



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wahome (Criminal Case E020 of 2021)
[2026] KEHC 4851 (KLR) (13 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4851 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU**

CRIMINAL CASE E020 OF 2021

LN MUTENDE, J

APRIL 13, 2026

BETWEEN

REPUBLIC PROSECUTION

AND

BERNARD WAMBUGU WAHOME ACCUSED

JUDGMENT

1. Bernard Wambugu Wahome, the Accused, is charged with Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars being that on the 26th day of August, 2021, at Gatundia Market within Melwa Location, Laikipia West Sub-County in Laikipia County, murdered Agnes Etot Lologoi (Deceased).
2. Facts of the case are that the Accused was the husband of the deceased. On 25th August, 2021 the family comprising of the Accused, deceased and their four children, PW1 SK aged 17 years and his siblings T, T, and W had supper then retired to bed. The Accused was the first to go to bed and was followed by the deceased some approximately 30 minutes later. In the morning of 26th May, 2021, the door to the house was closed but not locked. The deceased was found inside the bedroom with a deep cut wound on the neck and the Accused was missing.
3. The matter was reported to the police who visited the scene. The Scene of Crime Investigation Officer documented the scene and took photographs thereof. The body of the deceased was lying on the bed with a deep cut wound on the neck but covered with a blanket while a green piece of cloth covered the mouth. The lifeless body of the deceased was moved to the mortuary at Nyahururu Referral Hospital. In the meantime, the Accused who was on the run was arrested at Maili Nane, Nyahururu. Investigations conducted resulted into his arraignment.
4. Upon being placed on his defence, the Accused who made an unsworn statement stated that he was away on duty. That he went home at night after duty and found the door not locked. He entered the



house and found children asleep and inside the bedroom was the deceased in an act of coitus with Philip Samoei, a KDF soldier. That the two (2) jumped off the bed and the deceased took a *panga* and aimed at cutting his head. She told the man to jump out through the window which he did.

5. That he decided to snatch the *panga* from her and when he succeeded she ran to the room to grab a club and having been provoked, he did not know how he lifted the *panga* and cut her neck. That he dropped the *panga* and supported her. He put her on the bed and amid the confusion he realized she had stopped breathing. That he went to the police post but did not find anyone. Because of fear he did not go back home hence walked the whole night to the neighbouring village and at 8.00am he encountered some ladies that he told his problem and one of them called Maili Inya Police who went for him. He was then moved to Rumuruti Police Station.
6. At the close of the defence case written submissions were filed by the defence. It was urged that the Accused acted under sudden provocation. That sudden discovery of adultery amounted to provocation. That finding another man in their matrimonial house deprived the Accused of self-control. That the nature of injury sustained though severe does not prove malice aforethought as it was not deliberate and premeditated.
7. The offence of Murder is provided for in Section 203 of the [Penal Code](#) which enacts thus;

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
8. From the afore stated provision of law, ingredients of murder as derived from the [Penal Code](#) are;
 - a. Death occurred as a result of an unlawful killing.
 - b. The unlawful act or omission was caused by the Accused.
 - c. The action was actuated by malice aforethought.
9. In the case of [Anthony Ndegwa Ngari v Republic](#) [2014] KECA 424 (KLR) the Court of Appeal stated that elements of murder are;
 - “(a) the death of the deceased and the cause of that death;
 - (b) that the accused committed the unlawful act which caused the death of the deceased and
 - (c) that the Accused had the malice aforethought.”
10. In the case cited by the defence of [Republic v Andrew Omwenga](#) [2009] eKLR it was stated that;

“It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission. There are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are:

 - (a) the death of the deceased and the cause of that death;
 - (b) that the accused committed the unlawful act which caused the death of the deceased and
 - (c) that the Accused had the malice aforethought.”



11. It was the evidence of prosecution witnesses; PW1, PW2 Maria Akai Esther, the deceased's cousin, the Scene of Crime Officer and No. 77xxx Senior Sergeant Patrick Muriuki that the lifeless body of the deceased lay on the bed in her bedroom. PW3 Dr. John Omedo who conducted the postmortem confirmed that the cause of death was haemorrhage shock; secondary to the deep cut wound on the neck. This was proof of death beyond reasonable doubt. A postmortem report was adduced in evidence of such proof (See *Chengo Nickson Kalama v Republic* [2015] KECA 169 (KLR)).
12. It is not in dispute that the death was occasioned by the Accused herein as he has admitted in evidence. However, he argues that he was provoked. For an accused to be found culpable he must have acted with malice aforethought. Section 206 of the *Penal Code* defines malice aforethought thus;

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

- a. an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
 - b. knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
 - c. an intent to commit a felony;
 - d. an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.
13. In *Nzuki v Republic* [1993] eKLR the Court of Appeal stated thus;

“Before an act can be murder, it must be aimed at someone and in addition it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused:

- i. The intention to cause death;
- ii. The intention to cause grievous bodily harm;
- iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from these acts, and commits those acts deliberately and without lawful excuse the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not and in none of these cases does it matter that the act and the intention were aimed at a potential victim other than the one who succumbed.

Without an intention of one of these three types, the mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder. See the case of *Hyam v Director of Public Prosecutions*, [1975] AC 55.”



14. The Accused however pleads the defence of provocation. Section 207 of the *Penal Code* provides;

When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.
15. The issue to be determined is therefore whether the Accused acted in the heat of passion as submitted, without pre-meditated malice, was the act occasioned involuntarily? If established that the Accused was provoked then the element of malice aforethought would be abrogated.
16. Finding a wife in coitus with another man can indeed be provocative which may be deemed as a reasonable explanation by the Accused calling upon the court to consider reducing the charge to manslaughter. But, it is not enough to allege that one lost control of himself and that he found the woman committing adultery, a word of mouth perse is not sufficient, evidence must point to that fact.
17. PW1 was the couple's son aged 17 years old hence able to comprehend what transpired. The two were his parents and it was not suggested that he would favour one parent as against another. He testified that on the fateful night, they had dinner as a family and retired to bed. In the morning their mother was dead and their father (Accused) was nowhere to be seen. He did not hear anything at night. He was cross – examined by counsel who had instructions of the accused. Nothing of the sort came up.
18. PW5 the Investigating Officer stated that the house was a semi-permanent two (2) bedroom house. It was not suggested that there was a window that an adult would go through. On cross – examination the Investigating Officer agreed having recovered a *panga* which was not a murder weapon hence irrelevant.
19. All in all, the scenario depicted by the Accused was of an intense physical altercation that could have been heard by those present in the house. The Officer said the blood was only on the bed. It was a bit intriguing that the body had a piece of cloth that covered the mouth. It is not denied how and why that had to be the case. And, the body was covered with a blanket.
20. Had the Accused acted in self defence as portrayed, having been provoked, he could not have escaped from the scene which clearly suggested some premeditation. The victim was not let to breath leave alone make any sound due to the piece of cloth over the mouth. She was silenced after she went to bed with her husband, the father of her children before he cut her neck with a sharp object. This was an act well planned. The fatal injury was inflicted after she was restricted. This was a deliberate intent to kill, it could not have been an impulsive act.
21. Clearly, the Accused had the intent to kill not even cause grievous harm which was proof of the existence of malice aforethought.
22. From the foregoing, I find the State having proved the case of murder against the Accused beyond reasonable doubt. Therefore, I find him guilty as charged, and accordingly convict him.
23. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF APRIL, 2026.

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L. N. MUTENDE
JUDGE

