



**Republic v Kuresia (Criminal Case E029 of 2023)
[2026] KEHC 4192 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4192 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE E029 OF 2023**

RB NGETICH, J

MARCH 12, 2026

BETWEEN

REPUBLIC PROSECUTION

AND

SAITOTI TOROITICH KUREZIA ACCUSED

JUDGMENT

1. The accused, Saitoti Toroitich Kuresia, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars were that on 18th March 2019 at about 9.30 p.m. at Kaptunai Village, Senende Location, Mogotio Sub-County within Baringo County, he murdered Wilson Kipsom Rutto.
2. The accused pleaded not guilty. The prosecution called six (6) witnesses. When placed on his defence, the accused gave unsworn testimony and called one witness.

Prosecution Case

3. PW1 Eunice Chepchirchir Tiuyo testified that on 18th March 2019 at about 6.00 p.m., she was selling chang'aa at her house. Among her customers were Pauline Togocho and her husband Joshua Tuitoek. The accused arrived, left with them briefly, and later returned. At that time, PW1 was with four other people, including the deceased and her father-in-law, William.
4. PW1 testified that the accused became violent and assaulted William using a stick, causing him to flee. The accused then turned on the deceased and repeatedly beat him, causing him to bleed. A struggle ensued inside the house before the accused dragged the deceased outside and locked PW1 inside. From an opening in the kitchen, and with the aid of moonlight, PW1 stated that she saw the accused continue beating the deceased with a rungu, step on his waist as he lay on the ground, and later threaten PW2 with a panga.



5. PW1 further testified that PW2 and PW3 later returned and carried the injured deceased to an incomplete house nearby. The following morning, the deceased was found dead. PW1 stated that the accused and his mother later reported to the village elder that the accused had killed someone. She maintained that it was the accused who assaulted the deceased.
6. On cross-examination, PW1 stated that the accused was drunk but denied that she herself had consumed alcohol that day.
7. PW2 Shadrack Changmasa Cheserek testified that at about 8.00 p.m. he heard screams from PW1's house and went to investigate. He found the accused beating the deceased with a rungu and armed with a panga. He recognized both men as they were known to him. PW2 stated that the deceased was unable to escape due to his injuries. When the accused advanced towards him, PW2 ran to call PW3 for assistance.
8. PW2 testified that upon returning with PW3, they found the deceased injured and carried him to an incomplete house. He stated that PW1 told him the accused was responsible for the assault. On re-examination, PW2 reiterated that he personally saw the accused assault the deceased with a rungu.
9. PW3 Miller Magden Ngechurai testified that PW2 called him at about 10.00 p.m. to assist an injured person. They found the deceased lying down, carried him to an incomplete house, and covered him with a bedsheet. The following morning, PW3 learnt that the deceased had died.
10. PW4 Samuel Kipchumba Kimunyan testified that he identified the body of the deceased to the doctor (Pw6) for purposes of postmortem examination on 21st March 2019.
11. PW5 No. 240078 CIP Sara Pokosh testified that on 19th March 2019, following a report of murder, she visited the scene with the OCS and found the deceased's body bearing visible injuries on the face, mouth, back of the head, right hand, and back. The body was taken to Nakuru Mortuary. She stated that the report was made by the accused's mother, who indicated that her son was suspected of having killed the deceased.
12. PW6 Dr. Ngulungu, who conducted the postmortem, found that the deceased died from blunt trauma to the chest, consistent with homicide. The mechanism of death was traumatic asphyxia. He produced the postmortem report in evidence.

Analysis and Determination

13. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. For the prosecution to secure a conviction, the following ingredients must be proved beyond reasonable:-
 - a. the fact and cause of death of the deceased;
 - (d) that the accused acted with malice aforethought.
 - (c) that the unlawful act or omission was perpetrated by the accused; and
 - (b) that the death was caused by an unlawful act or omission;

(a) Proof of death and cause of death

14. There is no dispute that the deceased, Wilson Kipsom Rutto, died. PW4 identified the body to the pathologist, while PW5 confirmed that the body was recovered from the scene and taken to Nakuru Mortuary. PW6, Dr. Ngulungu, conducted the postmortem examination and formed the opinion that



the cause of death was blunt trauma to the chest, consistent with homicide, with the mechanism of death being traumatic asphyxia.

15. The defence did not controvert the fact or cause of death. I am therefore satisfied that the prosecution proved beyond doubt both the death of the deceased and its cause.

(b) Whether the death was unlawfully caused

16. The postmortem findings revealed multiple injuries consistent with assault. There is no suggestion that the injuries were accidental or self-inflicted. The evidence points to the deceased having been subjected to a violent beating, resulting in fatal blunt force injuries. In the absence of any lawful justification, I find that the death of the deceased was unlawfully caused.

(c) Whether the accused caused the unlawful death

17. The prosecution relies principally on the evidence of PW1 and PW2, both of whom placed the accused at the scene and described how he assaulted the deceased.
18. PW1 testified that the accused returned to her house, assaulted her father inlaw, and thereafter turned on the deceased, beating him repeatedly with a stick and later with a rungu, before dragging him outside and continuing the assault. She stated that although she was locked inside the house, she was able to observe the events through an opening in the window, aided by moonlight. Her account was detailed and consistent as to the sequence of events and the role played by the accused.
19. PW2 corroborated PW1's testimony by testifying that he heard screams from PW1's house, went there, and found the accused beating the deceased while armed with a panga and a rungu. He recognized both the accused and the deceased, whom he knew well. His evidence that the deceased was unable to leave due to injuries, and that he sought help from PW3, aligns with the narrative given by PW1.
20. PW3 confirmed that PW2 called him to assist an injured person and that they found the deceased seriously injured and later learnt of his death. PW5 further testified that the accused's mother reported that her son was suspected of having killed the deceased, lending further circumstantial support to the prosecution case.
21. The accused's defence is that he was too drunk to recall events after 6 p.m. and suggested that an unknown "madman" may have assaulted the deceased. This explanation was not supported by any independent evidence. The alleged assailant was neither identified nor traced, and the defence theory remains speculative.
22. While the accused questioned the presence of moonlight in March, both PW1 and PW2 were familiar with the accused and recognized him at close range. Recognition by known persons is generally more reliable than identification of strangers. I find no material contradictions in the prosecution evidence that would cast doubt on the participation of the accused. The accused further placed himself at the scene by confirming that he was drinking at pw1's house.
23. On the totality of the evidence, I am satisfied that the prosecution proved beyond reasonable doubt that it was the accused who inflicted the fatal injuries on the deceased.

(d) Whether malice aforethought was proved

24. The prosecution evidence does not clearly disclose what precipitated the incident. There is no evidence of a prior grudge, disagreement, or motive between the accused and the deceased. To the contrary, the accused and the deceased were related by marriage and had been drinking together earlier in the day.



The incident appears to have arisen suddenly in the context of excessive alcohol consumption at PW1's homestead.

25. Further, there is no evidence that the accused armed himself in advance with the intention of killing the deceased. The prosecution evidence portrays a violent but unplanned and spontaneous altercation, rather than a calculated attack.
26. Although the assault was undoubtedly vicious and unlawful, the evidence does not clearly demonstrate that the accused intended to cause death or grievous harm. The medical evidence confirms death by blunt trauma and asphyxia but does not point to targeted blows to a specific vital organ such as the head or neck that would irresistibly lead to an inference of intention to kill.
27. Further, intoxication featured prominently in the evidence. While intoxication does not excuse criminal conduct, it is a relevant factor when assessing whether the accused formed the specific intent required for murder. In the circumstances of this case, the accused's drunken state, the absence of a discernible motive, and the spontaneous nature of the confrontation create reasonable doubt as to the existence of malice aforethought.
28. From the foregoing, I am not satisfied that the prosecution proved malice aforethought beyond reasonable doubt. What is proved is that the accused unlawfully assaulted the deceased in the course of a drunken and chaotic confrontation, resulting in the deceased's death. The accused's conduct therefore fall within the definition of manslaughter under section 202 of the Penal Code.

Final orders

1. The accused is convicted of the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code and convict him accordingly.
2. Sentencing to follow sentence hearing.

DATED AND SIGNED AT NAIROBI THIS 11TH DAY OF MARCH 2026.

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R NGETICH

JUDGE

DATED, COUNTERSIGNED AND DELIVERED AT ELDORET THIS 12TH DAY OF MARCH 2026

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J.R. WANANDA

JUDGE

In the presence of :

Accused – Present virtually from Nakuru Prison.

Chebii for Accused.

Ms Omari for DPP.

