



**Republic v Tinega (Criminal Case E020 of 2025)
[2026] KEHC 4426 (KLR) (12 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 4426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL CASE E020 OF 2025
TW CHERERE, J
MARCH 12, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

ELIJAH MOGAMBI TINEGA ACCUSED

JUDGMENT

1. The accused person, Elijah Mogambi Tinega, was charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars of the charge are that on the 27th January 2024 at Bokibaru Village, Boisanga Sub-Location, Obwari Location in Nyamira North Sub-County within Nyamira County, he murdered Daniel Abisi Masira.
2. The accused was arraigned before this court where the information was read to him in a language he understood. He pleaded not guilty and the matter proceeded to full hearing. The prosecution called seven witnesses in support of its case.
3. PW1, Susan Kemuma Abisi, the wife of the deceased, testified that on 27th January 2024 at about 1.00 pm she returned home from church and had lunch with the deceased. The deceased thereafter left to tend to goats near their home. She testified that while she remained seated outside the house, the accused, who was their neighbour, arrived at the homestead riding a motorcycle and asked the deceased to stop grazing goats along a path which he claimed belonged to him. According to PW1, the deceased later asked her to give him a coat and then proceeded towards the coffee farm. PW1 testified that at about 3.00 pm she heard the accused shouting that the deceased had assaulted him and that he had fought him back. She further testified that she heard him shout that he had killed the deceased in the tea farm. Alarmed by those words she raised alarm and members of the public gathered. She later accompanied members of the public to the tea farm where they found the body of the deceased lying on the ground with severe injuries including deep cut wounds on the head, injuries on the stomach



- and a severed thumb. The area chief and police officers were informed and the body of the deceased was later removed to the mortuary.
4. During cross-examination PW1 admitted that she did not witness the attack upon the deceased and that she remained at home while the deceased had gone to the farm.
 5. PW2, Everlyne Nyakerario Abisi, the daughter of the deceased, testified that she received a call from her mother informing her that the deceased had been killed. She rushed home and found the body of the deceased lying in the tea farm with multiple injuries including deep cuts on the head and injuries on the stomach and hands. She confirmed that she did not witness the killing.
 6. PW3, Robert Oyondi Morgan, the Chief of Obwari Location, testified that he visited the scene after receiving a report that the deceased had been assaulted. He found the deceased already dead with injuries to the head.
 7. PW4, Rodgers Oganga, a clinical officer, produced the post-mortem report prepared by Dr Angela Ogendi. The report indicated that the deceased sustained multiple deep cut wounds to the head including a cracked scalp exposing brain tissue and amputation of the left thumb. The doctor formed the opinion that the deceased suffered severe head injury leading to haemorrhagic shock and cardiopulmonary arrest.
 8. PW5, a scenes of crime officer, produced photographs taken at the scene showing the body of the deceased with visible cut wounds.
 9. PW6, the investigating officer, testified that he visited the scene and recorded statements from witnesses who implicated the accused. During cross-examination he admitted that none of the witnesses saw the accused commit the killing and that no murder weapon was recovered.
 10. PW7 testified that the accused was later arrested in Narok County on 09th October 2024 after he had not been traced for a long period following the incident.
 11. At the close of the prosecution case the court found that the accused had a case to answer and placed him on his defence.
 12. The accused gave sworn testimony denying the charge. He testified that before his arrest he was engaged in farming in Oldonyo Orok in Narok County and that he had relocated there in April 2023. He stated that he was not present at the scene of crime on 27th January 2024 when the deceased was killed. DW2, the Accused's wife, testified that the accused had travelled to Narok on 18th January 2024 and was not present when the deceased was killed. DW3, the Accused's sister, also testified that the accused lived and worked in Narok during that period.
 13. I have considered the evidence on record and the issue in question is whether the Prosecution has proved beyond any reasonable doubt that Accused murdered Daniel Abisi Masira on 27th January 2024.
 14. Section 203 of the Penal Code defines murder as the unlawful killing of a person with malice aforethought. The Court of Appeal in Anthony Ndegwa Ngari v Republic [2014] KECA 424 (KLR) stated that the prosecution must prove three elements: first, the death of the deceased and the cause of death; second, that the accused committed the unlawful act that caused the death; and third, that the act was accompanied by malice aforethought.
 15. The fact of death and its cause were clearly established by the post-mortem report which confirmed that the deceased died from severe head injury leading to haemorrhagic shock and cardiopulmonary arrest. This element is not in dispute.



16. The critical question for determination is whether the accused was the person who inflicted the fatal injuries upon the deceased. None of the prosecution witnesses testified to having witnessed the accused attack the deceased. PW1 expressly stated that she did not witness the attack, as she remained at home while the deceased had gone to the farm. PW2 and PW3 arrived at the scene after the incident had already occurred. The investigating officer similarly confirmed that none of the witnesses saw the accused commit the alleged offence.
17. In the present case, the prosecution did not present any direct evidence placing the accused at the scene of the attack. None of the witnesses testified to having seen the accused at the material time, and the investigating officer confirmed that no witness identified the accused as the person who inflicted the fatal injuries.
18. The prosecution evidence also suggested that there existed a dispute between the accused and the deceased relating to the use of a path or boundary between their respective parcels of land. PW1 testified that there was a disagreement concerning the use of a path between the two homesteads. PW2 similarly stated that a dispute had arisen between the deceased and the accused's father over a path separating their parcels of land. PW3, the area Chief, also referred to a footpath dispute between the two families, and the investigating officer (PW6) testified that he established that there had been a boundary dispute between the accused and the deceased. The accused, however, denied the existence of any such dispute in his sworn defence, and DW2 likewise testified that there had never been any quarrel between the two families.
19. Even if such a dispute existed, the existence of a disagreement between neighbours would only go to motive and would not of itself prove that the accused committed the offence. The prosecution was still required to adduce evidence placing the accused at the scene and demonstrating that he inflicted the fatal injuries upon the deceased.
20. Additionally, PW1 testified that the accused shouted words to the effect that he had killed the deceased in the tea farm. That alleged utterance, however, was not corroborated by any other witness and was not supported by independent evidence placing the accused at the scene of the offence. Standing alone, the alleged statement does not provide a safe basis upon which the court can conclude that the accused participated in the killing.
21. The accused raised an alibi defence by stating that he had relocated to Narok County where he was engaged in farming and that he was not present at the scene where the deceased was killed. That account was supported by DW2 and DW3. The legal position regarding an alibi defence is well established in Kenyan jurisprudence. The Court of Appeal has consistently held that once an accused person raises an alibi, the burden remains on the prosecution to displace it by placing the accused at the scene of the crime. In *Kimotho Kiarie v Republic* [1984] KECA 65 (KLR), the Court of Appeal held that an accused person who puts forward an alibi does not assume the burden of proving it; it is sufficient if the alibi introduces into the mind of the court a doubt that is not unreasonable as to the accused's presence at the scene of the crime.
22. The duty therefore lies with the prosecution to adduce cogent evidence demonstrating that the accused was present at the scene and participated in the commission of the offence. Where the prosecution fails to place the accused at the scene of the crime, the alibi remains unshaken and must be given due weight by the court.
23. The principle that the burden of proof in criminal cases rests throughout upon the prosecution and never shifts to the accused flows directly from the fundamental rule of criminal law articulated in *Woolmington v Director of Public Prosecutions* [1935] AC 462, where the House of Lords held that



throughout the web of the criminal law one golden thread is always to be seen, namely that it is the duty of the prosecution to prove the guilt of the accused person.

24. In the absence of evidence placing the accused at the scene of the crime, and in light of the unrebutted alibi raised by the defence, the prosecution has failed to establish that it was the accused who committed the unlawful act that caused the death of the deceased.
25. Further, the prosecution did not adduce evidence from which the court could infer malice aforethought as required under section 206 of the Penal Code. There was no evidence demonstrating an intention to cause death or grievous harm, knowledge that the act causing death would probably result in death or grievous harm, or any other circumstances from which malice aforethought could be inferred.
26. Having carefully considered the evidence on record and the applicable law, I find that the prosecution has failed to prove the charge of murder against the accused person beyond reasonable doubt.
27. In the result, the accused person, Elijah Mogambi Tinega, is found not guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code and is acquitted under section 322(1) of the Criminal Procedure Code, unless otherwise lawfully held.

DELIVERED AT NYAMIRA THIS 12th DAY OF March 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Anita

1st Accused - Present

2nd Accused - Present

For Accused persons - Mr. Arosi Advocate

For the DPP - Mr. Chirchir (SADPP)

