



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Bajila (Criminal Case E173 of 2025)
[2025] KEMC 311 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEMC 311 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
CRIMINAL CASE E173 OF 2025
FM MULAMA, RM
OCTOBER 28, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ALI HAJILA BAJILA ACCUSED

JUDGMENT

A. Background.

1. Ali Hajila Bajila was on the 5/8/2025 charged with the offence of threatening to kill contrary to section 223(1) of the Penal code.
2. It is alleged that on the 4/8/2025 at around 0000hours in Magogoni area of Hindi sublocation the accused without lawful excuse uttered the following words, “Nitakuua ama unipee pesa” words which were meant to threaten Ann Manga Nyerere.
3. 4 witnesses were lined up by the prosecution and after their testimony the accused was found to have a case to answer and was placed on his defence. In his defence, he gave sworn testimony never called any witness and was not cross examined by the state.

The Prosecution’s case.

4. It is the evidence of the prosecution that on the said date and time Pw 1 the complainant while in her house she had someone open their gate yet she was alone in the compound as other teachers had gone for vacation. She switched off the lights in her room and went to the window to see the person who had entered the compound.
5. To her shock she saw the accused enter the compound by use of the security lights and the accused came upto her house and knocked while asking for money while armed with a panga. He tried to push the door by force but it was locked. He then asked for Kshs.1,500/= and said that should she not give



the amount, he will do something bad to her. The complainant was terrified and called the caretaker but she could not find her and she called a motorcycle person who came to her rescue and when the accused heard the sound of the motorcycle and saw its flash light coming towards the direction of the compound the accused escaped into the darkness.

6. The motorcycle person came and took the complainant to the caretaker and they came back and slept in the same compound and the following morning while with the caretaker, they saw the accused still armed with the panga and that is when they informed the landlord and later the accused was arrested. The caretaker Pw 2 corroborated the evidence of Pw 1.

Defence case.

7. The accused in his defence denied the charges and stated that on the material date and time he was in his sister's house sleeping and the following morning he went to the farm and while at the farm he saw Pw 3 with 2 other people who came and arrested him by tying with up with a rope.

B. Issue For Determination.

8. This court has identified the following issue for determination.
 - a. Whether the prosecution proved all the charges against the subject.

C. Analysis And Determination.

9. To sustain a charge of threatening to kill contrary to section 223(1) of the Penal Code the prosecution is required to establish the following ingredients of the charge:
 - a. That the accused person without lawful excuse uttered words which amounted to a threat to kill the complainant or directly or indirectly causes any person to receive a threat whether in writing or not
 - b. The uttering of these words must be made in the context that the complainant perceives that he is under threat of losing his life.
 - c. The context must come out in the evidence that will be adduced by the prosecution witnesses and the explanation given by the accused in his defence.
10. In the case of *Phenias Njeru Koru vs Republic* [2015] eKLR the court in restating the ingredients necessary to prove the charge of threatening to kill stated as follows;

“The prosecution was therefore required to establish that the Appellant, without lawful excuse, uttered words which amounted to a threat to kill the complainant. It must also be established that the uttering of these words was made in the context that the complainants perceived that they were under threat of losing their lives. The context must come out in the evidence that will be adduced by the prosecution witnesses and the explanation given by the accused in his defence.”
11. It is the evidence of the complainant that on the material date and time the accused went to her door and demanded for Kshs.1,500/= while armed with a panga and any failure to do so he will do something bad to the complainant. In that context only and by virtue of being armed with a panga at that time of the night, the complainant perceived the words uttered by the accused as a threat to her life and the context is clearly born out of the evidence.



12. As if the events of the night were not enough, the accused was seen the following day evesdropping to the complainant while armed with the same panga he had the previous night.
13. I am thus satisfied by his conduct and the words he uttered amounted to a threat to kill the complainant as they were not mere words but he was so determined to pursue this heinous act by arming himself with a panga and even trying to open the door by pushing but luckily it had been tightly closed.
14. As to the identity of the accused, it is the evidence of the complainant that he was able to clearly identify the accused by using the security light not only of her door but of other doors as well as he walked upto her door and further that she knows him well. I am thus satisfied that the conditions of lighting were such that the complainant could not mistake the accused for anybody else.
15. With all that I have stated above I must therefore arrive at the conclusion that the ingredients as stated in the case of Phenias Njeru Koru(Supra) have been met in this case and the prosecution have indeed proved their case as against the accused person.

D. Conclusion And Disposition.

16. The accused is thus guilty of the offence of threatening to kill contrary to section 223(1) of the Penal Code and he is accordingly convicted in that count under section 215 of the CPC.
17. Orders accordingly.

DATED AND DELIVERED AT LAMU LAW COURTS THIS 28TH DAY OF OCTOBER 2025

F.M. MULAMA

RESIDENT MAGISTRATE

In the presence of:

Court Assistant:- Fathiya Loo & Daniel Joshua.

Ahmed Omar for DPP.

Ali Hajila Bajila

