

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL CASE NO. 15 OF 2023**

**REPUBLIC**.....

**PROSECUTION**

**VERSUS**

**JOHN OCHANGO**.....

.....**ACCUSED**

**JUDGEMENT**

1. The accused person, John Ochango is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code to which he pleaded not guilty. The particulars of the offence are that on the 24<sup>th</sup> day of February 2021 at around 1600 hrs, in the Muslim area of Kawangware in Dagoretti Sub-County within Nairobi County murdered Adelight Naliaka.
2. The prosecution called a total of twelve (12) witnesses in support of the case against the accused person before closing it on 12<sup>th</sup> February 2025. In a ruling delivered on 30<sup>th</sup> April 2025, the accused was put on his defence where he gave sworn testimony and did not call any witness.
3. The prosecution case was founded on the circumstances surrounding the death of the deceased, Adelight Naliaka, on 24<sup>th</sup> February 2021 at Kawagware.
4. PW5, Mary Nangila Akwiri, testified that on 24<sup>th</sup> February 2021 at about 4.00 pm she was at her house in Kawangware when the deceased, Adelight, visited her. They shared a meal and thereafter proceeded to a nearby fence to pick vegetables. While there, a man known to her as Yohana approached. Upon seeing him, the deceased appeared frightened. The man demanded his

driving licence from the deceased, and a verbal exchange ensued. PW5 left for her house, with the deceased following behind her and the man trailing them.

5. Shortly thereafter, PW5 heard the deceased screaming that she had been killed. Upon turning back, she saw the deceased lying on the ground and the accused person seated on her while stabbing her. PW5 raised alarm, and members of the public responded. The accused fled the scene but was pursued and apprehended by members of the public and returned to the scene. PW5 proceeded to report the incident to the village elder's office and later returned to find the deceased lying by the roadside. The accused was compelled by members of the public to carry the deceased to hospital. PW5 did not accompany them as she was in shock. She identified the accused in court.
6. In cross-examination, PW5 stated that she knew the accused prior to the incident and that he appeared intoxicated, with red eyes. She maintained that she saw the accused stab the deceased and that he was armed with a knife. She further stated that both the accused and the deceased were agitated prior to the incident.
7. PW3, Gabriel Onyapidi Omudia, testified that at about 4.30 pm he heard screams emanating from behind his residence. He rushed to the scene where he found the deceased running towards the road while injured, before she collapsed. He was informed by a witness, Mary, that the deceased had been stabbed by a man who was fleeing. PW3 pursued the individual, raising alarm, and with the assistance of another person apprehended the accused approximately 500 metres from the scene. The accused was escorted back to the scene and handed over to local authorities.

PW3 observed that the deceased had sustained stab wounds to the neck and stomach.

8. PW1, Oscar Aswahi Musunye, testified that at about 4.00 pm he heard commotion at Mti Kubwa and proceeded to the scene where he found a crowd assaulting the accused person, who was alleged to have stabbed his wife. Upon inquiry, the accused admitted to the act and led the witness to where the deceased lay. He observed the deceased bleeding from the left side of her body. With the assistance of members of the public, arrangements were made to take her to hospital and the accused being compelled to carry her due to the urgency of her condition. They later encountered a police vehicle and proceeded to a nearby hospital, where the deceased was attended to but succumbed to her injuries shortly thereafter. PW1 subsequently returned to the scene and recovered a blood-stained kitchen knife, which he handled with a protective covering and handed over to the chairman of Nyumba Kumi.
9. PW2, Stephen Muthiora Kuria, the chairman of the community policing unit, testified that he received information of the incident at about 5.00 pm and proceeded towards the scene. He encountered the accused carrying the injured deceased, who was bleeding profusely. Efforts were made to secure police assistance, and the deceased was taken to a local clinic where she was pronounced dead on arrival. PW2 later received the knife recovered by PW1 and delivered it to the police. He confirmed that he did not witness the incident but identified the accused as the person present with the deceased at the material time.
10. PW4, James Ochieng Ouma, a village elder, testified to prior interactions between the deceased and the accused concerning a

monetary dispute arising from unpaid wages. He stated that the deceased had reported that the accused owed her money and that efforts had been made to resolve the dispute through community intervention. On the material day, PW4 received information that the deceased had been stabbed and upon arrival at the scene found her lying injured and bleeding profusely. The accused was subsequently brought to the scene by members of the public and restrained from mob justice. Arrangements were made for the deceased to be taken to hospital, where she later died.

11. PW6, Mary Khasoa Stephen, testified that she worked alongside the accused and the deceased in casual employment. She stated that the accused, who was their team leader, had failed to pay wages owed to her and the deceased, leading to a dispute which was reported to the village elder. The accused made partial payment and promised to clear the balance.
12. PW6 further testified that prior to the incident, the accused had threatened to kill her and the deceased over the dispute. On the material day, she saw the accused carrying a green backpack and later received information that the deceased had been stabbed by the accused. She proceeded to a local hospital where she found a crowd and was informed that the deceased had succumbed to her injuries. She later visited the scene and observed items belonging to the deceased, including vegetables, shoes and a knife with a blue handle.
13. In cross-examination, PW6 stated that she did not witness the stabbing but confirmed prior threats made by the accused and the existence of disputes between the accused and the deceased.

She further stated that the accused and the deceased had cohabited and frequently quarrelled.

14. PW7, Sergeant Nicholas Mwachofu, testified that on 24<sup>th</sup> February 2021 while on patrol duty at Muthangari Police Station, he received a report from a village elder that a man had stabbed his wife and that members of the public were attempting to lynch him. He proceeded to the scene and intercepted members of the public carrying an injured woman. The accused, who had been apprehended by the public, was arrested. The deceased was taken to a local clinic and later pronounced dead. The accused, who had sustained injuries from the mob, was taken for treatment and subsequently detained. The body of the deceased was moved to the City Mortuary. PW7 observed that the deceased had sustained stab wounds to the chest.
15. PW8, Ruth Wangari Kahi, a Government Analyst, testified that she received exhibits for forensic examination, including a kitchen knife with a blue handle, a blood sample from the deceased, fingernail clippings of the deceased, and a buccal sample from the accused. Upon analysis, the knife was found to be stained with human blood. DNA profiling established that the blood on the knife matched the blood sample of the deceased. She produced the report and related exhibits in evidence.
16. PW9, Dr. Peter Muriuki Ndegwa, a pathologist attached to the Ministry of Health, testified that on 5<sup>th</sup> March 2021 he conducted a post-mortem examination on the body of the deceased, Adelight Naliaka, at the City Mortuary. The body was identified to him by the deceased's sister, Judith Masitsa Lidungu, and her brother, Donald Muhitsi Kituyi, in the presence of police officers from Muthangari Police Station. Upon examination, he noted that the

body was that of an adult African female of moderate build, measuring approximately 160 centimetres in height, and clad in blood-stained clothing. There was a bandage across the chest which, upon removal, revealed a penetrating stab wound measuring approximately 2 centimetres on the left axillary region.

17. Internally, PW9 observed that the lower lobe of the left lung had been perforated and that there was a left-sided haemothorax, with approximately 2000 millilitres of blood within the chest cavity. The rest of the body systems were normal. He formed the opinion that the cause of death was exsanguination due to a penetrating sharp force injury, findings which were consistent with assault. He prepared and signed the post-mortem report on the same date and produced it in evidence.

18. PW10, Police Constable Allan Njoka, attached to the Directorate of Criminal Investigations, Scenes of Crime Unit, Dagoretti, testified that on 24<sup>th</sup> February 2021 he was instructed to visit the scene of the incident. He proceeded to Kawangware and documented the scene by taking photographs. The photographs depicted, inter alia, a pair of blood-stained slippers, a polythene bag containing vegetables, and a knife with a blue handle. He processed the photographs and prepared a report together with a certificate under section 106B of the Evidence Act, which he produced in evidence.

19. PW11, Chief Inspector Josephat Muia, the investigating officer, testified that on 24<sup>th</sup> February 2021 he received instructions to visit the scene of a reported murder at Kawangware. Upon inquiry, he established that the deceased had been in the company of PW5 when the accused approached her and demanded his driving licence, leading to a disagreement. PW11

further established that the accused stabbed the deceased with a knife and fled the scene, whereupon members of the public pursued and apprehended him. The accused was returned to the scene and compelled to assist in taking the deceased to hospital, where she was pronounced dead.

20. PW11 testified that he later received the knife alleged to have been used in the commission of the offence, which had been recovered from the scene by a witness and handed over through local administration to the police. The knife was secured, documented, and forwarded to the Government Chemist together with blood samples and other exhibits for forensic analysis. He further testified that the accused was subjected to mental assessment and found fit to stand trial. The accused was also treated for injuries sustained from members of the public before being placed in custody.

21. PW11 stated that investigations revealed that the accused and the deceased had been involved in a dispute relating to unpaid wages, and that the accused had previously issued threats against the deceased. He confirmed that the accused was identified by witnesses as the person who inflicted the fatal injury.

22. PW12, Judith Masitsa Lidungu, testified that she was a sister to the deceased and that on 5<sup>th</sup> March 2021 she attended the City Mortuary together with her brother, where they identified the body of the deceased to the pathologist prior to the post-mortem examination.

23. In his defence, the accused, John Ochango, testified that on the material day he had a disagreement with the deceased, whom he described as his wife. He stated that he later encountered her while she was in the company of another person. He alleged that

the deceased took out a knife and that in the course of a struggle between them, she fell and sustained injury. He stated that he assisted in taking her to hospital but later learnt that she had died.

24. The accused further stated that there had been an earlier dispute concerning money, as he had not paid the deceased her wages in full. He maintained that he did not intentionally inflict the fatal injury and denied responsibility for the offence.

25. The Court has considered the entirety of the prosecution evidence, the defence tendered by the accused, the written submissions and the applicable law. The sole issue for determination is whether the prosecution has proved the charge of murder beyond reasonable doubt.

26. The accused is charged with the offence of murder contrary to Section 203 of the Penal Code. Sec. 203 provides:

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

27. The ingredients of the offence of murder which the prosecution must prove beyond reasonable doubt are:

**a. The death of the deceased.**

**b. The unlawful cause of death**

**c. That in causing death the accused committed it with malice aforethought.**

28. The fact of death is not in dispute. The post-mortem examination conducted by PW9, Dr. Peter Muriuki Ndegwa, established that the deceased, Adelight Naliaka, died from exsanguination due to a penetrating sharp force injury. The examination revealed a stab wound to the left axillary region which perforated the lung and

caused massive internal bleeding. These findings are consistent with a fatal assault inflicted by a sharp object.

29. On the cause of death, the prosecution adduced both direct and circumstantial evidence. PW5, an eye witness, gave a clear and cogent account of the incident. She testified that she saw the accused pursue, overpower and stab the deceased while she lay on the ground. Her evidence placed the accused at the scene and directly linked him to the fatal act. The testimony remained unshaken on cross-examination.
30. This account was corroborated by PW3 and other witnesses who responded to the distress calls, pursued the accused as he fled, apprehended him, and returned him to the scene. The accused was found in close proximity to the deceased and was thereafter compelled by members of the public to assist in taking her to hospital. The sequence of events firmly places the accused at the centre of the occurrence.
31. Further corroboration was provided by forensic evidence. The knife recovered from the scene and produced in evidence was, upon analysis by PW8, found to bear human blood matching the DNA profile of the deceased. This scientific evidence directly connects the weapon to the fatal injury.
32. The evidence further disclosed a prior dispute between the accused and the deceased relating to unpaid wages. Witnesses testified that the accused had issued threats against the deceased prior to the incident. The confrontation on the material day immediately preceded the fatal attack.
33. In his defence, the accused admitted being at the scene and engaging in an altercation with the deceased. He contended that

the deceased produced a knife and that, in the course of a struggle, she fell and sustained the fatal injury.

34. The Court has considered whether the defence discloses self-defence under Section 17 of the Penal Code or provocation under Sections 207 and 208 of the Penal Code. Section 17 provides that:

**“Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.”**

35. In **Republic v. Silas Magongo Onzere alias Fredrick Namema [2017] eKLR**, the Court held that the law does not require a person under attack to measure with mathematical exactness the degree of force necessary to repel the attack, and that a person may act instinctively in self-defence. Similarly, in **Ahmed Mohammed Omar & 5 Others v. Republic [2014] eKLR**, the Court of Appeal held that where a person is faced with imminent danger, reasonable force may be used to avert it.

36. The applicable principles are that the accused must have reasonably believed that he was in imminent danger, that the force used was necessary, and that it was proportionate to the threat.

37. Upon evaluation of the evidence, the Court finds no factual basis for the plea of self-defence. There is no evidence that the deceased posed an imminent threat to the accused. On the contrary, the eye witness account demonstrates that the accused was the aggressor and inflicted the fatal injury upon the deceased. The defence is therefore untenable.

38. The defence is further inconsistent with the medical evidence. The nature and location of the injury, being a forceful penetrating wound to a vital part of the body, do not support the suggestion of an accidental or self-inflicted injury.
39. The conduct of the accused in fleeing the scene immediately after the incident, before being apprehended by members of the public, further undermines his version of events and lends credence to the prosecution case.
40. On malice aforethought, Section 206 of the Penal Code provides that it may be inferred from, inter alia, an intention to cause death or grievous harm, or knowledge that the act will probably cause death or grievous harm.
41. In **Rex v Tubere s/o Ochen {1945} 12 EACA 63**, the Court held that:
- “In determining existence or non-existence of malice one has to look at the facts proving the weapon used, the manner in which it is used and part of the body injured.”*
42. In **Hyam v DPP {1974} AC**, it was held that malice aforethought is established where the accused knew that the act would probably result in death or serious bodily harm.
43. In the present case, the accused used a knife to inflict a deep penetrating injury to the chest region, a vital part of the body, resulting in fatal internal bleeding. The nature of the weapon, the manner of its use, and the part of the body targeted establish an intention to cause death or grievous harm.
44. In the absence of any credible evidence supporting self-defence or provocation, malice aforethought is clearly established within the meaning of Section 206 of the Penal Code.

45. Upon a careful evaluation of the entire evidence, the Court is satisfied that the prosecution has proved beyond reasonable doubt that the accused unlawfully caused the death of Adelight Naliaka with malice aforethought.

46. Accordingly, the accused is found guilty of the offence of murder contrary to Section 203 of the Penal Code and is hereby convicted.

**Judgement dated and delivered this 9<sup>th</sup> day of April 2026**

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**D. KAVEDZA  
JUDGE**

**In the presence of:**

Ms. Timoi for the Prosecution

Accused Present

Karimi Court Assistant.