

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL CASE NO. E013 of 2025

REPUBLIC

.....**PROSECUTION**

V

MOHAMED ISSACK GEDI.....

.....ACCUSED

JUDGMENT

1. The accused person herein is charged with the offence of **murder** contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence being that on 30.10.2025 at Dekabuley village, Iftin Location, Garissa Township Sub - County, Garissa County he murdered Abdimalik Issack.
2. The accused pleaded not guilty to the charge and the case proceeded to full hearing.
3. PW2 Halima Ahmed, testified that the deceased and the accused were both his sons. It was her testimony that on the material night, at about 1:00 a.m., she was a sleep in her four bedroomed house together with other family members. That the deceased was asleep in one of the rooms sharing a bed with one Abdirahman. She stated that during that night, accused who was not in the house arrived and knocked the door. In response, Abdirahman opened for the accused who proceeded to his room. That in her room, she was with two young girls and a big girl known as shamsa while her sister Jelle slept in her room.

4. She told the court that, in the morning, the accused started making noise prompting his younger brother Abdifatah to intervene thus ordering him to stop making noise. Aggrieved by the said order, accused went outside and then entered in the house. Accused allegedly picked a knife and swore to kill Abdifatah who ran away. That in response to the noise, the deceased woke up and demanded to know what was wrong. Suddenly, the accused bounced on him and stabbed him with the knife on the neck and swore to kill everybody.
5. That the deceased was seriously injured and bled profusely. Despite the intervention of family members rushing him by taxi to the hospital, he died before receiving any treatment. She strongly urged the court to jail the accused and never to release him as he is troublesome and had sworn to kill all of them.
6. On cross examination, she emphasized the need to jail the accused for life as he was bitter with people and had sworn to kill her.
7. PW3, Abdifatah Ismail Issack, testified that he knew the deceased as his brother. He stated that on the material date, at about 1:00 a.m., he was present in the house where the deceased and other family members including the deceased and their mother were sleeping. He corroborated the testimony of his mother word by word. He blamed the accused his brother for killing their other brother after stabbing him with a knife for no apparent reason.
8. He stated that during the incident, the deceased sustained a stab injury inflicted by the accused using a knife. He observed that the deceased had an injury on the front side of the body and was

bleeding. Efforts were made to assist and calm the situation but the deceased's condition worsened. He confirmed that the deceased was later taken for medical attention, where he was examined and subsequently declared dead.

9. He further testified about the accused's behavior, stating that he had not known the accused to abuse alcohol and that in his observation, the accused was mentally fit and did not suffer from any mental illness. He described the accused as a problematic individual who often caused trouble but appeared normal in terms of mental capacity. He concluded by maintaining that his testimony was truthful and based on what he personally witnessed on the night of the incident.
10. PW4, Abdirahman Ahmed Warsame, testified that he knew the deceased very well. He stated that the deceased was a brother to his friend Abdifatah and a close acquaintance. That he used to sleep in the same house with Abdifatah, the deceased, the accused and one Abdimalik. He stated that on the material night, he was sleeping in the same house where the deceased was staying. That at 1.00 a.m, accused person who was away arrived. He opened the door for him.
11. He went further to state that, in the morning, the accused started making noise aggressively swearing to kill somebody. He corroborated entirely the testimony of PW2 and PW3. According to him, the deceased was attacked thus sustaining injuries to the throat. That his effort together with PW2, PW3 and Abdimalik to

calm down the accused were futile. He confirmed that it was the accused who stabbed the deceased on the neck using a knife.

12. PW5 No. 610, Cpl. Githae Mutunga, scenes of crime personnel document the scene of crime by photographing the same. He explained that the images captured the body of the deceased inside the room as well as the general condition of the scene, with several photographs showing the position of the body and the surrounding area.
13. He stated that the photographs revealed visible injuries on the deceased, including stab wounds on the lower back and other parts of the body. He added that photographs were also taken of the clothes worn by the deceased, which were stained with blood, and that additional images showed the area where the deceased had collapsed. PW5 further reported that the photographs taken at the scene were later compiled and processed. He produced the photographs as exhibits in support of the prosecution's case.
14. PW6, No. 116303 PC Martin Mwangi, stated that he visited the scene of crime at Bakabune after receiving a report of the incident and processed it. He stated that an autopsy was conducted and the cause of death was established as injuries resulting from bleeding due to a stab wound. He further said that investigations were carried out after the incident and that information was received which led to the arrest of a suspect. He explained that the suspect had been apprehended by members of the public, handed over to the police, and that the suspect had sustained injuries, was taken for medical treatment and later discharged. He testified that

investigations were completed based on the evidence gathered from the scene, the witnesses' statements and the recovered exhibit.

15. Dr. Abdihakim Ahmed Sheikh (PW1), testified that the deceased was taken to the hospital with multiple stab wounds. He indicated that the injuries were severe and that the deceased had sustained penetrating wounds to the neck and throat region, which resulted in heavy bleeding. According to him, the cause of death was excessive bleeding arising from penetrating injuries to the throat. He produced the post-mortem report as Pex1.
16. In his defence, he (DW1) testified that on the material morning he was at his family home, preparing his younger brother for school at their mother's request. He explained that this led to a disagreement within the household, during which his brother became furious and charged at him aggressively. He stated that in the midst of this confrontation, the deceased intervened in an effort to calm the situation. He described the scene as chaotic and emotional. That in the course of the struggle, the deceased was stabbed. He emphasized that the incident was sudden, unplanned, and without any prior intention to cause harm.
17. He further told the court that there had been long-standing family disagreements and hostility directed at him, which contributed to the volatile atmosphere that morning. He recounted being shocked and overwhelmed after the incident and needed assistance from those present. He added that he was later arrested by people known to him, but complained that the police failed to properly record his account and that certain family members, biased

against him, influenced how the matter was reported. He concluded by insisting that the death of the deceased was a tragic consequence of a sudden family conflict rather than a deliberate or premeditated act.

18. The parties proceeded to file written submissions. The prosecution in their submissions dated 17.03.2026 submitted that the cause of death was conclusively proved by PW1, Dr. Abdihakim, the pathologist who conducted the post-mortem examination thus observing a stab wound on the throat of the deceased hence formed the opinion that death resulted from penetrating trauma to the throat.
19. Counsel contended that from the scenes of crime, it was clear that the deceased had a stab wound on the neck which gave rise to bleeding. That the prosecution was bound to establish death occurred; the cause of death was unlawful; the perpetrator and malice a forethought. Counsel referred the court to the case of **Republic vs Mohamed Dadi Kokane & 7 others (2024) e KLR** where the aforesaid elements were espoused. According to counsel, the cause of death was unlawful given the manner in which it was executed.
20. On the aspect of who was responsible, counsel submitted that the evidence of PW2, PW3 and PW4 all eye witnesses corroborated each other. That the accused was well known by family members hence positive recognition.

21. Counsel urged that, the defence offered by the accused was a mere denial. That having admitted that he was present at the scene, he cannot allege that another person committed the offence and that he was framed due to a family property dispute. Counsel contended that during cross-examination, the accused conceded that he never reported the alleged alternative perpetrator to the police and failed to provide any evidence or particulars of the purported property dispute. The prosecution urged that the accused's defence is unsubstantiated, inconsistent, unreliable and did not displace the strong prosecution evidence.

22. It was counsel's submission that the issue of malice aforethought, as defined under **section 206** of the **Penal Code**, is clearly established by the nature of the weapon used and the targeted part of the body. That stabbing the deceased on the throat manifests a clear intention to cause death or grievous harm. Additionally, that identification of the accused was free from error. Counsel contended that the eyewitnesses were close family members and a neighbour who knew the accused well, observed him at close range in broad daylight, and gave consistent accounts. It was further opined that the recovery of the murder weapon from the accused fortified the prosecution case. The prosecution therefore urged this Honourable Court to find the accused guilty as charged and to convict him under **section 203** as read with **section 204** of the **Penal Code**.

23. The defence filed submissions dated 13.03.2026 urging that the prosecution failed to prove the charge of murder against the accused beyond reasonable doubt. The defence urged that although it did not dispute the fact or cause of the deceased's

death, it argued that the prosecution had failed to prove that the accused unlawfully caused the death or acted with malice aforethought. It was stated that the prosecution relied mainly on the testimony from close family members, which should be treated cautiously due to possible bias from strained family relations. That the accused claimed marginalization within the family after his father's death, a claim that was not rebutted. Additionally, the defence questioned the reliability of the identification of the accused, citing poor lighting and visibility in the early morning hours.

24. The defence further submitted that no independent or forensic evidence was produced to link the accused to the murder weapon or to place him conclusively at the centre of the offence. It was argued that the circumstantial evidence presented did not meet the legal threshold for conviction, as it did not exclude other reasonable explanations consistent with innocence.
25. On malice aforethought, the defence stated that the prosecution had not demonstrated premeditation or intent to kill as required under **section 206** of the **Penal Code**. It was contended that the circumstances pointed to a disturbed mental state rather than a deliberate act. Additionally, that the accused's responsibility was diminished by intoxication and mental distress, citing evidence of drug use and a medical assessment indicating mild mental distress linked to substance abuse and family rejection. It was argued that such impairment could negate the capacity to form the specific intent required for murder.

26. In the end, the defence urged the court to acquit the accused on the basis that the prosecution had not proved its case beyond reasonable doubt. Alternatively, it submitted that if culpability were found, the evidence supported a conviction for manslaughter rather than murder.

27. I have considered the evidence tendered before this court both by the prosecution and the defence and the rival written submissions. The accused herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The offence of murder is defined under section 203 of the Penal Code in the following terms; -

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

28. From the above definition, it therefore means that for the prosecution to secure a conviction on a charge of murder, it has to prove, beyond reasonable doubt, three ingredients. Those ingredients are as follows: -

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

(See **Anthony Ndegwa Ngari vs Republic [2014] eKLR**).

29. It is trite that the prosecution bears the burden of proving every element of the offence an accused person is charged with, and in

this case, prove that the accused herein murdered the deceased **[see Woolmington vs DPP (1935) AC 462]**. The standard of proof which is required of the prosecution is that of “beyond any reasonable doubt” **[See Miller vs Ministry of Pensions, [1947] 2All ER 372]**. The question therefore is whether the above ingredients were proven to the required standards.

30.As for the proof of the death of the deceased and the cause of death, PW1 who conducted post-mortem on the body of the deceased testified that the cause of death was as a result of penetrating trauma to the throat. As such, the death of the deceased was proved.

31.Right to life is protected by our Constitution under article 26 and can only be taken away under the circumstances provided therein. It therefore means that every homicide is unlawful unless authorized by law or excusable under the law. In **Guzambizi Wesonga vs Republic [1948] 15 EACA 63** the court held that; -

“Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable, it must have been under justifiable circumstances, for example in self-defence or in defence of property.”

32.The cause of the death of the deceased herein was not excusable or authorized by law and thus the same was unlawful. This is clear from the circumstances and manner in which it was executed.

33.As to whether the accused person committed the unlawful act which caused the death of the deceased, I note that PW2, PW3 and PW4 testified as having seen the accused person kill the deceased while PW6 stated that from his investigations, he determined that the accused was responsible for the death of the deceased herein. Counsel for the defense urged that the prosecution did not prove that the accused person was responsible for the act. Of importance to note is the fact that the accused person was in the same room with the deceased at the time in question when he created disturbance thereby attracting people's attention before stabbing the deceased.

34.Additionally, identification was not in question as the accused person was a person well known to the witnesses and further, the latitude of time taken during the incident in my view could not negate positive identification of the accused person. On the other hand, in as much as counsel for the accused does not expressly concede to the fact that the accused person caused the death herein, he has alluded circumstantially that the accused suffered mental distress attributable to drug use. That the same points out to the fact that in as much as the accused person could be responsible for the death herein, he was not in the right mind at the time as the same impaired his mind.

35.The argument by counsel for the accused that prosecution did not prove positive identification is not tenable. The offence took place during the day in the morning. It was witnessed by accused's mother (PW2), accused's brother (PW3) and PW4, his friend. There

is no element of mistaken identity. Identification was by way of recognition by close relatives. In the case of **Olola v Republic (Criminal Appeal No. E064 OF 2021) (2026)KECA (583(KLR) (13 March 2026)(Judgment)** the court held that;

“Recognition and or identification of an accused within a domestic setting of a close relation in broad day light is considered more reliable , satisfactory and assuring that visual”(see also **Anjononi & others v Republic (1980)(KLR 59.)**)

36. I have no doubt the accused was the perpetrator of the offence herein. He even admitted involvement but pleaded self-defence. There is no evidence tendered to suggest that he was provoked. The only evidence available is that depicting the accused as the aggressor. The evidence is well corroborated and consistent that accused out of no-where, armed himself with a knife and started that attacking family members.

37. Was there malice aforethought? Under section 206 of the CPC, 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.

38. The accused mounted a defence from the onset to the effect that he was suffering from intoxication at the time in question.

39. **Section 13** of the **Penal Code** deals with the issue of intoxication in criminal matters and provides that: -

“13 (1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and -

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code

and of the Criminal Procedure Code relating to insanity shall apply.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purpose of this section, “intoxication” includes a state produced by narcotics or drugs.”

40. **Section 13** of the **Penal Code** makes it clear that intoxication does not ordinarily operate as a defence to a criminal charge. A person who commits an offence while under the influence is not automatically absolved of responsibility. The law, however, recognizes three specific situations in which intoxication may afford a defence.

41. First, where the intoxication was involuntary—such as when a person is drugged or compelled to consume alcohol without his knowledge or consent. Second, where the intoxication was so severe that it prevented the accused from forming the specific intent required for the offence charged. Third, where the level of intoxication was so extreme that it resulted in a state akin to insanity, thereby bringing the case within the ambit of the defence of insanity.

42. In sum, the Penal Code restricts the defence of intoxication to these narrowly defined circumstances, underscoring that voluntary drunkenness is not a shield against criminal liability.

43. In the case of **Rex vs Retief [1940-1943] EA 71**, the former Court of Appeal for Eastern Africa explained this aspect of the defence of intoxication as follows:

“The insanity whether produced by drunkenness or otherwise is a defence to the crime charged. The law takes no note of the cause of insanity and, if actual insanity in fact supervenes as the result of alcoholic excess, it furnishes as complete an answer to a criminal charge as insanity induced by any other cause. It is immaterial whether the insanity so induced was permanent or temporary and if a man’s intoxication were such as to induce insanity so that he did not know the nature of his act or that his act was wrongful, his act would be excusable on the ground of insanity and the verdict should be as laid down in section 159 of the Criminal Procedure Code ‘guilty of the act charged but insane when he did the act.’”

44. The third situation, contemplated by **Section 13(4)** of the **Penal Code** arises where, by reason of intoxication, the accused person is incapable of forming a specific intent, which is an element of the offence charged. Sometimes this situation is referred to as “intoxication or drunkenness negating mens rea”. In the case of **Said Karisa Kimunzu vs Republic, CR App No. 266 of 2006 (Msa)**, the Court stated thus regarding intoxication or drunkenness negating mens rea as follows:-

“But under subsection (4) the court is required to take into account the issue of whether the drunkenness or

intoxication deprived the person charged of the ability to form the specific intention required for the commission of a particular crime. In a charge of murder such as the one under consideration, the specific intention required to prove such an offence is malice aforethought as defined in section 206 of the Penal Code. If there be evidence of drunkenness or intoxication then under Section 13(4) of the Penal Code, a trial court is required to take that into account for the purpose of determining whether the person charged was capable of forming any intention, specific or otherwise, in the absence of which he would not be guilty of the offence. In the circumstance of this appeal, the learned trial Judge was required to take into account the appellant's drinking spree of the previous night and even that morning in determining the issue of whether the appellant was capable of forming and had formed the intention to kill his son."

45. The evidence presented herein specifically the mental assessment report tendered before this court on 07.11.2025, noted that the accused had a mild form of mental illness (drug induced psychosis due to THC, Khat and tobacco). However, that the accused was fit to stand trial in court as he understood well the nature of the offence he was facing and further, that he could mount his own defence.

46. Taking into account the conduct of the accused during and after the commission of the offence in which he systematically attacked the deceased and his younger brother Abdifatah, he was specific and

indeed understood what he was doing or wanted to do. Even from his defence, he could remember vividly what happened on the material day to the extent of running away from the scene of crime to evade arrest. This is not a conduct of somebody whose mental capacity was impaired by sickness. He was sober that morning as confirmed by his mother and brothers. The relatives confirmed that accused was mentally stable save for abuse of Miraa chewing which did not affect his cognitive capacity. The aspect of mental incapacity does not arise.

47. As to the submission that he acted on self defence hence no malice aforethought, the manner in which he executed the attack was so brutal and intended either to kill or cause grievous harm considering the weapon used and the part of the body targeted which is the neck a delicate part of the body. See the case of **Republic v Tubere s/o Ochan [1945] 12 EACA 63** to buttress malice aforethought. It was found that the nature of the weapon used, the vulnerable parts of the body targeted, the repeated blows, and the conduct of the appellant all pointed to an intention to cause grievous harm or death of the deceased.

48. In the circumstances therefore, the element of malice aforethought is clear from the utterances made that he wanted to kill somebody and the eventual execution of the threat by stabbing the deceased's neck. Manslaughter therefore does not apply. Accordingly, it is my finding that the prosecution has proved its case beyond any reasonable doubt and therefore convict him for the offence of murder as charged.

Dated, signed and delivered virtually this **30th** day of **April 2026**

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J. N. ONYIEGO
JUDGE

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