused assault the deceased. However, PW1 he did not tell the court what the accused used to beat the deceased.

26. Further, at the time of the incident, it was late at night and dark and as PW1 and the deceased had been drinking therefore there is a possibility both were drunk and could not identify the attacker.

27. Furthermore, that the deceased met with PW2 and informed him that he had been hit on the head but

did not reveal who hit him and exactly where he was hit. Additionally, at the time the deceased met with PW2, he was totally fine and was able to borrow a car drive it and bring it back after two (2) hours

28. The defence argue that none of the evidence adduced points to the accused as having caused the death of the deceased and therefore the case rests wholly on circumstantial evidence. The defence relied on the case of; Sawe vs Republic [2003] KECA 182 (KLR) where the Court of Appeal set out the conditions to be met before the court can rely on circumstantial evidence to convict an accused.

29. That circumstantial evidence relied on by the prosecution did not irresistibly point to the guilt of the accused noting that there was a break in the chain of causation. Further, the deceased was attacked on 11th February 2022 and died one (1) month later on 22nd March 2022. However, no direct

evidence was tendered linking the actions on 11th February 2022 and 22nd March 2022.

30. That there is no evidence adduced to confirm that the accused was at the scene and attacked the deceased and no weapon was recovered from the scene of crime. That the investigating officer floated innuendos during investigations but, it is trite law that suspicion, no matter how strong cannot provide the basis for inference of guilt.

31. The defence further submitted that the prosecution case was marred with inconsistencies and contradiction. That PW1 testified that the deceased was hit on the rear of the head and fell down while PW3, the doctor who examined the deceased on 15th February 2022 indicated that the deceased complained of injuries on the left neck and forehead inflicted by a blunt object.

32. That further PW4 who conducted the post mortem on the body of the deceased noted that externally

there were no injuries on the head, neck, chest, abdomen and lower limbs.

33. Lastly, the defence referred the court to section 206 of the Penal Code and the case of Republic vs Eyanae (Criminal Case E002 of 2022)[2024](KLR) on what constitutes malice aforethought. It is argued that the prosecution did not adduce any evidence to show that the accused had the intention to kill the deceased as none of the prosecution witnesses testified that the deceased and the accused knew each other and that the accused harboured ill intentions against the deceased.

34. The defence relied on the case of David Kipkemboi Ngetich vs Republic Nakuru Cr. Appeal Np. 276 of 2006 (CA) where the Court of Appeal held that motive contextualises circumstances in which an offence was committed.

35. At the conclusion of the trial and in considering the evidence I find that the offence of murder is

stipulated under section 203 of the Penal Code which states as follows:

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

36. 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.

37. The court of appeal decisions in the case of; *Roba Galma Wario v Republic (2015) eKLR* reiterate these elements, emphasizing that proving these ingredients beyond reasonable doubt is crucial for conviction, with malice aforethought distinguishing murder from manslaughter.

38.The question is what does “beyond reasonable doubt” entail? It is the high legal standard of proof, required in criminal trials for a conviction, meaning the evidence must be so convincing that a rational person would not hesitate to act on it in their most important personal affairs, leaving no logical reason to doubt guilt, though it doesn't mean 100% certainty.

39.To revert back to the matter herein, it suffices to note the first element to establish is whether there is evidence of occurrence of death and cause of death. In that regard (PW) 5 Derrick Okoth Owuor testified that on the 4th April, 2022 he identified the body of the deceased for post mortem which was done on the same day.

40.In addition, Dr Titus Ngulungu testified that he performed a post mortem on the body of the deceased on the same day at 01.00hrs after it was identified by Stephen Juma Abour and Derrick Okoth

PW5. Therefore, the occurrence of the death of the deceased is not in dispute.

41.As regards the cause of death, Dr. Titus Ngulungu testified that the cause of death was severe head injury attended by massive subdural hematoma and raised ICP due to blunt force to the head. In the absence of any other evidence to the contrary, I find that the cause of death is well established.

42.The next issue to interrogate is whether it is the accused who committed the offence. In that regard, (PW1) Juma testified that he was with the deceased when the accused assaulted him on the lower head and fell down.

43. The witness identified the accused in court as the one who assaulted the deceased. He maintained in cross-examination, that he saw the accused hit the deceased and noticed that the part on which the deceased was hit was swollen. In re-examination, he

stated that, at the time the deceased was unconscious.

44.The defence faults the evidence of this witness and argue that he was drunk, the scene was dark and he could not state with precision where the deceased was injured.

45.However, as regards the light at the scene, (PW1) stated that the “there was a light at the scene where the deceased was hit’”. The court also takes judicial notice of the fact that the offence is alleged to have taken place at a place where there were two clubs; Tamu Tamu and Black Diamond club and generally there would be adequate light. Even then, the witness (PW1) Juma was not cross examined on the alleged drunkenness hence inability to testify to what happened

46.Further (PW2) Edwin Ndekore testified to the effect that the deceased told him he had been hit on the head but notably did not tell the witness the person

who assaulted him. However, PW2 told the court that the deceased informed him he became unconscious when he was hit on the head. The evidence of PW2 corroborates the evidence of PW1 that the deceased was assaulted and more so on the head.

47. In addition, (PW3) Dr Martin Abuto told the court that when the deceased was being attended to at Gilgil Sub-County hospital after the incident, he stated that he was assaulted by a “person well known to him” and complained of headache and dizziness. The element of headaches brings into evidence assault on the head.

48. Furthermore, (PW1) Juma testified that on 11th February, 2022 when the deceased was assaulted, they reported the matter at Gilgil police station. (PW6) No. 112601 PC Labia Juma Ngala who was assigned to investigate the matter, testified that he recorded the statement of the complainant who told

him that he had gone to Black Diamond and was assaulted on the head by someone called Joseph Muneria. Notably, those are the names of the accused.

49. It suffices to note therefore in the statement recorded from the complainant (now deceased) and admitted in evidence that, the accused herein Joseph Muneria was identified as the person who assaulted the deceased thus corroborating the evidence of PW1 Juma as to who assaulted the deceased and more so the evidence tally to the extent that it confirms the deceased was assaulted on the head.

50. Furthermore, the injury on the head was confirmed by the evidence of (PW7) Dr Anangwe the radiologist who confirmed that from the deceased's CT scan taken of brain he noted on both sides of the brain, bleeding in the subdural space (space around the brain which had haemorrhage or blood clots).

Obviously, the brain is in the head, consequently, it confirms that the deceased was assaulted and injured on the head.

51. Be that as it may, the accused denies committing the offence, however, he admits that on the material date, he was at Black Diamond club where coincidentally the deceased and PW1 were. There the high possibility the accused and the deceased were in contact.

52. He also testifies to a customer who seduced his woman friend but does not state who the customer was. However, from the circumstances of this case, it can only have been (if at all) the deceased, hence the reason why the accused assaulted him.

53. Moreover, in his defence, the accused indicates that he investigated the deceased and learnt that he was working with the deceased's uncle. It is not clear from the evidence whether the accused and the deceased knew each other earlier.

54. Be that as it may, when asked why he thought he is being framed in this matter, the accused stated in his defence that it was because of “alcohol, drunkenness and disagreement they had.” Obviously, the accused confirms that they had disagreement with the deceased and that explains the reason of assault and subsequent death of the deceased.

55. To that extent the accused’s denial of the offence and the evidence that he heard of a fight and did not know who was involved and that he simply left for home, is not tenable and not honest.

56. I therefore find that (PW1) Juma saw the accused assault the deceased on the head. There is no evidence of a grudge between (PW1) Juma and the deceased. The evidence of (PW1) Juma is direct evidence and therefore the submission that the case rests purely on circumstantial evidence is not

proper and/or correct. Further the deceased identified the accused as the assailant.

57. Pursuant to the aforesaid, it is the finding of this court that the accused assaulted the deceased and it is the assault that caused the deceased's death. The argument that there is no link between the assault and time of death is not tenable, as there is evidence the deceased was on treatment due to the injury on the head from date of incident to death.

58. The last question is whether the accused had malice aforethought. Section 206 of the Penal Code which deals with malice aforethought states that malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (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.

59. In the instant matter, the evidence reveals that the accused and deceased just met in the bar. There was no bad blood between them before then. Apparently, their disagreement arose out of the woman the accused had and whom it is alleged the deceased seduced. It is also in evidence that the

accused hit the deceased on the head but no evidence of repeated assault.

60. Further PW1 Juma who was at the scene, did not refer to any items used to hit the deceased and what can be gathered from the evidence is that it was a single fatal blow on the head. Therefore, there is no evidence of aggravated assault.

61. In deed the injuries were initially classified as “harm” when the P3 form was filled. It is also in evidence that the deceased actually drove himself from the scene.

62. However, what evades the personnel treating the deceased initially as he complained of headaches is that the blow on the head had affected the brain which shock and as the deceased complained of headaches, the same was not taken seriously leading to his death. Be that as it were, the blow occasioned on the deceased head was the one that led to his death.

63. In the given circumstances of this case, I find that this is a suitable case to reduce the charge to the charge to a charge of manslaughter. I consequently find the accused guilty of the charge of manslaughter and convict him accordingly.

Dated, delivered and signed on this 12th day of February, 2026.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Chepkonga for the State

Mr Kipkorir for the accused

Accused - present physically

Ms Hannah - Court