



**Republic v Jillo alias Kassim Jillo (Criminal Case E009 of 2024)
[2026] KEHC 2761 (KLR) (5 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 2761 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E009 OF 2024
JN ONYIEGO, J
MARCH 5, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

HASAN ABUBAKAR JILLO ALIAS KASSIM JILLO ACCUSED

JUDGMENT

1. The accused was charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code. Particulars being that on 15.09.2024 at Adele area Madogo Location, Bangale Sub County, within Tana River County he murdered Collins Muiga Gichohi.
2. He pleaded not guilty and the prosecution called ten witnesses in support of its case.
3. PW1, Aisha Alufa Imani, aged 17-years-old stated that she had known the accused, Hassan Abubakar alias Jillo, as her boyfriend for about a month. She explained that on the night of 15.09.2024 at around 11:00 pm, she left her sister Mariam's house to go to her mother Zainab's home, which was nearby. On the way, she met Hassan as they had agreed. While they were standing by the roadside, two boys arrived on a bicycle. She recognized one of them as Collins Muiga Gichohi, their neighbor whom she had known for about two months. Collins ordered them to leave but Hassan refused.
4. The boys then alighted and began to assault Hassan with fists. That Hassan in defending himself, drew a knife from his belt and stabbed Collins once in the neck before fleeing. She also left the scene and went home without informing anyone. The following day, she told her brother Abdi in Hola, who accompanied her back home. She later learned that Collins had died and so, she was taken to Madogo police station, where she was detained. She confirmed seeing photographs of Collins' injuries, including one on the leg, though she did not know how it was sustained. She emphasized that she had no grudge against Hassan.



5. On cross-examination, she reiterated that she was 17 years old and had been Hassan's girlfriend for one month. She denied ever telling the police she was 18 years. She explained that the incident occurred on a public road at night but the motorbike lights were on. That Collins, who was riding, appeared bitter and possibly drunk. She maintained that it was Collins and his companion who initiated the fight. That they were unarmed and that Hassan stabbed Collins only once before running away. She added that the injury on Collins' leg had existed prior to the attack. Aisha further stated that she was detained for two weeks as a condition to produce Hassan and was later taken to court.
6. PW2, Kennedy Mwendwa Mwangila, a tyre repairer from Madogo stated that he knew the deceased, Collins Muiga Gichohi, as a friend for two years. That on 15.09.2024, at about 11:00 am, he, Collins and Hesbon Kennedy left Madogo for the police canteen club where they arrived at around 9:30 pm on a motorbike that Collins was riding. At the club, they drank beer and left at 10:00 pm. After dropping Hesbon at his home, he and Collins proceeded together since they lived in the same place. On the way, they encountered a man standing by the roadside with a woman. Collins asked why they were there so late and the man retorted by questioning Collins in return. Collins stopped the bike, alighted and attempted to punch the man but missed. The man then drew a knife and stabbed Collins on the neck. When he tried to intervene, the man stabbed him on the right arm before fleeing, followed by the woman. Collins fell down bleeding heavily.
7. That on realizing the seriousness of the matter, he sought help from neighbors who rushed Collins to the Garissa general hospital on a motorbike but he died upon arrival. He identified the accused in the dock as the person who stabbed Collins though he had not known him before.
8. On cross-examination, he admitted that he and Collins had been drinking since 7:00 pm and that Collins was drunk while riding the motorbike. He stated that the accused and the woman were standing in a dark place about 300 metres from their plot. That it was Collins who directed the bike's headlamp towards them. He reiterated that Collins attempted to punch the accused but missed, after which the accused stabbed him. That he was stabbed when he tried to push the man. On re-examination, he confirmed that Collins was drunk at the time of the incident.
9. PW3, Hesbon Mogaka Kennedy, a mechanic residing in Madogo, recalled the events of 15.09.2024. He stated that he did not know Hassan, the accused, but he knew Collins Muiga Gichohi, the deceased, as his workmate. It was his testimony that on the material day, he, Collins and Mwendwa Kennedy left work together and first visited Collins' mother. Afterwards, they proceeded to the police canteen club. At about 9:00 pm, the three of them left the club, with Collins riding the motorbike. They dropped Hesbon at his house and he agreed with Collins to meet the following day.
10. He told the court that at 2:00 pm the next day, police officers informed him that Collins had died. He subsequently met Mwendwa who was also injured. That Mwendwa told him that Collins had been stabbed by somebody.
11. PW4, Caroline Wango Wanjiru, a businesswoman from Madogo and mother to the deceased stated that she knew the accused, Hassan Abubakar only from the date of his arrest. She stated that the deceased was a motor vehicle electrician aged 25 at the time of his death. That on the material day, she was at home when Collins left the house at about 8:45 pm. Later, at 9:36 pm, she received a call from a man named Mark informing her that her son had been attacked.
12. That the caller instructed her to go to the general hospital. Upon arrival, she found Collins in critical condition. That the doctor showed her where her son was lying on a hospital bed already dead with a bleeding injury on the left side of his neck. She called neighbors and the body was taken to the mortuary. She reported the matter to the police who accompanied her to the scene of the attack where they found



- blood stains on the ground. She later identified her son's body for post-mortem and eventually took it for burial.
13. On cross-examination, Caroline acknowledged that her son had taken beer earlier when he dropped her home. On re-examination, she clarified that although her son had taken beer, he was not drunk.
 14. PW5, Maxwel Kirutu Njeri, a boda boda rider from Madogo, stated that he did not know Hassan but he knew the deceased, as his neighbor. On 15 September 2024, at about 10:00 pm, while on his way home, he saw a motorbike parked about ten metres from his house. Nearby, he noticed a person lying on the ground. On approaching, he recognized the person as Collins and that he had sustained an injury on the neck. That he immediately called neighbors and together, they rushed Collins to the hospital using his motorbike. That a neighbor rode the bike with the assistance of a lady, while he informed Collins' mother by phone before proceeding to the hospital. At the hospital, Collins was attended to but succumbed to his injuries.
 15. PW6, Dr. Fred Naibei, a medical officer at Garissa County Hospital explained that on 16.09.2024, he conducted a post-mortem examination on the body of the deceased. That the head and neck was soiled with blood. There was a cut wound on the left side of the neck measuring 4 cm by 2 cm with a depth of 7 cm. He also noted a friction burn on the left upper limb and on the right lower limb. On opening the internal organs, he found an apical injury in the chest and approximately two litres of blood accumulated there. He further observed that the internal jugular vein had been severed.
 16. He concluded that the cause of death was massive blood loss resulting from the injuries described. He produced his report as an exhibit (P. Exhibit 2) and confirmed that blood samples had been taken. On cross-examination, he acknowledged that he had no formal training in pathology. He stated that he had observed a single cut wound on the neck.
 17. PW7, Patrick Kyalo Mulyungi, a boda boda operator stated that on the material day, he entered his house when Mark approached him seeking assistance to take Collins to the hospital. That he went outside their plot and found Collins Muigai bleeding from the neck. He explained that Collins's motorcycle was parked with its engine running. He together with Mama Paa took Collins to Garissa Hospital using collin's motorcycle. According to him, Mama Paa held Collins while he rode. He stated that on the way, he saw Ken and requested him to get his own motorcycle and follow them. He stated that upon arrival at the hospital, Collins died. That they subsequently reported the matter to the police and Ken was arrested though, he did not know why or what had happened to Collins.
 18. PW8, Enox Muriithi, stated that he was a nurse by profession but also engaged in business. He said that he knew Collins as his friend and as the mechanic to his father. He told the court that on the material date at about 10.00 p.m., Ken and Collins went to his house while they were very drunk but he told them to go away. He reported that later, his cousin Kinoti informed him that Collins had died at Garissa Hospital.
 19. On cross-examination, the witness stated that Ken and Collins had passed through his home because Collins was to fix their car. He reiterated that they were drunk at the time.
 20. PW9, Sukri Iman Shurie, a casual worker from Hola, recalled that on 17.09. 2024, he received a call from the OCS at Madogo police station. The OCS asked him whether his sister Mariam was at his home. Sukri explained that he was away at the time but when he returned he found Mariam there. He then called the OCS, who instructed him to take her to the station. Sukri complied the following day. At the station, the OCS interrogated Mariam and required her to record a statement concerning the death of a man who had been killed.



21. Sukri stated that his sister had been with the deceased at the time of the incident. He added that he was the one who presented his sister to the police. During interrogation, the OCS asked Mariam whether she had a relationship with the suspect or the deceased. She confirmed that she had a relationship with the suspect but not with the deceased.
22. PW 10, No. 112442 PC Collins Kibet stated that he was the investigating officer in the matter before handing it over to PC Muchiri. He stated that on the morning of 16th September 2024, his superior at the DCI informed him of a murder case. Upon checking the Occurrence Book, he saw that a case had been reported at Adele, and the body was already in the mortuary with the family prepared for a postmortem. He said that they proceeded to the mortuary where the deceased's mother, Wanjira, identified the body, and Dr. Naibei conducted the postmortem. According to his observation, the deceased had a stab wound on the left side of the neck and a burn wound on the right leg, consistent with contact from a hot motorcycle exhaust. He added that the cause of death was determined to be excessive bleeding.
23. The officer reported that four suspects were interrogated, three of whom had been arrested on 15th September and the fourth on 16th September. He further stated that two other suspects who had gone missing were later arrested, including one Aisha Alfa, who was with the accused at the time of the incident. He said that investigations concluded it was the accused who stabbed the deceased, and that a witness, Kennedy Mwendwa, confirmed the deceased had been stabbed by a man accompanied by a woman. On 1st October 2024, he received information that the accused, who had been at large, was hiding in Adele. He informed the OCS and DCIO, and together they proceeded to Adele where they managed to arrest him.
24. He recounted that at the time of arrest, the accused was armed with a knife, which they took possession of and treated it as an exhibit. The accused was later charged with murder. He explained that the knife was taken as an exhibit, blood samples from the deceased were collected, and then sent to the government chemist for comparison. The report, however, showed that the knife had no blood stains.
25. On cross-examination, he stated that he had taken over the case on 16th September 2024. He explained that at the time, three suspects were already in custody, namely Kennedy and Muriithi. He confirmed that he attended the postmortem and observed the injuries on the deceased, noting a stab wound and a burn on the right leg. He stated that the doctor confirmed that the burn was caused by contact with a motorcycle exhaust while the deceased was being taken to hospital. He further stated that the deceased was drunk at the time of his death. He mentioned that he took blood samples from the body but did not request toxicology, as he considered it unnecessary.
26. He also admitted that the inventory was not taken at the point of recovery. He noted that the inventory indicated the knife belonged to the deceased.
27. On re-examination, he clarified that the injuries on the leg and the burns were not caused by the attack. He explained that those injuries resulted from an accident when the motorbike transporting the deceased to hospital broke down along the way. He emphasized that he had no doubt the knife was recovered from the accused.
28. DW1, Hassan Ababukar, a mason, testified that he knew the deceased before his demise. He stated that on the date alleged that he killed the deceased on 15.09.2024 at around 10:00 p.m he was with his lady friend, Aisha, with whom he intended to marry. He explained that while standing with her by the roadside, two people on a boda boda approached and flashed very bright headlight towards them. That he told them to switch it off, but they ordered him to leave the place. He told them to continue with their journey, but they insisted he should leave. He recounted that they left, promising to return



- and shortly thereafter, they stopped again. He spoke with the rider, but the passengers instructed him to stop and finish their business. According to him, the boda rider came out and attacked him with punches, while the passenger broke a piece of wood from a tree in attempt to hit him but he did not reach him.
29. That in self defence, he drew his Somali knife from his waist, as the rider equally attempted to stab him with a knife he was holding. He explained that he ran away but before he could leave, he stabbed the deceased once, insisting that he did not cause any further injuries.
 30. On cross-examination, he admitted that although he claimed to have been attacked first, he did not sustain any injuries.
 31. Parties were directed to file their written submissions and only the accused person complied with the said order as the learned prosecutor chose to rely on the evidence on record and orally submitted that the prosecution had proved its case beyond any reasonable doubt.
 32. The defence on the other hand contended that, there was no malice aforethought as the accused acted in self defence. That the evidence showed that he acted in self defence after the deceased and PW2 unlawfully physically assaulted him without any justifiable cause hence his life was in imminent danger. He relied on the case of Republic vs Joseph Chege Njora [2007] eKLR where the court held that use of force that results in death in order to avert a felonious attack is justifiable.
 33. That the accused person herein was provoked by the deceased person and his team when they flashed bright light towards him and ordered to leave the area before being assaulted. Reliance to support the foregoing was placed on the case of Republic vs David Kinyua (alias Mboi) Ntongai [2014] KEHC where the Court held that a deadly blow struck as a result of insults and physical assault, is an act in the heat of passion upon provocation and threat to life.
 34. In the end, this court was urged to find that the prosecution had failed to dislodge the burden of proof consequent to which, the accused person ought to be acquitted.
 35. I have considered the evidence adduced by both the prosecution and the defence. The main issue for determination is whether the prosecution proved beyond reasonable doubt all the elements of murder against the accused person herein. These elements are: the fact of the death of the deceased, the cause of that death, that the death was occasioned by an unlawful act or omission, that it was the accused person herein and no other person who caused the unlawful death of the deceased and finally, that the accused had malice aforethought when he unlawfully killed the deceased. see the case of Republic v Duncan Munene(2021) KEHC1345(KLR).
 36. There is no doubt that there was death of a person in the name of Collins Muiga Gichohi. The testimonies of all the witnesses in this case stated that indeed the deceased died. Further, PW6 Dr. Naibei who carried out the post mortem on the body of the deceased testified that as a result of his examination, he formed the opinion that the cause of death was exsanguination following penetrating injury on the side of the neck. Supraclavicular severing the apex of the left lung and internal jugular vein by use of a sharp object. Accordingly, the prosecution proved beyond reasonable doubt that indeed the deceased died.
 37. As to whether the deceased's death was caused by an unlawful act or omission, Article 26 (1) of *the Constitution* guarantees every person the right to life. The postmortem report prepared by PW6 and produced as Pex 2 showed that the cause of death was exsanguination following penetrating injury on the side of the neck, Supraclavicular severing the apex of the left lung and internal jugular vein by use of a sharp object. There is no lawful basis for the aforementioned cause of death and as such, I find that the deceased's death was unlawfully caused.



38. On the question of whether it was the accused who caused the deceased's unlawful death, the accused person does not deny killing the deceased. He actually pleaded that he was provoked and thus acted in self defence. As a consequence, it is not denied that it was the accused person who caused the unlawful death of the deceased.

39. On whether the accused had malice aforethought, the Court of Appeal in the case of Peter Kiambi Muriuki vs Republic [2013] eKLR reiterated its previous holding regarding malice aforethought in the case of Nzuki vs Republic (1993) KLR 171, where it stated 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.”

40. In this case, the accused person urged that the actions of the deceased together with his entourage led to the death herein. It was his submission that he was provoked by the deceased person and his team when they turned bright light towards him and being assaulted.

41. The next question is whether the plea of provocation has been successfully raised. The Penal Code makes provision for provocation under Sections 207 & 208 as follows:

“207. When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.

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(1). The term “provocation” means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.”



- (2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.”

42. In the case of *Peter King'ori Mwangi & 2 others vs Republic* [2014] eKLR, the Court addressing the defence of provocation stated as follows:

“We start from the premises, that provocation is not a complete defence that if advanced and proved would entitle the accused to an automatic acquittal. It is a partial defence, the effect of which is to leave it open to court to return a verdict of guilty to manslaughter if the court is satisfied the killing was as a result of provocation. So what is provocation? In the case of *Duffy* (1949) 1 ALL ER 932; provocation was defined as; ‘some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind ...’ Inherent in this definition at common law, is the requirement of two conditions to be satisfied for the defence to be made out, namely:-The “subjective” condition that the accused was actually provoked so as to lose his self-control; and the “objective” condition that a reasonable man would have done so.”

[Also see the Court of Appeal in the case of *Elphas Fwambatok v Republic* [2009] eKLR].

43. It is trite that, a plea of provocation is available to an accused facing the offence of murder. However, that plea only acts to eliminate the element of mens rea which is malice aforethought. If successfully pleaded, then the accused will be found guilty of manslaughter hence not murder.

44. It should also be noted that not every act of provocation will reduce the act of murder to manslaughter. In the case of *Tei s/o Kabaya v. R.* [1961] EA, the Court of Appeal for East Africa, outlined the circumstances which a court should consider in deciding whether certain provocation is sufficient for purposes of Section 207 of the Penal Code, to reduce a charge of murder to manslaughter. The Court stated:

“In considering whether provocation was sufficient to reduce the offence to manslaughter, it is material to consider the degree of retaliation as represented by the number of blows and the lethal nature of the weapon used.”

45. The evidence on record is that, the accused while standing on the road talking to his girlfriend, the deceased with his entourage approached them while shining bright light at them. Upon reaching the place where the two stood, the deceased ordered them to leave. It was stated that when the accused person questioned him why, he threw a punch at the accused person while the rest of the entourage picked sticks to join the fight. That the accused person stabbed the deceased on the neck before running away. The foregoing was supported by the evidence of PW1 and PW2 who testified that it was the deceased who first confronted and consequently attempted to assault the accused person notwithstanding that the deceased and his entourage were already drunk.

46. However, having taken into account the part of the body of the deceased which the accused stabbed, notwithstanding the fact that he only stabbed him once, given the circumstances herein, it is my humble view that the stab was as a result of the chaos caused by the deceased and his team. As such,



it is my view that the prosecution did not establish malice aforethought which is an integral element of the offence of murder.

47. I find and hold that the prosecution failed to establish beyond reasonable doubt the offence of murder. However, a lesser offence of manslaughter was proved beyond reasonable doubt, as the action of the accused was an unlawful act, dangerous and caused the death of the deceased. Although provoked, his reaction was excessive in the circumstances.

48. In reference to the above, I seek refuge under Section 179 of the Criminal Procedure Code which provides that a court may convict of a lesser offence. It states as follows;

- 1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.
- 2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.”

[Also see the Court of Appeal decision in the case of Rashid Mwinyi Nguisya & Another v Republic (1997) eKLR].

49. I am therefore inclined to substitute the charge of murder with that of manslaughter contrary to Section 202 of the Penal Code against the accused person as read with Section 205. He is convicted accordingly.

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

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J.N. ONYIEGO

JUDGE.

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