



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CRIMINAL CASE NO. 13 OF 2020**

**REPUBLIC/STATE**

.....**PROSECUTOR**

**VERSUS**

**STEPHEN NYAKUNDI OTWOMA**

.....**ACCUSED**

**RULING**

1. The accused person is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars being that on the night of 18<sup>th</sup> March 2020 at Kicheko, Syokimau in Athi River Sub-County within Machakos County he murdered **Gerald Ondieki alias Jared Ondieki**.
2. The accused person pleaded not guilty to the charge whereupon the Prosecution called a total of seven (7) witnesses to prove its case.

3. Briefly, the Prosecution's case is that the deceased and the accused were good friends; that on the material day at around 11 p.m. the accused and the deceased were seen in a heated exchange by Mercy Mogire (Pw1), in the corridor of a building where she was residing. She was on her way to her room and she knew them both very well as they used to frequent a bar where she was working. That was the last time the deceased was seen alive because the following morning at about 4.30 a.m. his lifeless body was found lying in that very corridor by Wilson Anunda (Pw5) and his friend with who they were going to Gikomba market. They reported the matter to Hellen Achieng (Pw2), the building's caretaker and the matter soon reached the police who went to the scene, instituted investigations, took photographs and removed the body to the mortuary.
4. Subsequently, a post mortem was conducted on the body of the deceased by Dr. Grace Atieno Midiko (Pw6) who concluded that the cause of death was massive hemorrhage due to penetrating injury to the abdomen. The body had several lacerations.
5. The accused was subsequently arrested and charged with this offence. According to Chief Inspector Juma (Pw7) their reasons for arresting him was that he was the last to be seen with the deceased more so in a heated exchange. The officer testified that the accused was apprehended in his house by members of the public. He was taken to Mlolongo Police Station.

6. In support of its case the Prosecutions tendered a post mortem report and photographs taken at the scene of crime (Exhibit P1 and 2).
7. Counsel for the parties elected to make their arguments, at this stage, by way of written submissions but only those of the Mr. Muumbi Advocate for the accused were received.
8. At this stage this court is required to determine whether or not the prosecution has adduced evidence that the accused committed the offence as would require him to be put on his defence (**Section 306 (1) of the Criminal Procedure Code**). In other words whether a prima facie case has been established sufficiently to warrant the accused to be put on his defence. Should the answer to the above question be in the negative then the court is required to enter a finding of not guilty and acquit him. Should it however be in the positive, then the court is required to put him on his defence (**Section 306(2) of the Criminal Procedure Code**).
9. The elements of the offence of murder and which the prosecution must prove beyond reasonable doubt are the death of the deceased, that the death was by an unlawful act of the accused person and that there was malice aforethought.
10. In this case, the death of the deceased and the cause of that death are not in doubt. This is given that the testimony of the brother of the deceased (Pw3) and the evidence of the

Pathologist (Pw6) prove that fact beyond reasonable doubt. That the death was by an unlawful act is also not in doubt given that there is a rebutted evidence that the cause of death was excessive bleeding due to a penetrating stab wound to the abdomen. Such a stab wound is obviously intentional unless evidence is adduced to rebut such a presumption and amounts to an offence which is an unlawful act.

11. The other issue is whether that unlawful act was by the accused person. In this case there is no direct evidence that the unlawful act of stabbing the deceased was perpetrated by the accused person. It is my finding however that there is circumstantial evidence that he was the last person seen with the deceased before witnesses stumbled on his lifeless body early that morning.

12. Circumstantial evidence can be as good as direct evidence. The witness who saw the accused and the deceased in a heated exchange knew both of them well. It was her evidence that the corridor where she saw them was well lit by electricity, a fact which was corroborated by the investigating officer (PW7). Her evidence was therefore one of recognition and hence reliable and trustworthy. It is my finding therefore that the accused person was the last person to be seen with the deceased. He shall therefore be required to enter his defence as provided in **Section 306(2) of the Criminal Procedure Code.**

It is so ordered.

**Ruling signed, dated and delivered virtually on this 19<sup>th</sup> day of March 2026.**

**E. N. Maina  
Judge**

In the presence of:

Mr. Motende for the State

Mr. Muumbi Advocate for the accused

The accused person

Mary : Court Assistant/Interpreter