



REPUBLIC OF KENYA



**Republic v Ahmed (Criminal Case E003 of 2025)
[2026] KEHC 2809 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E003 OF 2025**

**JN ONYIEGO, J
MARCH 5, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

NOOR ADAN AHMED ACCUSED

JUDGMENT

1. The accused person is charged with the offence of murder contrary to Section 203 as read out with 204 of the Penal Code. The particulars are that on 04.03.2025 at Konton Location, Khorof Harar Sub – County within Wajir County in the Republic of Kenya, he murdered Hassan Hamed Abdi.
2. He pleaded not guilty to the charge consequences whereof the case proceeded to full trial.
3. PW1, Dr.Kassim Shariff Hassan, conducted a postmortem examination on the body of Hassan Mohamed Abdi on 4.03.2025 at 4:00 p.m and made the following observations; that there was a bullet wound on the upper left lateral side of the chest, with an exit wound on the back; there were blood stains on the body and clothes. He concluded that the cause of death was a bullet wound leading to excessive bleeding. He produced the postmortem form as Exhibit 1.
4. PW2, CIP Paul Wanyoike Maina a ballistic expert testified that on 07.03.2025, they received an AK-47 rifle serial number 5524760, together with 114 rounds of ammunition and four magazines from PC Joel Wanyonyi for examination to determine; whether the firearm was functional; whether the magazines could be fitted; whether the ammunition could be fired and the calibre of the rounds. He stated that the exhibits were received in the laboratory on 12.03.2025 with a forwarding memo. After analysis, he prepared a report dated 14.03.2025.
5. In his findings, he confirmed that the firearm was an AK-47 of calibre 7.62 × 39 mm, in good condition and capable of firing. All component parts were intact. He explained that they test-fired the weapon using eight rounds from the 114, and recovered test fired cartridges and bullets which were marked



- accordingly. He added that the four magazines, each with a capacity of 30 rounds, were suitable for use in the rifle.
6. He further testified that the 114 rounds of ammunition were properly marked and were all capable of firing, thus classified as firearms under the *Firearms Act*. However, when comparing the test-fired cartridges with previously submitted cartridge cases of the same calibre, no match was found, meaning they could not establish whether the rifle had been used elsewhere. He concluded by noting that one of the magazines contained only 24 rounds instead of the full 30.
 7. PW3, Bulle Mohamed Abdi, testified that on the material day, he was at the market in Konton town, seated in front of his shop when he heard his brother Hassan demanding a sum of Kes. 2,100 from the accused. He stated that the accused, who was armed, shot his brother causing him to fall down. He recalled that the accused told his brother not to ask for money and confirmed that the accused had a gun. He stated that the accused was a Kenya Police Reservist. That together with others they took his brother to his house, where he died. They then called the chief, who instructed them to take the body to Elikahali. From there, they transported the body to Wajir, where the police took it to the hospital for postmortem. After the examination, the body was released to them for burial.
 8. He added that he was with Adhow Mohamed Aden and Adhow Ahmed Osman, who also witnessed what had happened. He concluded by stating that the accused later surrendered to the police. On cross examination, he reiterated that he saw the accused shoot his brother on the chest causing the deceased to die on the spot.
 9. PW4, Adhow Mohamed Adan, testified that on the material day, he was in his shop when the father of Noor arrived and informed him that two men were quarreling. That he closed his shop and went to see what was happening. He heard Hassan demanding money from Noor, and many people gathered at the scene. He recalled that the accused warned Hassan to stop asking for money or else he would kill him. He stated that the deceased then scooped soil and threw at Noor, who in response drew his gun and shot Hassan instantly. He explained that Noor then left on a motorbike and went to report to the police.
 10. He went further to state that together with others, they took the deceased to the hospital and later called the area chief, who advised them to report the matter to the police. As they reported, they found Noor had already presented himself at the police station. He added that the OCPD demanded that they avail the deceased after which the body was taken to Wajir hospital. Following the postmortem, the deceased was buried. PW4 concluded that the accused was responsible for the shooting. On cross-examination, he reiterated that he personally saw the accused shoot the deceased.
 11. PW5, No. 258078 PC Edwin Osaka, testified that on 04.03.2025 at about 11:00 a.m. he was at Khorof Harar Police Station when an NPR officer stationed at Konton village, Noor Adan Ahmed, arrived while armed with an AK-47 rifle. He explained that Noor came in as a suspect of murder and the OCPD together with the OCS disarmed him. He stated that Noor was suspected of shooting one Abdi.
 12. He told the court that he was handed over the rifle since he was the armourer. The weapon was identified as rifle serial number 5524760 together with 114 rounds of ammunition of calibre 62x3.9mm. He said that he kept the rifle and ammunitions pending ballistic examination while the officer was locked in the cells. He confirmed that Noor reported at 11:00 a.m. and was disarmed on suspicion of shooting somebody, though he was not aware of the exact time the offence had been committed. He emphasized that his role was to disarm Noor and secure him in custody.
 13. PW6, No. 257220 PC Felix Riyai testified that on 25.01.2025, he was instructed by the OCS to issue a rifle to NPR officer Service No. 06278, PC Noor Adan Mohamed. He stated that he issued him with



an AK-47 rifle, serial number 5524760 together with four magazines carrying a total of 120 rounds of ammunition of calibre 6.2 x 3.9mm, each magazine containing 30 rounds. He explained that on 4.03.2025, he was informed that the same officer had committed an offence using the rifle he had issued him. He confirmed that the issuance had been recorded in the arms movement book, which he wished to produce as Pexhibit 10.

14. PW7, No. 93081 Cpl. Shem Asha, testified that on 24th March 2025 a murder case report was made to them through the OCS Khorof Harar Police Station concerning an incident that had occurred on 4.03.2025 at around 9:00 a.m. He stated that the offence was attributed to one Noor Adan Ahmed, a person well known to them. He explained that he was tasked by the CCIO to investigate the matter and instructed the station officer at Khorof Harar to transfer the body to Wajir County Hospital, where a postmortem was conducted.
15. He further stated that the accused had presented himself and surrendered an AK-47 rifle, serial number 5524760, which had housed a magazine containing 24 rounds and three extra magazines with 30 rounds each, making a total of 114 rounds of ammunition.
16. He stated that the accused was arrested by PC Osaka and placed in cells. He explained that he recorded witness statements and established that the deceased and the accused were cousins who had quarreled over a debt of Kes. 1,200. The quarrel was witnessed by PW3, the deceased's brother, PW4 and other bystanders. He further confirmed that the accused was a police reservist, Service No. 06278, bearing ID No. 27450771.
17. He further stated that he prepared a memo to accompany the rifle, rounds of ammunition and four magazines which he forwarded as Exhibit Memo (PMI 2), produced as Exhibit 2. He later received the ballistic report, produced as Exhibit 6. He also took and processed photographs at the scene. In his exhibit memo to the ballistics expert, he forwarded the four magazines: three containing 30 rounds each and one containing 24 rounds. These were produced as Exhibits 5A–D. The 114 rounds of ammunition were produced before the court as Exhibits 4A–D. He added that eight rounds were tested, and their casings and bullet heads were produced before the court as Exhibits 7A–H.
18. He also produced the certificate of appointment confirming that the accused was an employee of the Kenya Police (Exhibit 12A), his ID card (Exhibit 12B), and his Huduma Card (Exhibit 12C). He concluded that the accused was charged with murder. On cross-examination, he stated that the report was made vide OB No. 3/4/4/25 at 11:00 a.m., although the incident itself had occurred between 8:00 a.m. and 9:00 a.m.
19. DW1, No. 06278 KPR Noor Adan Ahmed, testified that he was working at Wajir East as a police reservist. That on 4th March 2025 he was on duty at Konto while armed and accompanied by a colleague. He stated that he had a disagreement with Hassan Mohamed, who told him that he was not a police officer and ordered him to go away. He described Hassan as rough, saying that Hassan scooped soil and poured it into his eyes while holding a sword. It was his testimony that they faced each other and began fighting, and that Hassan followed him down until his colleague held Hassan. He recounted that Hassan cut him with a knife on his left elbow while aiming at his chest, narrowly missing.
20. He stated that he decided to defend himself, and as he tried to pull out his gun, Hassan held it and struck him with it, causing him to fall. He explained that when he rose, the gun discharged accidentally and shot Hassan. He emphasized that Hassan was his cousin and that he was shocked by the turn of events. He added that he left the scene and reported to the police, where he surrendered, and was subsequently charged with the offence. On cross-examination, he stated that Hassan died by mistake in his hands.
21. The parties chose not to file submissions despite being granted an opportunity to do so.



22. This being a criminal case, it is incumbent upon the prosecution to discharge the burden of proof by establishing that the accused person in this case committed the offence of murder beyond reasonable doubt. In the locus classicus case of *Miller v Ministry of Pensions* [1947] 2 All ER 372 Denning J. stated as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least probable’ the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

23. As already stated, the issue due for determination is whether the prosecution discharged the burden of proof of beyond reasonable doubt in respect with the charge of murder against the accused person herein based on the following elements.

1. Whether the death of the deceased occurred.
2. Whether the death was unlawfully caused.
3. That the accused caused the unlawful act of death and;
4. That there was malice aforethought.

24. As such, in determining whether death occurred and that the accused person was responsible for the death of the deceased, there is no doubt that the deceased died. The foregoing was supported by the evidences of PW3, PW4 and PW7. Additionally, the element of death was corroborated by the evidence of Dr. Kassim Sharif Hassan (pw1) who testified that he conducted post mortem on the body of the deceased. According to him, the cause of death was a bullet wound leading to excessive bleeding. In any event, the accused does not deny that the deceased died. Therefore, there is no dispute as to the proof of death as a requirement of the law under Section 203 of the Penal Code as against the deceased.

25. The second element is on proof of causation of death, which the law provides must be unlawfully caused. It is trite law that every homicide is unlawful unless justified or excusable as contemplated in Art. 26(4) of *the Constitution*. The landmark case of *Guzambizi Wesonga vs Republic* [1948] 15 EACA 63 addressed this element as follows:

“Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable, it must have been under justifiable circumstances, for example in self-defense or in defense of property.”

[Also see the case of *Daniel Nzioka Mbuti & another vs Republic* [2021] KECA 987 (KLR)].

26. Like all elements of the offence of homicide, the element of actual causation must be proved beyond reasonable doubt by way of evidence. In this case, according to the prosecution witnesses especially PW3 and PW4 they testified that they saw the accused person shoot the deceased dead. Additionally, PW1 testified that he conducted a postmortem examination on the body of Hassan Mohamed Abdi on 4.03.2025 at 4:00 p.m and according to him, the cause of death was a bullet wound leading to excessive bleeding. He produced the postmortem form as Exhibit 1.



27. The accused person urged that Hassan died by mistake in his hands while the prosecution on the other hand presented direct evidence to the effect that the accused person killed the deceased simply for asking for his money. The defence put forth by the accused that it was the deceased who grabbed the gun and in the course of the struggle the gun discharged a fatal bullet does not add up.
28. How come none of the people present saw the deceased grab the gun. The defence raised is a mere excuse intended to apportion liability where it does not lie hence the same is not convincing and therefore dismissed. To that end, I am satisfied that the accused person herein shot the deceased after their bitter exchange over non-payment of a debt owed to the deceased by the accused leading to the deceased scooping some soil and poured it on the accused who overreacted by shooting and killing him instantly. The act of shooting was therefore unlawful. The circumstances did not warrant use of a gun hence use of excessive force.
29. As to whether the unlawful act of assault was actuated with malice aforethought, section 206 of the Penal Code defines it as follows:
- “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; or 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.
30. The factors in which such inference can be drawn, were laid out in the case of the Tanzanian Court in *Enock Kipela vs Republic*, Criminal Appeal No. 150 of 1994 (unreported), where the court stated that:
- “Usually an attacker will not declare his intention to cause death or grievous bodily harm. Whether or not he had that intention must be ascertained from various factors including the following: (1) the type and size of weapon, if any used in the attack; (2) the amount of force applied in the assault; (3) the part or parts of the body the blows were directed at or inflicted on; (4) the number of blows, although one blow may, depending on the facts, of a particular case, be sufficient for this purpose; (5) the kind of injuries inflicted; (6) the attacker’s utterances, if any, made before, during or after the killing and (7) the conduct of the attacker before and after the killing.”
31. The question is whether the accused in shooting the deceased on the chest intended to cause death or knew that the manner and degree of assault would probably cause death. It was held in the case of *Ibrahim Maramba Mukabane vs Republic* [2020] eKLR while citing the case of *Republic vs Tubere*



s/o Ochen [1945] 12 EACA 63 that in determining whether malice aforethought has been proved the following elements should be considered:

“The nature of the weapon used; the manner in which it was used; the part of the body targeted; the nature of the injuries inflicted either a single stab/wound or multiple injuries; the conduct of the accused before, during and after the incident.”

32. I find that the prosecution has proved beyond reasonable doubt that the death of the deceased person herein was caused unlawfully and with malice aforethought. The deceased knew that by shooting the deceased using a gun, the repercussions were severe. He therefore desired the results. His reaction in the circumstances was excessive thus causing grievous harm giving rise to death. I therefore find the accused person guilty of the offence of murder and thereby convict him accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF MARCH 2026

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J. N. ONYIEGO

JUDGE

