



**Republic v David (Criminal Case E009 of 2022)
[2026] KEHC 4432 (KLR) (19 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4432 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL CASE E009 OF 2022
TW CHERERE, J
MARCH 19, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

DOMINIC KIPTOO DAVID ACCUSED

JUDGMENT

1. The accused, Dominic Kiptoo David, was charged with murder contrary to section 203 as read with section 204 of the Penal Code, the particulars being that on 19th May 2022 at Metamaywa Village in Nyamira County he murdered Jared Gichana Ogeto. The charge was read to him in a language he understood and he pleaded not guilty, whereupon the matter proceeded to full trial.
2. The prosecution called five witnesses in support of its case. PW2, Ezpon Atinda Ombuki, a businessman and shoe seller based in Nairobi, testified that he originated from the Manga area near Miriri Primary School and was acquainted with both the accused and the deceased, having known them as co-workers employed at the same premises. He testified that on 19th May 2022 at about 12.30 a.m. he received a telephone call from Elijah Machuki informing him that intruders had entered their employer’s compound and requesting that they proceed to the premises together. PW2 met Elijah and the two proceeded to the compound, where Elijah opened the gate with a key. The compound was illuminated by electric lighting.
3. Upon entering, PW2 testified that they found the accused violently assaulting the deceased while shouting “thief, thief,” the deceased bleeding heavily and visibly seriously injured. PW2 and Elijah intervened and prevailed upon the accused to desist, after which they secured the accused within one of the rooms in the compound and summoned the police. Arrangements were simultaneously made to convey the injured man to hospital. The deceased was taken to hospital but succumbed to his injuries the following morning.



4. PW3, Elijah Nyakumbu Machuki, a taxi driver based in Keroka who also acted as supervisor at the premises, testified that on 19 May 2022 at about midnight he received a telephone call from the accused informing him that the compound had been invaded by thieves. He thereafter contacted PW2 and the two proceeded to the premises together. Upon arrival, PW3 opened the gate and they entered the compound, where they found the accused assaulting the deceased while shouting “thief, thief” and striking him with firewood and a slasher. The accused appeared extremely angry and aggressive, while the deceased was already bleeding and lay helplessly on the ground. PW3 intervened by securing the accused in a room and summoning the police, who arrived shortly thereafter and recovered several weapons at the scene, including a slasher and a panga. The deceased was taken to hospital but died the following morning from the injuries he had sustained.
5. PW4, Inspector Paul Omondi, testified that he was an investigator stationed at Keroka Police Station and that on 19th May 2022 at about 1.00 a.m. he received a report of a robbery at Metamaywa Village. He proceeded to the scene with other officers and found a man lying on the ground with serious injuries to the back of his head. Witnesses at the scene informed them that the accused had been observed beating the deceased while accusing him of theft. The police recovered several items at the scene, including a slasher, knife, panga, broken stick and rungu, all bearing bloodstains and believed to have been used in the assault. The injured man was taken to hospital and later died, whereupon the accused was arrested and charged.
6. PW1, Dr. Leah Obosy Okwori, a pathologist at Kisii Teaching and Referral Hospital and holder of a Master of Medicine degree in Human Pathology from the University of Nairobi, testified that on 19th May 2022 at about 3.30 p.m. she conducted a post-mortem examination on the body of Jared Gichana Ogeto. She observed that the deceased was an African male aged between 40 and 45 years, well-built, approximately 179 cm tall, and that rigor mortis was present in both the upper and lower limbs, indicating that death had occurred several hours before the examination.
7. External examination revealed signs of medical intervention, including a bloodstained bandage on the head and an intravenous line at the elbow, together with multiple stitched lacerations on the head measuring approximately 10 cm and 8 cm, additional lacerations on the frontal, parietal and occipital regions, and a fracture and laceration of the left thumb. On internal examination, PW1 found subgaleal haematoma, fractures of the skull involving the occipital, parietal and temporal bones, and bilateral subdural haematoma in the brain, while the lungs, cardiovascular system and stomach were otherwise unremarkable. She concluded that the cause of death was severe head injury and haemorrhage resulting from trauma caused by a sharp object, injuries consistent with a violent assault.
8. PW5, Inspector Paul Omondi Mokodo, the investigating officer assigned to the case, testified that he prepared an exhibit memo through which several items were forwarded to the Government Analyst for forensic examination. These included blood samples from the deceased, bloodstained clothing, and the weapons recovered at the scene. Upon completing his investigations and reviewing the available evidence, PW5 recommended that the accused be charged with murder.
9. The accused elected to give an unsworn statement and called no witnesses. He stated that he worked at the compound alongside the deceased and that the deceased had earlier travelled to visit his family. He said that on 19th May 2022, he returned to the compound at about 8.00 p.m. and was unaware that the deceased had by then also returned. According to him, the deceased informed him that he had been injured, and upon entering the compound he encountered three unknown persons who fled when he shouted. He thereafter telephoned their supervisor and reported that thieves had escaped. He maintained throughout that he neither assaulted nor killed the deceased.



10. Counsel for the accused filed written submissions dated 10th March 2026 urging the court to find that the prosecution had failed to prove the charge beyond reasonable doubt. It was submitted that the burden rests entirely on the prosecution and that no obligation to prove innocence rests upon an accused person. Counsel contended that the prosecution evidence was marred by inconsistencies and contradictions, and that the prosecution had failed to establish malice aforethought as required under section 206 of the Penal Code.
11. The issues for determination are: first, whether the death of the deceased was proved and the cause thereof established; second, whether the accused caused the death of the deceased; and third, whether the accused acted with malice aforethought.
12. I have considered the evidence on record, the unsworn defence by the accused, and the written submissions filed on his behalf, together with the authorities cited therein. Counsel properly restated the settled principle that the burden of proof rests upon the prosecution throughout and never shifts to an accused person, placing reliance on *JOO v Republic* [2015] eKLR. Counsel further invoked *David Ochieng Aketch v Republic* [2015] eKLR to argue that inconsistencies in the prosecution case rendered the evidence unreliable, and contended that malice aforethought as required under section 206 of the Penal Code had not been established.
13. There is no dispute as to the fact of death or its cause. The evidence of PW2, PW3 and PW4 consistently established that the deceased was found at the scene with grave injuries and later succumbed while undergoing treatment. This was conclusively confirmed by the medical evidence of PW1, whose post-mortem demonstrated multiple severe head injuries, including skull fractures and subdural haemorrhage, leading to the conclusion that the cause of death was severe head injury and haemorrhage due to trauma inflicted by a sharp object. That evidence was neither challenged nor displaced and I find that the death of the deceased and the cause thereof were proved beyond reasonable doubt.
14. On whether the accused caused the death, the prosecution case rests on direct and consistent eyewitness testimony. PW2 and PW3, who knew both the accused and the deceased as co-workers, testified that upon entering the compound on the material night, they found the accused in the act of violently assaulting the deceased while shouting “thief, thief.” They were clear that there was sufficient electric lighting and that no other persons were present. Their evidence was materially consistent and mutually corroborative, and the alleged inconsistencies highlighted in the submissions have not been demonstrated. Their core narrative remains intact and is further reinforced by the evidence of PW4, who recovered bloodstained weapons at the scene and confirmed that the accused had been identified as the assailant.
15. The accused’s unsworn denial that unknown intruders fled the scene does not raise any reasonable doubt in the face of this direct and cogent evidence. Applying the principle in *Woolmington v DPP* [1935] AC 462, I am satisfied that the prosecution discharged its burden and proved beyond reasonable doubt that it was the accused who inflicted the injuries that led to the death of the deceased.
16. The remaining question is whether malice aforethought was established. While the nature of the injuries inflicted and the weapons used would ordinarily support an inference of intent to cause death or grievous harm within the meaning of section 206 of the Penal Code, the court must evaluate the surrounding circumstances.
17. The uncontroverted evidence of PW2 and PW3 was that the accused was shouting “thief, thief” during the assault, and it is not disputed that the accused himself initiated the report that there were intruders in the compound. The totality of the evidence points to a situation in which the accused, albeit



mistakenly, believed that the deceased was a thief. There was no evidence of prior animosity between them; on the contrary, they were co-workers residing within the same compound.

18. In those circumstances, although the force used was clearly excessive and unlawful, the court is not satisfied that the prosecution proved beyond reasonable doubt that the accused possessed the specific intent required to establish malice aforethought. What is disclosed instead is an unlawful killing arising from a mistaken belief and a disproportionate response to a perceived threat.
19. In the result, while the prosecution has proved that the accused unlawfully caused the death of the deceased, it has failed to prove malice aforethought as required under section 203 of the Penal Code. The offence of murder is therefore not established. The proved facts, however, disclose the offence of manslaughter under section 202 as read with section 205 of the Penal Code.
20. Accordingly, I find the accused, Dominic Kiptoo David, not guilty of murder but guilty of manslaughter, and I hereby convict him accordingly. Orders accordingly.

DELIVERED AT NYAMIRA THIS 19TH DAY OF MARCH 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Anita

Accused - Present

For Accused - Ms. Shilwatso for G.B.Shilwatso & Co. Advocates

For the DPP - Mr. Chirchir (SADPP)

