

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 23 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ABDULLAHI WAKO DABASSO.....ACCUSED

JUDGMENT

1. *Robert Isaboke Ontiri* (hereafter the deceased) was a police officer stationed in Starehe Division. On the night of 2nd and 3rd March 2016, he was shot in the head. According to the pathologist, the bullet entered through the left side fracturing the temporal bone, pierced the brain and caused a tear measuring 14 x 5 cm. He died on 4th March 2016 while undergoing treatment at Kenyatta National Hospital.
2. The accused, who is also a policeman, was the prime suspect. The Director of Public Prosecutions thus brought *Information* to the High Court charging him with *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
3. The particulars are that on the night of 2nd and 3rd March 2016 at Kibera Highrise in Langata District within Nairobi County the accused murdered *Robert Isaboke Ontiri*.

4. The Republic marshalled *fourteen* witnesses. Eleven of them appeared before my predecessor, *Wakiaga J.* On 25th October 2022, and, pursuant to section 200 (3) of the **Criminal Procedure Code**, the accused elected to proceed from where the matter had reached. I should add that PW11, who had been stood down earlier was recalled to the stand on 20th March 2024.
5. *Kennedy Muya* (PW1) is a businessman. He knew both the accused and the deceased. On the night of the murder, he was at his pub in Kibera when the accused called him requesting to be driven to his lodgings at Capitol Hill Police Station. PW1 drove his motor vehicle KBR 319E to *Dubai Pub* where he picked up the accused. Along the way, the accused insisted on making a stop at *Jates Bar*. The bar was closing and someone pushed the accused out. PW1 said he saw the accused fall and drop his gun.
6. He also saw the deceased emerge from the bar and he requested him to give him a lift to town. PW1 ferried both the accused and the deceased from the bar. The deceased sat at the back. When the accused, who was at the front passenger seat realized that the deceased was also in the car, he demanded that the deceased must disembark. The deceased declined. PW1 stopped the car on

instructions from the accused. The accused alighted and opened the rear passenger door where the deceased was seated.

7. The two officers got out of the car. An argument ensued and he saw both officers, who were drunk, draw their guns. He left them on the roadside. A few metres away, he heard a shot ring out. He saw two people fall into the trench. He then saw the accused climb out of the ditch.
8. *Sergeant Bernard Orawo* (PW5) and his colleagues, *SSgt. Muchiri* (PW8) and *A.P. Tirop*, found the deceased at the scene. He had a bloodied forehead and still breathing but could not move or talk. They took him to Kenyatta National Hospital where he later died. They also recovered from the scene the deceased's Ceska Pistol S. No. 6408 containing 9 live ammunitions (exhibit 1) and a Techno cell phone. PW5 handed over the items to *SP Grace Chepkoech Cheseret* (PW10).
9. *Corporal Eliud Muthenge* (PW4) visited Kenyatta Hospital the same night. He found the officer Ontiri lying on the trolley with gunshot wound on the head
10. *Patricia Ndunge Ndida* (PW14) worked at *Jates Bar*. She said the deceased was a regular patron at the pub in Highrise Area. At about

23:00 hours, a Somali man knocked on the door enquiring why the bar was open past hours. Another hard knock followed. As the manager opened the door, the intruder pushed to gain access. She later heard a gun being cocked and a shot fired. At the time, the deceased was in the club and she heard him tell the intruder “*wewe ni officer mwenzangu*” before the two left the club.

11. As PW14 left the bar between midnight and 00:30 hours, she heard some screams. A co-worker named *Mweni* informed her that the deceased was shot. She saw him being removed from a ditch with a gun-shot wound to the forehead.
12. On 3rd March 2016, the accused surrendered his firearm, a Ceska Pistol S. No. F6060 (exhibit 8) to his colleague, *Cpl. Godfrey Muya* (PW2). According to the witness, it had only 14 rounds of ammunition. When he asked him about the missing ammunition, he said he would explain later. On the same day the accused was arrested at the police lines at Capitol Hill by CID Officers from Kilimani Police Station.
13. From the arms movement register and relevant entries (exhibits 10 (a & b)) and the combined evidence of *Snr. Sgt. Catherine Ndegwa* (PW13), the accused had been assigned anti-mugging

duties (SPIV) on the material night. From the evidence of *Sgt. Peter Kosgey* (PW11), at the time the accused firearm was assigned, it contained 15 rounds of ammunition but when it was surrendered, one round was missing (exhibits 9 (i-xiv) & 11).

14. *Corporal Jenipher Sirwa* (PW7) is a scenes of crimes officer. She produced 10 photographs of the body taken at the Kenyatta Hospital mortuary (exhibits 4 (a) - (j)) and 3 photographs of the motor vehicle KBR 319E (exhibit 4 (k) - (l)).

15. *Chief Inspector James Onyango* (PW12) is a firearms examiner. He examined the two Ceska pistols Nos. F6060 (exh A) and F6408 (exh D) recovered from the accused and the deceased respectively. He test fired three bullets each from the ammunition marked C1 to C14 and F1 to F9 and confirmed that they were both government stores, complete in all aspects and were thus firearms and ammunition as defined under the **Firearms Act**.

16. *Samuel Isaboke* (PW3) is the father of the deceased. On 3rd March 2016, he visited the patient at Kenyatta National Hospital. He had been operated on and was still at the ICU. The deceased died the following day. He identified the body for post mortem purposes.

17. The post-mortem was carried out by *Dr. Kanyi Gachie* (PW6). I

gave a summary of his key findings in paragraph 1 of this judgment. He produced the report dated 14th March 2016 (exhibit 3) which certifies that the cause of death was “*due to single bullet perforating gunshot wound to the head*”.

18. When the accused was placed on his defence, he protested his innocence and claimed he was framed up for a murder he never committed. He step up an *alibi* stating that at 9.00 p.m. on the material night, he boarded a matatu at Ngumo stage to Capitol Hill Police Station arriving there at 10.00 p.m. I will reproduce his sworn statement *in extenso*-

I have been a police officer for 37 years. When I recorded the above statement I was based at Kilimani Police Division, Capitol Hill station. I was there for 1½ years. I was on SPIV (Undercover Police). It is special prevention duties. We gather information. We would be in civilian clothes.

On the date of the incident on 2nd March 2016 at 4.00pm, I went to the armoury and got a firearm. I boarded a bodaboda at West to High-rise to a pub ran by Moraa. I asked her about a parcel I was expecting. She said Mumo, who was drunk would know when he sobered up. I left. I found a friend, Olelo and Rebecca who also ran pubs. We went to Rebecca’s pub. They requested me to get them a keg and pump. She bought me one beer. I then left for the

front street to another pub belonging to a lady, Mtano. I took three beers there.

I then left and went to Laini Saba, three to four Kilometers away. I went on foot. At Golf-course I went to see my cousin who works at Administration Police. My cousin Jillo was not in. I went to Ngumo stage. It was now 9.00pm. I boarded a matatu to Capitol Hill Police Station where I arrived at 10.00pm. I stayed at the Police canteen drinking until 1.00am in the night. I then went to my quarters and slept.

In the morning the Records officer (Ngenye) woke me. I gave him the records. It was now 10.00am. I went to the armoury but the armourer was out. It was now 11.00am. I gave the weapon to CPL Muia to return it for me so that I could go to sleep. He said the rounds were less when he checked the magazine. I had been assigned 15 rounds. He said it had 14 rounds. IN my statement I said the rounds were 13. It is an error.

I had lunch at the canteen and went back to sleep. At 4.00pm, I was woken up by CID Officer from Kilimani and asked me to accompany them to Kilimani. At the Report Office it was entered in the OB. That is when I learnt it was about murder from other officers at the report office saying another officer died. I was surprised. I did not know the officer or his name. I never met him as alleged.

On the date I wrote my statements, that is when I learnt of his name. On the night of 2/3/2016, I never met him.

On 7/3/2015 I was taken to Kibra Law courts where I was remanded at Kilimani. I stayed for 1 year in remand. The witnesses who said they saw me (PW1) is unknown to me. I don't know why he said so. I did not kill deceased.

19. Learned counsel for the defence, *Mr. Otieno*, filed extensive submissions with a list of authorities dated 28th January 2026. The first limb is that in all the circumstances of this case, the element of *actus reus* is missing. He submitted that there is no cogent evidence to show that the accused *“met the deceased or commit[ted] any act, whether directly or indirectly against the deceased”*. Reliance was made on ***Republic v Kibet***, Eldoret High Court Criminal Case E016 of 2023 [2025] KEHC 12477 (KLR).

20. It was submitted that the prosecution failed to call material witnesses while those who took to the stand gave false or unreliable evidence. For instance, one of the key witnesses (PW1) who claimed to have been together with the deceased and the accused up to the point of the shooting *“did not witness the accused discharge a firearm or inflict any injury upon the deceased”*.

21. Relying on ***Nzuki v Republic***, Court of Appeal, Nairobi, Criminal Appeal 70 of 1991 [1993] KECA 83 (KLR), learned counsel contended that there was no proof of *malice aforethought* or any credible

evidence showing a clear *motive* for the homicide.

22. Reliance was also made on a number of precedents including ***Republic v Moses Nato Raphael***, Court of Appeal at Nairobi, Appeal 169 of 2014 [2015] eKLR, ***Mukhalule v Republic*** [2025] KECA 1353 (KLR) and ***Joseph Kimani Njau v Republic*** Court of Appeal at Nyeri, Appeal 375 of 2011 [2014] eKLR.

23. The totality of the submissions is that the evidence is largely circumstantial, fails to connect the accused with the homicide and falls far short of the threshold of proof. Counsel cited ***R v Kipkering arap Koske & another*** 16 EACA 135 (1949) and ***Sawe v Republic*** [2003] KLR 364 for the proposition that the evidence did not irresistibly point to the guilt of the accused.

24. My findings are as follows. The burden of proof that the accused murdered the deceased lay squarely with the Republic. ***Woolmington v DPP*** [1935] AC 462, ***Bhatt v Republic*** [1957] E.A. 332.

25. Section 203 of the **Penal Code** provides that *any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.*

26. There are three key ingredients that *must* be present: first, the

prosecution must prove beyond reasonable doubt the *death* of the deceased and the *cause* of that death; secondly, that the accused *committed* the unlawful act that led to the death; and, thirdly, that the accused was *of malice aforethought*.

27. The death of the deceased is *no* longer in doubt. It was confirmed by his father, *Samuel Isaboke* (PW3). There is also the emphatic post-mortem report dated 14th March 2016 (exhibit 3) produced by *Dr. Kanyi Gachie* (PW6). The pathologist concluded that the cause of death was “*due to single bullet perforating gunshot wound to the head*”.

28. I thus readily find that the death was *unlawful*. The next question then is whether the Republic proved beyond reasonable doubt that the accused, *of malice aforethought*, killed the deceased.

29. The eye-witness in this case was PW1. He knew both the accused and the deceased. On the fateful night, the accused called him requesting to be driven to his lodgings at Capitol Hill Police Station. He ferried both the accused and the deceased from *Jates Bar*. He had earlier picked up the accused from *Dubai Pub* but along the way, the accused insisted on making a stop at *Jates Bar*. He saw someone push out the accused from the bar and his pistol falling down.

30. This was in fact evidence of recognition that was not affected by the night condition. See generally **Wamunga v Republic** [1989] KLR 424; **Maitanyi v Republic** [1986] KLR 198 at 201. I thus find that the accused was positively identified as the person who rode with the deceased in PW1's vehicle KBR 319E, and who later insisted that the deceased must disembark. The accused ordered the driver to stop, opened the back door and got into a heated argument with the deceased. Both of them were drunk and drew out their guns. A few metres away, he heard a shot ring out. He saw two people fall into the trench. He then saw the accused climb out of the ditch.

31. From the combined evidence of PW1 and PW14, I have come to the conclusion that the accused was the aggressor. Only one shot rang out. From the totality of the evidence of PW2, PW11 and PW13, the discharge was from the pistol assigned to the accused. There was no evidence that the deceased fought or fired at the accused. I am then unable to say that the accused acted in self defence.

32. I am fortified in that finding because, in fact, the accused never raised such a defence at all. His sworn evidence is that he boarded a matatu at Ngummo stage which delivered him at his quarters at Capitol Hill Police Station where he took a drink and then slept. His

alibi was raised well after the close of the prosecution's case. But it did *not* shift the burden of proof to the accused. See **Republic v Johnson** [1961] 3 ALL E.R. 969, **Saidi Mwakawanga v Republic** [1963] E.A. 6. Like I stated earlier, the legal burden of proof lay throughout with the prosecution. **Woolmington v DPP** [supra] **Bhatt v Republic** [supra].

33. I have thus *weighed* the *alibi* against the evidence of PW1 above and readily find that it was a fat lie: A blatant falsehood that he was bar-hopping the whole night before retiring to his quarters for the night; and, that he only learnt of the murder the following day. I say so because he is the one who summoned PW1 to pick him up at *Dubai Pub* and who insisted on a stop at *Jates Bar*. He rode in PW1's car from *Jates* to the *locus in quo*. From my earlier analysis, he is the only person who fought with the deceased, fell into the ditch and shot him in the head. Any other interpretation is not backed by the evidence.

34. Regarding *mens rea*, the accused abandoned his SPIV duties and opted instead to go on a drinking spree and to harass the operator at *Jates Bar* for opening beyond hours. He then suffered embarrassment when he was pushed out of the bar and his pistol

fell out. From the evidence of PW14, the deceased was in the club and she heard him telling the “Somali” intruder “*wewe ni officer mwenzangu*” before the two left the club.

35. The deceased then asked for a lift from PW1 and sat at the back. Like I stated, when the accused learnt that the deceased was a passenger, he became enraged, stopped the vehicle, opened the back door and the fight ensued. By shooting the deceased in the head at close range, he *knew or ought to have known* that it was likely to cause grievous harm or death. I thus find that the accused had *malice aforethought* as defined in section 206 of the **Penal Code**.

36. I have thus no doubt that he killed the deceased. From the nature of injuries and all the surrounding circumstances, it is also clear that the death was premeditated. The entire *alibi* is a sham: He murdered the deceased and then disappeared from the scene to rest in his quarters at Capitol Hill Police Station. He all the time feigned great ignorance of the heinous crime he had committed against a fellow police officer.

37. The conduct of the accused is *inconsistent* with his plea of innocence. The deceased died as a direct *consequence* of his unlawful conduct. The entire corpus of direct, circumstantial and documentary evidence points *irresistibly* to his guilt.

38. The upshot is that the prosecution has proved the charge *beyond reasonable doubt*. The accused, *of malice aforethought*, caused the death of the deceased by an *unlawful* act. I accordingly enter a finding of *guilty* and *convict* him of *murder* contrary to section 203 as read with section 204 of the **Penal Code**.

It is so ordered.

DATED, SIGNED and **DELIVERED** at **NAIROBI** this 10th day of February 2026.

KANYI KIMONDO
JUDGE

Judgment read in open court in the presence of-

Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Lumumba holding brief for Mr. Otieno for the accused instructed by Brian Otieno & Company Advocates.

Mr. E. Ombuna, Court Assistant.