

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NUMBER 14 OF 2020

REPUBLIC.....PROSECUTION

VERSUS

SAMUEL MWANGANGI MUINDI..... 1ST
ACCUSED SAMWEL MWANZIA MUSILI.....
2ND ACCUSED

RULING

1. SAMUEL MWANGANGI MUINDI and SAMWEL MWANZIA MUSILI the accused persons herein were charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 10th day February 2020 at Kituluni Village of Matungulu Sub-County within Machakos County jointly with another not before court murdered one DANIEL MUNYAO MULI.
2. Having denied the charge, the case proceeded to full trial with the prosecution adducing evidence from a total of 15 witnesses in its endeavour to discharge the burden of proof beyond reasonable doubt.
3. As such, at this stage, this court's role is to consider the evidence on record and make a determination as to whether the same presents a *prima facie* case that would warrant this court to call upon the accused persons to give their defence pursuant to Section 306 of the Criminal Procedure Code.
4. It was the prosecution's case led by PW1 **Pastor David Kiio Kioko** that his goat was allegedly stolen by **Daniel Munyao Muli** the deceased herein and on the 9th February 2020 the deceased and the two accused persons came to his home with two hens and they later left to recover the said goat.

5. On cross examination, he testified that the deceased was not tied when he left the home and when he saw the body on the day he died on 10/02/2020 he didn't notice whether it had been tied.
6. PW3 **Julius Mutisya Mutua**, also testified that on the said date he saw the deceased with a goat heading towards the market. His son PW4 **Robert Wambua Mutua** told him he had seen the deceased with two chickens on the night of the said day. PW4 also testified that he saw the deceased with a hen and he told him he had exchanged a goat for the hen. **PW4 was not cross examined and re-examined.**
7. PW5 **Jackson Kimue Muli** testified that on the 9/2/2020 he heard voices outside his shop and found 3 people whom 2 were known to him as he knew **Samuel Mwangangi** (1st accused) and the deceased **Munyao**. The 1st accused was holding the chicken and the deceased tied with a rope as he was suspected to have stolen a goat but the same was recovered. His testimony during trial is that he also saw the deceased being assaulted by the men who accompanied the 1st accused and was holding the rope.
8. On cross examination, it was his testimony that none of the two accused persons assaulted the deceased, he never saw any injuries on the deceased and that the deceased appeared normal save for being tied, it was his evidence that the person who assaulted the deceased wasn't present in court.
9. PW6 **Stephen Wambua Muoki** testified that the night of 9th February 2020 he saw the deceased in the company of the accused persons and he was being beaten and caned by the man with the rope. It was his testimony that the 1st accused had a chicken.

10. On cross examination, he stated that he heard the noise at 12.00pm, he was asleep, he left with his torch and he found 3 people, he recognised all of them , it was his testimony that the accused held two hens and the 2nd accused was handling the stolen goat, he didn't mention that the accused held sticks, and that he retained the sticks and took them home on 11/06/2020. That on 26/02/2020 he was called to go and read his statement and he didn't tell the police he had the sticks for that period, and that he identified the sticks because he was near them. It was his testimony too that the accused did not assault the deceased with the sticks and that the Persons who assaulted the deceased wasn't in Court, he gave the Police information where he was working but he disappeared and that he was present when they stepped on the deceased. His evidence doesn't connect and it doesn't state that he followed them to **Kwa Mathenge** and saw them step on the deceased.
11. PW7 **Zakaria Kimanthi Muindi** testified that he saw the deceased with the he-goat on the said date.
12. On cross examination, he stated that the deceased was found at Mutenge, they were 5 people and that he isn't aware if Mulinge recorded his statement that in his statement he states that the 1st accused had 2 hens and the 2nd accused was holding the goat tied with the rope. It was his evidence he didn't see the one who held a stick and that he never saw the accessed persons assault the deceased and he couldn't tell who among the 5 killed the deceased.
13. PW8 **Elizabeth Nduko Kitaka** was stood down because she insisted on giving hearsay and was never recalled.
14. PW9 **Esther Kamene** testified that on the said date the deceased never returned home. Daniel told her he had recovered his goat and later he called her and informed her that the deceased was found lying at Mulenge's.

15. PW10 **Milka Ndunge Mwalu** told the Court that a young man called Munyao passed with a goat. He had a he-goat and she asked the deceased to lend her the goat to serve her she-goat. She also testified that on the said night the deceased came to her house with the accused persons to retrieve the goat. They picked the goat and left.
16. On cross examination, she stated that the deceased was tied with a rope and they never saw him being assaulted. She did know how the deceased died.
17. PW11 **Benjamin Kimeu**, PW13 **Joseph Musembi Muli** and PW14 **Evans Simiyu** testified that he identified the remains of the deceased. PW12 **Dr. Katua Daniel** the pathologist who conducted the post-mortem and produced the post mortem form dated 3/3/2020 stated before Court that there were different injuries on the deceased's body. That sticks could not have inflicted the injuries. The injuries upon the deceased could be as a result of a mob using heavy blunt objects and or hitting the accused with huge sticks.
18. PW15 was No.45604 retired **Corporal Johnstone Kabubii**, the Investigating officer. He testified that he was informed by his boss that a body had been found at Duduni in an area called Mwatate village which is on the boarder of Kangundo and Tala. Him together with Inspector Hassan and Senior Sgt Ochieng proceeded to Nunguni Police Post where they were given 2 police officers who escorted them to the scene where the body was. It was in a bush where there was a trench. The body had visible injuries. They interrogated the villagers who were around including the village elder who is the 1st accused. They collected the body and took it to Kangundo Level 4 hospital. Later they received information that the deceased was a thief stealing within the area and this time, he had stolen a goat belonging to Kioko (PW1). He stated that the village elder (1st accused) and workers of the

complainant went looking for the goat and, in the process, they found the deceased who had stolen the same. They went to Nduguni police post with the deceased and the goat and they were advised to return it to the owner and for the deceased to be released. The issue was resolved. On their way they met **eight (8) people who attacked the deceased** and killed him. The village elder (1st accused) pleaded with the attackers to stop beating the accused but they ignored him. The deceased later succumbed to the injuries of the beating. On 20/2/2020 the In Charge of the Tala police post Chief Insp. Guyo arrested the 1st and 2nd accused persons and took them to DCO offices in Matungulu at KBC police station. The two accused persons were then charged with murder. He testified that PW6 came with the sticks that were used to beat the deceased. These were produced as PExt. 1, 2 &3 respectively. He stated that he witnessed the post mortem and the Pathologist finding was that the cause of death was due to severe head injury caused by a blunt force object. During the beating the attackers used thick sticks.

19. On cross examination he stated that the eight (8) people who beat the deceased were not known to him and he didn't find out any of the 8 persons. This witness could not identify which of PExt.1, 2 & 3 was used by each of the accused persons to beat the deceased and that the sticks didn't have blood stains. The witness was unable to answer whether the accused persons participated in the mob justice. He stated that there was no evidence of who caused the death of the deceased.
20. In re-examination, he stated that the sticks that were used to beat the deceased were brought by Stephen Wambua Muoki (PW6) when he went to record his statement. That PW6 said he had picked the sticks from the scene where the accused died. He clarified that he witnessed the post

mortem and the pathologist said the cause of death was due to severe injury to the head due to blunt force object.

21. The prosecution then closed its case.
22. Upon closure of the prosecution's case, parties filed submissions on no case to answer. The Prosecution's submissions are dated 14/07/2025 while the Defence submissions are dated 20/10/2025.
23. The prosecution submitted that their evidence tendered so far places the accused persons at the scene of the crime and the death of the deceased was due to the wrongful act of the accused persons. The prosecution submitted that it had established a prima facie case against the accused person and urged this court to find that the accused has a case to answer and place him on his defence.
24. I note that the prosecution does not specify which of the two accused persons herein should be found to have a case to answer and therefore to be put on his defence.
25. On the other hand, the defence submitted that from all the evidence on record, it is clear that the 1st and 2nd accused persons had no common intention to cause grievous bodily harm or death of the deceased. They had merely arrested the deceased of being a thief and as they proceeded to take him to the police station, he was assaulted by a mob and the gentleman who was assaulting the deceased and had tied him with a rope soon thereafter disappeared after the crime. Ultimately, the defence submitted that the prosecution's evidence is not able to place the 1st and 2nd accused persons on their defence as they have no case to answer.

Determination

26. I have considered the evidence and submissions on record. What this Court must determine is whether the prosecution

has proved the ingredients of the offence of murder against the accused persons to the required standard.

27. Section 203 of the Penal Code defines murder in the following terms:

“Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder”

28. The ingredients of murder were set out by Odero, J. in the case of Republic v Mohammed Dadi Kokane & 7 Others [2014] KEHC 1088 (KLR) as follows:-

“This definition gives rise to four crucial ingredients of the offence of murder, all four of which the prosecution must prove beyond reasonable doubt in order to prove the charge. These are:

- 1. The fact of the death of the deceased.*
- 2. The cause of such death.*
- 3. Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons; and last*
- 4. Proof that the said unlawful act or omission was committed with malice aforethought”.*

29. What this court has to determine is whether the prosecution proved the above crucial ingredients of the offence of murder beyond reasonable doubt.

The fact of the death of the deceased.

30. There is no dispute on the deceased's death. This was confirmed by all the prosecution's witnesses. In particular by the evidence of PW12, Doctor Katua Daniel who carried out the postmortem on the deceased's body. The doctor stated that the deceased died on 10/02/2020 and certificate of death number 1004936 was issued.

The cause of such death.

31. On this issue, PW12 further stated that the deceased died from severe head injury from blunt trauma (force). He stated that injuries sustained by the deceased could be as a result of a heavy blunt object or by **a mob beating inflicted by huge sticks.**

32. None of the prosecution's 15 witnesses actually saw the accused persons kill the deceased with the sticks that were produced in court. The prosecution's evidence did not establish the doctrine of common intention to harm and/or kill the deceased. and that further no evidence was led to show that the accused persons herein had malice afterthought and lastly that, it is difficult in the case of mob justice such as in this case to pinpoint **what blow or assault** by a particular person in the group led to the victim's death. That it is worth noting all the prosecution's witnesses more so PW-5 and PW-6 stated the person who was at the scene of the crime at the material time and assaulted the deceased wasn't in Court and never acted under the control or supervision of the accused persons herein.

33. The Pathologist Dr. he stated that the deceased had injuries all over the body and however the main cause of death was severe head injury from blunt force trauma and highly connected to a mob beating and or inflicted by huge sticks and there is doubt that any acts of the accused persons herein caused severe head injury from blunt force trauma and subsequent the death of the deceased. The testimonies of PW5 and PW6 are inconsistent in that they say that they saw the deceased was in the company of 3 and/or 5 men, similarly after PW6 recovered the alleged weapons whilst none had blood and the Investigating Officer PW15 couldn't identify which stick was carried by which accused persons. All the witness who saw the 1st accused stated that he held the two chicken and the 2nd accused held the tethered goat,

none of them stated they saw them assault the deceased with the stick produced as PExt.1, 2 & 3 by the prosecution and this confirms to the narrative as given by the PW15 the Investigating Officer.

34. In addition, PW15 stated that the village elder (1st accused) and workers of the complainant went looking for the goat and, in the process, they found the deceased who had stolen the same. They went to Nduguni police post with the deceased and the goat and they were advised to return it to the owner and for the deceased to be released. The issue was resolved. On their way they met **eight (8) people who attacked the deceased** and killed him. The village elder (1st accused) pleaded with the attackers to stop beating the accused but they ignored him. The deceased later succumbed to the injuries of the beating.
35. On the above, it is clear that the deceased was attacked and assaulted by a mob who inflicted injuries on him that resulted into his death.

Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons

36. On this issue, the post-mortem report produced and marked as PExt.4 by the prosecution suggests that the cause of death was **severe head injury from blunt force**. The deceased is said to have died after being assaulted by a mob as led by PW5 and the pathologist PW12 who conducted the post-mortem. The pathologist stated that the injuries could not be inflicted by the alleged thin sticks (PExt.1, 2 & 3) that the state had produced in evidence but with thick sticks. No thick sticks were produced in evidence. The accused persons cannot then be said to have used PExt.1 2, and 3 to inflict the injuries that caused the deceased's death. This court finds that the prosecution failed to prove this ingredient

Proof that the said unlawful act or omission was committed with malice aforethought.

37. Section 206 of the Penal Code defined malice aforethought as follows:-

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances-

38. Section 206 of the Penal Code which stipulates that:
“Malice aforethought shall be deemed to be established by evidence proving;

a) An Intention to cause the death or grievous harm.

b) Knowledge that the act or omission causing death will probably cause death of or grievous harm to the same person,

c) An intention to commit a felony.”

39. There is no doubt that all the witnesses and more so PW5 and PW6 clearly never saw accused 1 and 2 beating the deceased and since no beatings caused by the accused persons or were intended to cause the deceased grievous harm. The first 1st accused and 2nd accused persons must not therefore be found to have had malice aforethought.

40. This court having considered in totality the prosecution’s evidence on record, it has come to the finding that the accused persons herein had no common intention to cause grievous bodily harm on the deceased or to cause his death. It was stated that the deceased was a thief stealing within the area and this time, he had stolen a goat belonging to Kioko (PW1). PW15 stated that the village elder (1st accused) and workers of the complainant went looking for the goat and, in the process, they found the deceased who had stolen the same. They went to Nduguni police post with the deceased and the goat and they were advised to return it to

the owner and for the deceased to be released. The issue was resolved. On their way they met **eight (8) people who attacked the deceased** and killed him. The village elder (1st accused) pleaded with the attackers (mob) to stop beating the accused but they ignored him. The deceased later succumbed to the injuries of the beating.

41. This court observes that the accused persons herein merely arrested the deceased of being a suspected thief and as they were heading home after the issue had been resolved by the police, the accused was attacked and assaulted by a mob who inflicted injuries on him that resulted into his death.
42. The person who allegedly was assaulting the deceased and had tied him with a rope and hit him on the head disappeared soon after the incident. Again, this court finds that this ingredient was not prove beyond reasonable doubt.
43. In the instant case, circumstances under which the offence was allegedly committed as stated by PW2, PW5, PW7, PW9, PW11, PW12 and PW15 revolve around a mob justice.
44. Without proper identification of the accused persons and the part the played in the mob justice by the crowd, it is not safe for this court to come to a conclusion that the accused persons actually participated in the assault which led to the demise of the deceased. See **Republic v Josphat Njiru Njoka [2019] KEHC 7022 (KLR)**
45. Accordingly, a review of the prosecution evidence and confining myself to the live issues relevant to making the decision under Section 306 of the Criminal Procedure Code, I am not satisfied that a prima facie case has been established to place the accused persons on their defence.
46. Therefore, this court finds both the accused persons to be innocent and proceeds to acquit them of the charge of murder herein.

47. Right of appeal 14 days.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 10TH
MARCH 2026

**NOEL I. ADAGI
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 10TH
MARCH 2026

In the presence of :