



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Nduta (Criminal Case 25 of 2019)  
[2026] KEHC 2996 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2996 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE 25 OF 2019  
FR OLEL, J  
FEBRUARY 12, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN NGIGI NDUTA ..... ACCUSED**

**JUDGMENT**

**A. Introduction**

1. The accused person was 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. The particulars of the offence were that on 29<sup>th</sup> May 2019 at Githogoyo area, Lari Sub County within Kiambu County he did murder one Eunice Nduta.
2. The accused person was first arraigned before court on 19.06.2019 and was referred to Mathare National Teaching & Referral hospital for treatment and eventually took plea on 05.02. 2020, when he was declared fit to do so. He denied the charge faced and pleaded not guilty. The case proceeded to full trial with the prosecution calling ten (10) witnesses in support of their case.

**(B) Prosecution Case**

3. PW1 Minis Riimi Bonface, the accused wife recalled that on the evening of 28.05.2019, she was at home with her husband and child. she prepared supper, which they partook as a family and retired to bed. The appellant had woken up early on the following day at about 6.00am, to cut Napier grass for the cows and at about 8.00am left to escort their child to school. Shortly thereafter she heard screams from their neighbours and on inquiry was informed that her child had been injured and had been rushed to hospital. She rushed to Tigoni hospital, where she found her child on life support machine but unfortunately, she died shortly thereafter.



4. She confirmed that she did not know what led to her child sustaining fatal injuries that curtailed her life and affirmed that the accused had never had any mental breakdown before nor was she aware if his family had the same issue. She further confirmed that on the day prior to the murder incident, the accused did not exhibit mental problems and had not shown any strange characteristic.
5. PW2, Eunice Nduta Gitau confirmed that the accused was her second born child and recalled that on 28.05.2019, at about 9.00pm, he had invited them to his house to pray, and again on the following morning called her to go pray at his house as they took breakfast, which was unusual. The accused left to escort his daughter to school and shortly thereafter was informed that he had unfortunately killed his daughter, though she was not sure of the circumstance under which the said incident had occurred.
6. Under cross-examination she confirmed that the accused had not had any previous mental breakdown but had acted in a strange manner prior to the murder incident. She further affirmed that from her father's side, they had a history of mental illness but the same had not previously manifested on the accused person.
7. PW3 Paul Kungu Kuria, confirmed that he was the head teacher at Githogoyo Primary School and that on material morning he was in school and was informed that one of their students had been attacked and injured while on her way to school and that the assailant had been beaten up by members of the public. He rushed to the scene and found his student being rushed to hospital and intervened to stop the mob from continuing to assaulting the accused person. He thereafter called the area chief, who came and escorted the accused to Kimende Police Station.
8. PW4 Antony Waweru Kuria, the area chief of Kiambaa, stated that on the material morning he was on his way to work, when he received a call from PW3, informing him that one of his pupils had been assaulted by her father, while on her way to school. He rushed to the incident scene and confirmed the unfortunate incident. He found that the accused had been arrested and had been subjected to mob justice. He re-arrested him and escorted him to Kimende Police station. Later, he was informed that the injured child had died while undergoing treatment. Under cross examination he confirmed that he did not witness the accused harm his daughter.
9. PW5 Daniel Nduta and PW6 John Ngige Gitau identified their niece/grandchild's body at the mortuary before the autopsy was carried out at Naivasha level 4 hospital mortuary, while PW7 Joram Kangethe stated that on the material morning at about 8.00am he had been sent home from school due to lack of school fee and met the accused walking with his daughter, while carrying a fork jembe and he asked for prayers, which was unusual. No sooner had they passed each other did he heard screams from a lady, shouting that a child had been harmed. He rushed back to the direction from where the screams were coming from and unfortunately discovered that it was his niece who had been fatally injured on her head and was lying on the ground unconscious.
10. He proceeded to pick her up and rushed to the main road, where he got a good Samaritan, who rushed them to hospital. Later he traced the accused to orthodox hospital- Kimende, where he urged him to pray for him as he had suffered from a mental breakdown. Under cross examination PW7 confirmed that the accused had a good relationship with his child and that it was not normal for him to ask for prayers along the road. The accused had not suffered from any previous mental breakdown and affirmed that he did not see the accused assault his daughter.
11. PW8 Dr Titus Ngulungu performed the postmortem and confirmed that the minor suffered from a concentric skull fracture on the vertex measuring 7cm leading to global contusion- the severest form of brain injury. He certified the cause of death to have been caused by severe head injury caused by extensive skull fracture and brain laceration caused by blunt force trauma.



12. PW9 Tresiah Wanjiru Mwangi testified that on the material morning she was at her shamba and saw the accused carrying a fork jembe and panga on one hand and on the other hand had carried his daughter. When he reached where she was, the accused asked her to pray for him and his child, as the said child had been possessed by Evil spirits. She was alarmed by his behavior but heeded to his request and they went to her home where they prayed together, in the presence of her mother Anna Wamboi and brother Peter Mucheru. Her mother also encouraged him to be strong in faith and after the said prayer and counselling session, the accused left to escort his daughter to school.
13. From her home, the accused went to Mama Mary's home, where he also asked for prayers and after about 15 minutes or so, she heard screams from Mama Mary shouting that the accused was hitting/harming his child. They rushed to the scene and found the injured child, but the accused had taken off but was being sorted by the villagers who followed him in hot pursuit. They urgently organized to have the child evacuated to hospital and later learnt that she had passed on. The accused was also arrested immediately thereafter hiding within a tea farm and was matched to the local police station.
14. PW10, SRGT Leonard Busuru, the investigating officer, stated that he was instructed by his boss to investigate the murder, which had been reported at Kimende Police post, where the suspect had been detained and the recovered murder weapon kept under safe custody. He recorded witness statements, where the accused was implicated as the culprit, who had fatally injured his daughter using a fork jembe, which fact was confirmed by the postmortem carried out by PW8. He produced the fork jembe as an exhibit before the court and identified the accused as the culprit he had re-arrested.
15. Under cross examination, PW10 confirmed that the fork jembe was recovered by the area chief and was handed over to the police, though they did not subject it to further forensic analysis as it had no blood stains. As regards the accused mental state, no witness had confirmed that the accused had suffered any prior mental breakdown, but PW1 had informed him that the accused grandfather had suffered from some form of mental instability, though he was deceased. The accused had believed that his child was a demon but during investigation he did not involve a mental health expert to ascertain the accused person's state of mind.
16. Be that as it may, he had also established that the accused at the time of committing the offence was not under any form of medication to manage his mental health and thus his action had to be construed as murder as it was pre-meditated and the accused had taken off after committing the said offence and was arrested about 1km away from the scene by the mob who had chased after him.
17. The prosecution closed their case at this point, and the accused was placed on his defence and opted to give sworn evidence.

### **(C) Defence Case**

18. The accused stated that he was a small-scale farmer residing at Githogoyo, within Kiambu County. Regarding the charge he faced, he was categorical that he could not remember and/or explain what happened on the material morning because he was not of sound mind. He was later informed that he had murdered his child, which act was not carried out knowingly. He reiterated that he had suffered a mental breakdown and after arrested had been confined at Mathare mental hospital for 3 months getting treatment before he was certified as fit to take plea.
19. DW2 Margaret Nduta Njenga, stated that she had known the accused from childhood and was shocked by the murder incident that had occurred. The accused had all along exhibited good character and did not have a bad record within their area as he grew up nor had he shown any hostility towards his child and thus they were shocked by what had occurred.



20. DW3, Dr Victoria Wamuahia, from Mathare National Teaching and Referral hospital did produce the patient- treatment record of the accused person retrieved from their records. He was in his first seen by their doctors on 11.06.2019 and had a history of alcohol and substance abuse for over 10 years and if he failed to use the same he would be irritable, abusive and aggressive (exhibited bad anger issues).The accused had also suffered turbulent childhood, as they had been abandoned by their father at an early age and his mother had been unwell and emotionally absent. His paternal grandfather had also previously suffered mental illness.
21. The accused was diagnosed to be suffering from mood disorder with psychotic symptoms and was placed on medication. Based on the history given and medical history it was possible that the accused committed the murder under hallucination and thus was not mentally stable. She produced the accused medical report dated 30.10.2025 into evidence. Under cross examination, the doctor confirmed that the said report had been prepared based on the accused entire medical file held at Mathare National Teaching and Referral hospital, where he had been attended to severally both as an inpatient and outpatient.

#### **(D) Determination**

22. I have considered the evidence adduced by both parties and submissions on record, and the question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein murdered his daughter Eunice Nduta, the deceased herein.
23. Section 203 of the Penal Code defines the offence of murder as follows:

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
24. In the case of Republic v Okwara (Criminal Case E015 of 2023) [2024] KEHC 1360 (KLR) the court stated as follows;

“Mens rea in murder causes takes the form of malice aforethought, and the elements are set out in section 206 of the Penal Code. They relate to intention and knowledge. Intention to kill or cause grievous harm or to commit a felony. Knowledge that the act or omission causing death could cause such death and being indifferent to the consequences of the act or omission. Intention and knowledge are mental elements. One forms an intention, in their mind, to do or not to do something, and has knowledge, within his mental faculties about something. So, the mental element for the offence of murder is either intention or knowledge.

Has the prosecution adduced evidence to establish such intention or knowledge, that the accused had formed an intention to kill or cause grievous harm or to commit a felony, or knew that whatever he was doing was likely to cause death, but remained indifferent to the consequences? Well, the mens rea of an offence is usually to be inferred from conduct or action, being a mental element, unless the intention is voiced by the perpetrator.”
25. The Court of Appeal at Nyeri in Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari vs. Republic [2014] eKLR, also summed up the elements of the offence of murder as follows: -
  - a. the death of the deceased and its cause;
  - b. that the accused committed the unlawful act which caused the death of the deceased; and



- c. that the accused had malice aforethought.
26. I will now proceed to interrogate each issue.

**The death of the deceased and its cause.**

27. It is common ground that Eunice Nduta died on 29.05.2019 and this was confirmed by all the witnesses. Dr Titus Ngulungu (PW 8), the pathologist who conducted the postmortem on 03.06.2019 described in detail the extensive injuries sustained by the deceased on her skull/brain. He formed the opinion that the cause of death was due concentric skull fracture and brain laceration caused by blunt force injury and produced the postmortem report into evidence as Exhibit 2.
28. This court therefore finds as a fact that the deceased died as a result of the said extensive injuries sustained as enumerated above.

**Whether it has been proved that the accused committed the unlawful act which caused the death of the deceased:**

29. PW1. & PW2 confirmed that the accused left home with the minor, taking her to school and enroute he met his brother PW7, while with the said child. The accused then went to PW9 home, where they prayed for him and left for Mama Mary's home after which he inexplicable turned brutal and inflicted fatal wounds on the deceased head using the fork jembe he had carried. The accused took off, put was chased by members of the public and arrested about 1km away. The fork jembe used to harm the deceased too, was recovered in the tea plantation where he was arrested and produced as an exhibit before the court.
30. In defence, the accused admitted that indeed, he did harm to his child but raised a defence that he was not of sound mind and could not remember what had transpired on the material morning. DW3 also produced the accused medical record from Mathare teaching and referral hospital, confirming that the accused had had a history of alcohol and substance abuse and had been diagnosed with mood disorder with psychotic symptoms.
31. Therefore, based on the prosecution evidence adduced and the accused own admission in defence, I do find that it was proved beyond reasonable doubt that it was the accused, who unlawfully caused his daughter's death.

**Malice Aforethought**

32. Having found that the prosecution has proved actus reus, the other issue for determination is whether malice aforethought can be inferred from the prosecution's evidence presented. The offence of murder is complete when "malice aforethought" is established. Section 206 of the Penal Code, provides that:
- "(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.”

33. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased.

34. A similar statement of Law was made in the persuasive authority of *S. vs. Sigwahla* 1967 4 SA 566 in which the court stated:

“The expression intention to kill does not in Law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such a result. This form of intention is known as a *dolus eventualis* as distinct from *dolus directus*.”

35. Though the accused person admitted to committing the offence, he raised a valid defence that, though he committed the offence, he was not of sound mind at the material time and thus did not have malice aforethought. He called DW3 who produced his medical records from Mathare national teaching and referral hospital showing his treatment regime and confirmed that the accused suffered from mood disorder with psychotic symptoms. It was also her opinion that based on the accused action prior to the incident, where he suffered from bouts of hallucinations, he most likely was not mentally stable.

36. Section 11 and 12 of the Penal Code provides that:

11. Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

12. Insanity

A person is not criminally responsible for an act or omission if at all at the time of doing the act or making the omission, he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned or reference to that act or omission.

37. Finally, on the applicable law, Section 9 of the Penal Code too provides that:-

“9(1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.”

38. The courts reiterate that the above provisions form the basis of the generally accepted notion that person's who cannot appreciate the consequences of their actions should not be punished if those actions happen to be criminal acts.

39. In *Ellis vs. Republic* [1965] EA 744 at 791 it was held that whether a defence of insanity is proved is a question of fact.



40. Similarly on the same issue, the court of Appeal in the case of *Wakesho Vrs Republic* (criminal Appeal No 8 of 2016) (2021) KECA 223(KLR) stated that;

“The critical point at which the mental state of the accused person was relevant for purposes of the defence of insanity was at the time of the commission of the act complained of. If the appellant was suffering from a disease which affected his mind and made him incapable of understanding what he was doing or knowing that what he was doing was wrong at the time of the commission of the offence of murder, then he was not responsible for his actions.”

41. The same court further in the case of *Leonard Mwangemi Munyasia Vrs Republic* (2015) Eklr, held that;

“under the rule, insanity is a defence if at the time of the commission of the act, the accused person was labouring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing; or ,if he did know it, that he did not know he was doing what was wrong. In such circumstances, the accused person would not be entitled to an acquittal but under section 167(1)(b) of the criminal procedure code, he would be convicted and ordered to be detained during the president’s pleasure because insanity was an illness (mental illness) requiring treatment rather than punishment. Such people when so detained are considered patients and not prisoners.

Both section 12 aforesaid and the M’Naughten rules recognize that Insanity would only be a defence if it was proved that at the time of commission of the offence charged, the accused person, by reason of unsoundness of mind, was either incapable of knowing the nature of the act he was charged with or was incapable of knowing that it was wrong or contrary to law. The test was strictly on the time when the offence was committed and no other. Yet it would be virtually impossible to lead direct evidence of the exact mental condition of the accused person at the time of the commission of the crime.

42. When the accused was first presented in court to take plea, he was found to be mentally unsound as confirmed by the mental assessment done then and he was referred to Mathare national teaching and referral hospital from June 2019 to February 2020, when after getting treatment, he was finally able to take plea.

43. PW2, confirmed that on the evening prior to the murder and on the morning of material, the appellant insisted that they pray together which was not usual. The accused also met PW7 by the road as he walked back home from school and again asked for prayers, and he wondered why as that was not normal request. Finally, the accused met PW9, who also confirmed that the accused told her that they needed prayers, as the daughter was possessed with evil spirits. she had to leave the “shamba” and went with the accused to her home where extensive prayers were held in the presence of her mother and brother. The encouraged him and counseled him before eventually releasing him to take his child to school.

44. Unfortunately, after about 15 minutes later, they heard screams from their neighbour, mama Mary, who was screaming that the accused was battering his daughter. Placed on his defence, the accused reiterated that he had a mental breakdown and could not remember what happened on the material day thus did not knowingly kill his daughter. After he was arrested, he was certified unfit to plead and spent three months admitted to Mathare hospital, where he was treated.

45. DW3, further produced a summary medical report dated 30.10.2025 outlining the accused history of mental illness, the triggering factors and line of treatment which was adopted. Considering the totality



of the evidence adduced by both the prosecution and defence witnesses it is clear beyond peradventure that the accused conduct on the previous evening and on the material, morning was that of a disturbed person who was suffering from psychosis/ hallucinations at the time of commission of the offence and must have suffered a mental breakdown. The same had impaired his perception and judgment and thus could not appreciate the consequences of his actions.

**E. Disposition**

46. In the circumstances, am persuaded beyond reasonable doubt that the prosecution has proved their case that it is the accused who murdered his young innocent daughter, and make a special finding that he is guilty but was insane at the time of commission of the said offence as mandated by Section 166 of the Criminal Procedure Code which provides that;

“

“ 166.

(1) of the criminal procedure Code.

Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.”

47. The challenge that arises with this finding is that Section 166 of the criminal procedure Code, has been declared unconstitutional in Republic v SOM {2018} where D.S. Majanja, J held that the said provision violates *the Constitution* by allowing for indeterminate, executive-ordered detention ("President's pleasure") instead of judicial sentencing, infringing upon the principal of separation of powers.

48. Accordingly, I do direct the probation office to file a comprehensive pre-sentence report to enable the court to determine the appropriate final orders to issue.

49. It is so Ordered.

**JUDGMENT, SIGNED AT KIAMBU THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**JUDGMENT READ AND DELIVERED IN OPEN COURT ON THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026.**

In the presence of:-

.....Accused

.....For O.D.P.P

.....Court Assistant

