



**Republic v Constant (Criminal Case 9 of 2019)
[2026] KEHC 3506 (KLR) (Crim) (17 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 9 OF 2019**

**K KIMONDO, J
MARCH 17, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH SIMIYU CONSTANT ACCUSED

JUDGMENT

1. This is a double murder most foul. On 22nd January 2019, the lifeless bodies of two young children, MS and VS (hereafter the deceased) were found lying face down on a mattress on the floor of their house in Shauri Moyo. The older one was bleeding from the nose. Both had been stabbed; and, there were traces of poison in their stomach and liver samples.
2. The accused is their father. He also bore stab wounds; and, a “suicide note” allegedly authored by him, was later recovered in the house. The children had been left under his care after he chased away his wife (PW1). According to her evidence, he beat her up and she relocated to her sister’s place in Embakasi.
3. The Republic thus brought Information to the High Court charging the accused with two counts of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars were that on the 22nd January 2019 at Shauri Moyo in Kamukunji Sub-County within Nairobi County he murdered the deceased.
4. The prosecution lined up nine witnesses. Two of them appeared before my predecessors, Mutuku J and Bwonwonga J. On 24th April 2023, and, pursuant to section 200 (3) of the Criminal Procedure Code, the accused elected to proceed from where the matter had reached.
5. I will summarize the key evidence. Millicent Anyango Otieno (PW1) was the accused’s wife of 10 years. Like I stated, they had since separated. On 18th December 2018, she went to Garissa Lodge, Eastleigh,



to shop for clothes. When she returned at 5:00 p.m., a bitter argument ensued between her and the accused and he asked her to leave.

6. He then beat her up forcing her to relocate to her sister's house. She reported the assault to Shauri Moyo Police Station and was advised to seek treatment. She was late to learn of the death of her children from the neighbours. By the time she reached the scene, the accused had been arrested. She saw the two bodies on a mattress lying face down; the older one was bleeding from the nose.
7. Douglas Ondieki Mahagwa (PW4) is a neighbour. He last saw the children on 19th January 2019 accompanied by the accused heading out to church. On 22nd January 2019 at about 4:00 a.m., his wife woke him up and told him "amam wamekufa". That was in reference to the two deceased children. He went to the scene and found the children lying dead on the floor of the accused's house. He did not believe the explanation given by the accused that a stranger stabbed and poisoned them.
8. PW4 advised the accused to report the matter to Shauri Moyo Police Station. The accused went for treatment at Morningside Clinic where he was referred to Mama Lucy Hospital. PW4 said that the accused decided to go back to his house for a change of clothes. He said the public wanted to lynch the accused. Police officers arrested him at the scene.
9. MA (PW3) is a grandmother of the deceased. On 29th January 2019, she identified the bodies at the City Mortuary for post mortem purposes. The autopsy was conducted by Dr. Grace Midigo (PW5). The post-mortem reports for both deceased (exhibit 1 a & b) disclose that the cause of death was "penetrative injury to the left chest wall with left haemothorax".
10. PW7 was Cpl Samuel Kimani. He confirmed that the accused had injuries on his chest. He told him that he stabbed himself. The witness testified that when he visited the scene later with the accused, he showed him a "suicide note" (exhibit 3). PW7 prepared two Exhibit Memos (exhibits 4 a & b) relating to contents of two bottles found in the house as well as the samples extracted from the bodies of the deceased during the postmortem.
11. According to Dr Muende Muthini (PW8), the Government analyst, he detected acaricide/insecticide in the stomach and liver samples from Melisa as well as the empty bottle labelled A1. Acetamiprid, an insecticide, was also detected in the empty bottle of Bedlam labelled A2. Regarding Venesa, he found similar chemicals in her liver and stomach samples. His respective reports were produced as exhibits 5 (a) & (b).
12. PW9 was Cpl David Otieno Ouma, a scene of crime officer. He produced a report and certificate (exhibit 6) together with photographs (exhibits 7 a-h) taken by his colleague PC Kopchor Kipsaimo who is now deceased. The defence had no objection to their production.
13. When the accused was put on his defence, he denied killing his two children. He said that on the material date, he was riding on Bondo Street when he was attacked by three people. They hit him on the head and he lost consciousness. When he came to, he was in his house and had been stabbed. He then noticed that the children were dead.
14. He stated further as follows-

I left Wanyama's place at 6.00 p.m. on my bodaboda. I got a customer who I took to Mlolongo. After 7.00 p.m. I got another customer. I got to my house at 10.00 p.m. through Bondo Street. On the way, a motor-bike with three people blocked me and they attacked me. They hit me on the head and I lost consciousness. I found myself in the house. I came to at 6.00 p.m. I went to my neighbour's house for assistance. I noted that I had been stabbed on the chest twice and once in the stomach. I also noticed that the two children were dead.



My neighbour was Douglas [PW4]. He took me to Shauri Moyo Police. I was weak. He held my hand. The police knew me. I was taken to hospital at morning side. I was bleeding. They referred me to Mama Lucy but I decided to go back to my house. But I found many people there and police officers. It is after that, that I was admitted at Mama Lucy for 2 days and then back to the Police Station and charged.

15. Learned counsel for the defence, Mr. Mburu, filed detailed submissions dated 27th January 2026 together with a bundle of authorities. Their pith is that the prosecution failed to prove the double murder. In particular, he contended that the cause of death (whether through stabbing or poisoning) was not conclusively established. Paraphrased, that a key element of the offence is missing.
16. Furthermore, he stated that the evidence was weak and circumstantial. In his view, PW1, PW2, PW4 and PW7 all arrived at the scene after the event. Accordingly, the prosecution failed to prove the twin elements of actus reus and mens rea. In addition there was no direct link between the poisoning or stabbing of the deceased with the accused. It was also submitted that there was no evidence that the injuries suffered by the accused were self-inflicted. Lastly, learned counsel argued that the “suicide note” was inadmissible.
17. Reliance was made on a number of precedents including, *Ndung’u v Republic* Nairobi Court of Appeal, Criminal Appeal 171 of 1984 [1985] KLR 487, *Sawe v Republic* [2003] KLR 364, *Nzuki v Republic*, Court of Appeal, Nairobi, Criminal Appeal 70 of 1991 [1993] KLR 171 and *Bonaya Tutu Ipu v Republic* [2015] eKLR.
18. I take the following view of the matter. 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.
19. 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.
20. 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.
21. There is no doubt about the death of the deceased. Their lifeless bodies were seen at the scene by their mother (PW1) and a neighbour (PW4). Furthermore, their grandmother (PW3) identified the bodies for postmortem. The pathologist (PW5) established that the cause of death for both deceased was “penetrative injury to the left chest wall with left haemothorax”.
22. I should add that from the further evidence of the Government Analyst (PW8) traces of acaricide an insecticide; and, acetamiprid, also an insecticide, were detected in the liver and stomach samples of the deceased.
23. From that evidence, I readily find that the deaths were unlawful. The submission by the learned counsel for the accused that the cause of death was not established is unfounded.
24. The next question then is whether the Republic proved beyond reasonable doubt that the accused, of malice aforethought, killed the deceased.
25. Firstly, the accused was the father of the deceased and was found at the locus in quo. He sought help from PW4 who first escorted him to the police station. His identification was thus never in doubt. See generally *Wamunga v Republic* [1989] KLR 424; *Maitanyi v Republic* [1986] KLR 198 at 201. His



defence that he was attacked on his way home, lost consciousness and woke-up to find the dead bodies is unbelievable and a red herring.

26. On the totality of the evidence, he is the only one who poisoned and stabbed his two children. He was living with them and had ample opportunity. He was seen by PW4 the day before heading out to church with the two girls. He killed them in the night and then tried to commit suicide by stabbing himself.
27. He is the one who showed the police (PW7) the original “suicide note” (exhibit 5). I must agree with the defence that the handwritten note was never subjected to further analysis. I thus find that it does not amount to a confession and is not admissible as one. But the point to be made is that there is other sufficient evidence linking the accused directly to the murder.
28. From the evidence, the accused and his wife had a difficult marriage. He beat her up and chased her away from their home late at night. When cross-examined on this matter, he conceded the following-

I asked her [his wife] to leave my house. It was at 10.00 p.m. I was left with Melisa and Venesa. Peter, my son was in Secondary school and aged 16. My sister-in-law called us for a meeting to resolve our dispute with my wife. I refused to go back with my wife. My mother-in-law said she wanted to get back Melisa and Vanesa. We had separated with my wife since 16 December 2018. So I lived alone with children up to 22nd January 2019.
29. From that evidence, the accused decided to end the life of the deceased rather than surrender them to his in-laws. He then attempted to take his own life. By poisoning the girls and stabbing them on the chest, the accused had malice aforethought as defined in section 206 of the Penal Code. The deceased died as a direct consequence of his unlawful conduct.
30. I have already stated that the defence set up is a sham and completely evasive. The accused was found fit to plead and followed the proceedings. Furthermore, it was never his case that he never knew or understood what he was doing. The deceased were never a threat to him. Paraphrased, I find there is no possible defence for his conduct.
31. In summary, the entire corpus of direct, documentary and circumstantial evidence is “incapable of explanation upon any other reasonable hypothesis than that of his guilt”. R v Kipkering arap Koske & another 16 EACA 135 (1949).
32. The upshot is that the prosecution has proved both counts beyond reasonable doubt. The accused, of malice aforethought caused the deaths by an unlawful act. I accordingly enter a finding of guilty on both counts 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 17TH DAY OF MARCH 2026.

KANYI KIMONDO

JUDGE

Judgment read virtually on Microsoft Teams in the presence of-
Accused.

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

Mr. Mburu for the accused instructed by Kago Mburu & Associates Advocates.



Mr. E. Ombuna, Court Assistant.

