

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL CASE NO. E006 OF 2024

REPUBLIC.....

.....PROSECUTOR

=VERSUS=

OMAR MUHIDIN HASSAN.....

ACCUSED

JUDGMENT

1. The Accused Person in this case, **OMAR MUHIDIN HASSAN** was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya.
2. The particulars of the offence are that on 10th May 2024 at around 2200 hours at Marondo village in Kimorigo Location in Taveta Sub County within Taita Taveta County, the Accused Person murdered **JIMSON MWACHOFI KARARI AKA ABAA** .

3. The Accused Person pleaded not guilty to the charges and the prosecution called a total of seven (7) witnesses. The Accused Person was represented at the trial by Mosioma Advocate.
4. The prosecution evidence in summary was that **PW1 JOHN MUSYOKA KIMWELI** was in house at Eldoro in Taveta on 11th May 2024 when he received a call from a neighbour called Shaban who told him that one of the workers had killed Abaa (the deceased).
5. PW1 said Abaa was his neighbour. He said his worker who killed Abaa is the Accused Person in this case. His name is **OMAR MUHIDIN HASSAN.**
6. The police from Eldoro went and arrested the Accused Person and the body of the deceased was taken from the farm to the mortuary.
7. The Accused Person was also arrested and taken to Taveta Police Station.
8. In cross-examination PW1 said he had known the Accused Person for five months. He also said Abaa (the deceased) used to be a troublesome person.
9. **PW2 JIMSON MWACHAFI** who is a boda boda rider at Wundanyi said the deceased was his father.

10. PW2 said he was called on 11th May 2024 by Nefli Mwekesi who told him that his father had been killed the previous night.
11. PW2 went to Taveta mortuary where he saw the body of his father.
12. PW2 said the body had a cut on the right hand, the stomach and on the intestines which were out and also a cut on the right knee.
13. PW2 identified the body of the deceased for post mortem.
14. In cross-examination PW2 said his father was staying alone since 2017.
15. PW3, PETRINA NASHUGU NOBERT said on 10th May 2024, she was selling food in her kiosk. She said she was in a bar where she works when Abaa (the deceased) and the Accused Person went there to drink at 6p.m. They ordered mnazi.
16. She said they continued drinking until 3p.m when Abaa started a quarrel. She said Abaa threatened the Accused Person with a panga which he had.
17. PW3 said she told them to pay and leave. Omar (the Accused Person) paid Kshs. 200.

18. She said she saw Abaa hit a seat where the Accused was sitting with a panga.
19. They bought maize flour and left. The following day she learnt that the deceased had died.
20. In cross-examination PW4 said she had only seen the Accused Person twice. She said Abaa had always been going to the bar.
21. PW3 said on the retrial night she did not see the Accused Person threatening the deceased.
22. She said it was the deceased who was threatening the Accused Person with a panga.
23. **PW4 MOHAMED MOHAMED KOMORO** who is a herder from Tana River said on 10th May 2024, he was at Marondo at Taita Taveta.
24. PW4 said the Accused Person and the deceased had a quarrel. He said the Accused Person woke him up at 11p.m at night and asked for vegetables.
25. He said the Accused Person told him he had disagreed with Abaa because of cooking flour.
26. The Accused Person told PW4 that he had bought cooking flour with the deceased but the deceased had refused to give him the cooking flour.

27. The Accused also said the deceased wanted to cut him with a panga but he had escaped.
28. Shortly after that, the deceased also went to PW4's house. PW4 heard the Accused asking the deceased for the cooking flour.
29. The deceased left and the Accused Person followed him. The Accused Person returned and told PW4 he had cut the deceased twice.
30. The Accused wanted to take PW4 where he had cut the deceased. PW4 said he ran away and went to sleep in a neighbour's house leaving the Accused in his house.
31. In the morning when he returned to his house he did not find the Accused Person. He went to Abaa's house and he did not find him either and he went to his place of work. He asked Shaban to call the Accused Person's boss.
32. PW4 said he heard people saying Abaa had died.
33. In cross-examination PW4 said the deceased was his neighbour. He said he had known the Accused Person for only 3 months.
34. PW4 also said the Accused Person returned with a blood stained panga and told him he had cut Abaa twice.

35. PW5, HENRY MATATA who is the Assistant Chief Kimorigo sublocation said on 11th May 2024 he was at Kimorigo village at 8a.m when the village elder at Marondo called Sebastian Maratabu called him and told him that someone had been murdered at Marondo village.
36. PW5 went to the scene and saw a body lying on the road facing upward. PW5 identified the person as Abaa.
37. There was a panga and a packet of flour at the scene. The body had been cut on the stomach. He said police went to the scene and took away the body.
38. **PW6, DR. CHARITY GACHERI KIMATHI** based at Taveta Sub-County Hospital gave evidence on behalf of Dr. Juma Musa who did the post mortem on the body of the deceased.
39. She said the body had a bluish discolouration. There was an open wound on the left lower limb. There was a cut wound on the abdomen and the contents were visible.
40. PW6 said the orbital artery and vein were injured and the proximal tibia had a fracture.
41. The doctor who did the post mortem formed the opinion that the cause of death was poplitea vessel injury/intestines evisceration and damage due to stab wounds.

42. PW6 said the doctor who did the post mortem was unwell. He produced the post mortem report on his behalf.
43. PW7, the investigating officer said on 11th May 2024 he was called by the DCIO Mr. Gacheru who told him that a body had been found at Marondo village in Kimorigo.
44. PW7 said he proceeded to the scene. He found the suspect at Eldoro Police Station.
45. He said at the scene he found the body lying down with a cut wound on the right hand, left leg and an open wound on the stomach.
46. PW7 said the body had deep wounds on the right hand, berry and the left leg below the knee.
47. PW7 took photographs at the scene which he produced in this case.
48. The body was removed to Taveta Sub-County Hospital mortuary. PW7 took statements from the witnesses who have testified in this case and he charged the Accused with this offence.
49. PW7 also obtained the exhibits which he produced in this case including a packet of maize flour recovered at the scene,

clothes worn by both the Accused and the deceased are a panga.

50. PW7 said in cross-examination that the Accused Person was arrested on 11th May 2024.
51. He said that the Accused Person did not have any injuries at the time of arrest.
52. Upon close of the prosecution case, the learned defence counsel submitted that the prosecution called seven witnesses, but none saw the accused commit the offence, making the case entirely circumstantial.
53. The bar owner testified that the deceased was violent, tried to cut the accused with a panga, and was sent away, with the accused leaving later.
54. A housemate stated the deceased later came to their home, struck the walls with a panga, and chased the accused when he fled.
55. He further said that no witness saw the attack that killed the deceased. The post-mortem revealed two cut wounds: one on the back of the leg and one on the abdomen.
56. Further, that the investigating officer admitted that forensic tests on the accused's clothes and panga were negative for

blood, that he did not test the deceased's own panga found at the scene, and that no evidence linked the accused to the death.

57. That the officer also failed to explain a yellow bag found at the scene containing human blood from an unknown person.

58. The defence argued that the injuries could have been self-inflicted if the deceased tripped while running drunk, or that another person may have attacked him given his violent nature.

59. Since the prosecution did not established malice aforethought or a complete chain of circumstantial evidence pointing irresistibly to the accused, and because the evidence leaves room for reasonable doubt, the defence submitted that no prima facie case had been made and the accused should not be placed on his defence.

60. The court ruled that the Accused Person had a case to answer. The Accused Person gave sworn evidence.

61. He said he comes from Marondo village. He said he knew the deceased called Abaa.

62. The Accused said he used to stay at Eldoro where he had rented a house.

63. He said PW1 John Musyoka had given him work and he took him to his home and gave him a house to stay.
64. He said he met the deceased at Marondo village.
65. The Accused Person said on 10th May 2024 he was at his Uncle's place. He work up and went to his sister's house.
66. He said he went to meet a friend at Petrona (PW3's place. The friend had been sent money by his boss.
67. The Accused said he met the deceased at Petronah's place and the deceased told him he had not been paid.
68. The deceased told him he did not have flour. The Accused person told the deceased that he was also looking for his money.
69. They found the person who had been sent the Accused Person's money. He said his phone was charging and they decided to wait while enjoying mnazi.
70. The Accused said he bought 4 litres of mnazi alcohol and he drank 2 litres and Abaa drunk 2 litres.
71. The Accused Person said he gave Abaa Kshs. 300 but he wanted Kshs. 500. He told him he had school fees to pay.

72. He said Abaa was upset and threatened to cut him. He said he had a panga and Abaa also had a panga. He said Abaa cut the chair he was sitting on.
73. The Accused Person said he bought the flour which Abaa carried. Petronah told them to go away.
74. The Accused said he would not go with Abaa. He remained for 15 to 20 minutes.
75. The Accused Person said he had been told Abaa was violent and he used to hurt people but he had not experienced it.
76. He said it took him 20 - 30 minutes to reach his house. It had flooded. He said he did not meet anyone on the way. It had flooded.
77. When he reached his house, the Accused Person said he closed the door but he did not lock it. He asked his neighbour for vegetables.
78. While they were still talking they heard someone scrapping the roof with a panga. It was Abaa and he was still threatening to catch him.
79. The Accused Person told Abaa he was not going to demand the money he had given him.

80. The Accused Person went to his neighbour. He told the neighbour he wanted to call his employer.
81. They went to Mzee Shaban's house. He was the employer of his neighbour.
82. They told Mzee Shaban that Abaa was disturbing the Accused Person. The Accused Person asked for a place to sleep but Mzee Shaban only accepted his neighbour who was his employee and told him to go away.
83. The Accused Person said he went to his Uncle and he ate and slept there.
84. The following day he went to report how Abaa had disturbed him. He first went to his sister and she told him she was feeling bad. At Eldoro Police Station, he was arrested up to this day.
85. The Accused Person said Abaa was aggressive and he had hurt many people in the village and they wanted to kill him.
86. The Accused Person denied having killed Abaa and said he did not see him again after he left his house.
87. The Accused said his clothes did not have blood and further that other people killed Abaa and used him a shield.

88. The Defence Counsel filled submissions as follows:- That the accused gave sworn evidence, and that the prosecution failed to prove its case beyond reasonable doubt.
89. While the fact and cause of death, excessive bleeding from two cut wounds, were established, the defense argued that the killing was not an unlawful act.
90. That the evidence showed the deceased first attacked the accused with a panga in a bar, missed, and later followed the accused to his home, attacking him again.
91. The defense contended that the accused acted in self-defence, as recognized under Section 17 of the Penal Code, and that once self-defence is raised, the prosecution must disprove it beyond reasonable doubt, which it has not done.
92. On malice aforethought, the defense noted that no witness testified to any intention by the accused to kill or cause grievous harm; instead, the accused left the bar after the deceased and went home, indicating no premeditation or ill motive.
93. Further that the defence of intoxication, raised as a possibility, undermined proof of specific intent.

94. That the accused's sworn testimony was consistent and unshaken, and crucially, forensic examination of his clothes and the panga revealed no blood stains, raising reasonable doubt.

95. The defence concluded that the prosecution did not eliminate lawful justification or proved malice aforethought, and therefore the accused should be acquitted.

96. I have carefully considered the evidence adduced in this case.

97. It is the duty of the prosecution to prove the guilt of the Accused Person.

98. The standard of proof in criminal case is beyond reasonable doubt.

99. The issues for determination in this case are as follows;

(i) Whether the death of the deceased was unlawfully caused.

(ii) Whether the Accused Person caused that death.

(iii) Whether the defence of self-defence is available, and if so, whether the force used was reasonable.

(iv) Whether the prosecution proved malice aforethought necessary for murder.

100. The fact of the deceased's death and its cause were conclusively proved by the prosecution through PW2, PW5 and PW6.
101. The deceased died from popliteal vessel injury and intestinal evisceration due to stab/cut wounds. That is not in dispute.
102. On the identity of the perpetrator, the prosecution relied on circumstantial evidence and the testimony of PW4, Mohamed Mohamed Komoro.
103. PW4 testified that on the night of 10th May 2024, the Accused Person came to his house, stated he had disagreed with the deceased over cooking flour, and later returned to declare, "I have cut Abaa twice," while holding a blood-stained panga.
104. The Accused person told PW4 that he had cut the deceased. While the forensic analysis of the Accused Person's clothes and the panga tested negative for blood, the investigating officer (PW7) admitted that the deceased's own panga was not tested.
105. More importantly, the negative test on the accused's panga does not negate the oral testimony, especially given

that the cut wounds were deep and would have caused significant bleeding that could have soiled the accused's clothes, but the absence of blood could also be explained by the nature of contact which the Accused person had with the deceased.

106. The court finds that the totality of the circumstantial evidence, the quarrel over flour, the deceased's threat to cut the accused, the accused's statement to PW4, and the presence of the accused at the scene, forms a complete chain pointing irresistibly to the Accused Person as the one who inflicted the fatal cuts.

107. The forensic gaps, while raising questions, do not break the chain given the strength of the direct evidence of PW4.

108. On the defence of self-defence, the evidence from PW3 (the bar owner) and the Accused Person's own testimony established that the deceased was the initial aggressor.

109. At the bar, the deceased threatened the Accused Person with a panga and struck the chair where the Accused was sitting. The Accused Person left the bar to avoid conflict.

110. Later, at his home, the deceased followed him, threatened him again, and scraped the roof with a panga.

111. The court accepts that the Accused Person genuinely believed he was in imminent danger of unlawful force. This triggers the protection of Section 17 of the Penal Code.
112. However, the critical issue is whether the force used by the Accused Person was reasonable in the circumstances.
113. The doctrine of self-defence does not grant a licence to kill. The force used must be proportionate to the threat faced.
114. Here, the deceased was armed with a panga and was aggressive. Nevertheless, the Accused Person admitted to cutting the deceased twice.
115. The post-mortem report revealed two severe wounds: one on the abdomen causing evisceration of the intestines, and another on the left lower limb causing a fracture and injury to the popliteal artery.
116. These are not defensive wounds; they are offensive, deep, and lethal strikes.
117. The deceased was unarmed at the exact moment he was cut, the panga was in his hand earlier, but no witness saw the actual cutting.
118. The court finds that while the Accused Person was provoked and faced a threat, his response of inflicting two

deep, life-threatening cuts with a panga was disproportionate and excessive in the circumstances.

119. He exceeded the bounds of lawful self-defence. Consequently, the full defence under Section 17 fails, but the circumstances, the deceased's violence, the provocation, and the lack of premeditation, negate malice aforethought.

120. On malice aforethought, Section 206 of the Penal Code defines it as an intention to cause death or grievous harm, knowledge that an act will probably cause death, or an intention to commit a felony.

121. The evidence shows no pre-planning, no prior grudge beyond a spontaneous quarrel over flour, and no motive to kill.

122. The Accused Person was also intoxicated, having drunk two litres of mnazi earlier that evening.

123. Under Section 13(4) of the Penal Code, intoxication may be considered to determine whether the accused formed a specific intention.

124. The court finds that the Accused Person did not have the specific intention to kill or cause grievous harm; rather, he reacted excessively to a genuine threat.

125. The appropriate conviction is therefore for manslaughter contrary to Section 202 as read with Section 205 of the Penal Code, which punishes any unlawful killing without malice aforethought.

126. The court finds the Accused Person, **OMAR MUHIDIN HASSAN, NOT GUILTY** of murder contrary to Section 203 as read with Section 204 of the Penal Code.

127. However, he is found **GUILTY** of the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He is convicted with manslaughter accordingly.

Dated, signed and delivered this 28th day of April, 2026 in open court at Voi.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Millicent/Eghwa

State Counsel:

..... for the Accused Person

The Accused Person

ORIGINAL