

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIAMBU**  
**CRIMINAL CASE NO.E010 OF 2020**

**REPUBLIC.....**

**PROSECUTOR**

**VERSUS**

**NELSON THUNARINA KANGORIA.....**

**ACCUSED**

**JUDGMENT**

**A. INTRODUCTION**

1.The accused person was charged with the offence of murder contrary to **section 203 as read with section 204 of the Penal Code (Cap 63)** of the Laws of Kenya. The particulars of the offence were that on or about the 8<sup>th</sup> day of February 2020 at Karura- Kanyungu Shopping Centre within Kabete Sub- County, Kiambu County murdered **HENRY MAINA.**

2.The accused person was arraigned before court and took plea on 1<sup>st</sup> April 2020. He denied the charge faced and pleaded not guilty. The case proceeded to full trial with the prosecution calling nine (9) witnesses in support of their case.

## **(B) PROSECUTION CASE**

3. **PW1 Susan Wanjiku Wachaga**, recalled that on the night of 08.02.2020, she was at work at Tumaini Bar, when the deceased walked in and asked for a White cap beer, which she served him and after a short while the accused walked in and started to converse with the deceased. After a short while, they walked out together and after about five (5) minutes, she saw her customers dashing outside the bar and her colleague, Daisy told her that their customers had engaged in a physical fight that left the deceased injured and he had been rushed to hospital for treatment.

4. She then locked the bar counter, and went outside to see, what was happening and saw a crowd walking towards the police post. She followed them and noted that the accused had been arrested and had been placed under police custody. She confirmed that she personally knew both the accused and the deceased as they were regular customers at the bar, and that before they left the bar to go outside, they were engaged in a quarrel. She had also later learnt that the accused had stabbed the deceased in the stomach and he had been rushed to Kiambu level 5 hospital, but had unfortunately died while undergoing treatment.

5. **PW2 Jane Wamboi Waweru**, also confirmed that she previously worked at Tumaini bar and restaurant and

recalled that on the material night, she was at work within the bar, when the deceased walked in and asked to be served with White cap beer. The accused followed him shortly thereafter and they exchanged harsh words. She heard the deceased ask the accused, why he was still following him, while he had deliberately decided to keep off, and later again told the accused that they should go outside, since he did not want their quarrel to spoil the business environment.

6. After about five (5) minutes she heard screams outside and dashed to see what had occurred. She met the deceased holding his stomach and alerted the other customers who also came out to assist the deceased and had him rushed to hospital. She also confirmed that the accused ran away, but was later on the same night arrested and was handed over to the police. Under cross examination, she confirmed that she did not see the accused stab the deceased, but she believed that he was the guilty party as they were quarrelling with the deceased and had walked out of the Bar together to go sort out their differences.
7. **PW3 Lillian Njeri Wairimu** also confirmed that on the material night she was at work at Tumaini Bar and reiterated the evidence of PW1 and PW2 as relates to the confrontation that occurred between the accused and the deceased. She had seen them walk outside the bar and

after about 2 minutes heard some commotion outside the bar, which aroused her curiosity. She dashed outside and found that the deceased had been stabbed and called for help to have him rushed to Kiambu level 5 hospital. Later she got a chance to see the deceased at the hospital emergency room and later learnt that after surgery, he was transferred to Kijabe hospital but unfortunately died two days later.

8. PW3 confirmed that after the incident, the accused had ran away and hid at his house situated in the same building where “ **Buffalo bar**” was situated, and members of the public had gathered to administer mob justice on him, but fortunately, he was rescued by the police through the back door. PW3 identified the accused in court as a person well known to him
9. **PW4 Patrick Karanja Kiruri**, confirmed that he was the deceased elder brother and that after receiving information of the incident, he had dashed to at Kiambu level 5 hospital and found the deceased admitted, with a stab wound injury. They later transferred him to Kijabe hospital for better management, but he unfortunately died on the following day. Later he attended the post mortem which was conducted at Kihara level 4 hospital and identified the body before the said process was undertaken

10. **PW5 PC Yusuf Pishar Hussein**, confirmed that as at 8<sup>th</sup> February 2020 he was stationed at Karura-Kanyunga patrol base and that he did receive a distress call from PW1, who informed him that there was a fight outside her bar and requested for his intervention. He informed his boss CPL Muema and together with PC. Kihara they left the patrol base, which was about 200m from the bar to go check on what was happening. Enroute, they found a big crowd converged Infront of "*Buffalo bar*" which was about 50m from "*Tumaini bar*" and the crown informed them that a person suspected of assaulting his friend was being subjected to mob justice therein.

11.They went into the said bar, where they found the accused being assaulted by the crowd and immediately rescued him and used the back door to whisk him away because the crowd at the front was still baying for his blood. During the arrest process, they had conducted search within his room, and PC Kihara had recovered a blood-stained knife, which was kept as an Exhibit. He confirmed that the person they had rescued on the material night was the accused person and that they had been informed by the crowd that he had stabbed the deceased during a fight and that is why members of the public wanted to lynch him.

12. Under cross examination PW5 confirmed that he was not the investigating officer, but was amongst the police officers, who responded to the distress call made and

arrested the accused. He further confirmed that they had not found the deceased at the scene as he had been rushed to hospital, but saw a pool of blood outside, “Tumaini bar”, which scene they secured and was taken over by DCI officers who later joined them. On arrest they had found the blood-stained knife within the room, where the accused had run to, but did not find any item on his person.

13. **PW6 Dr. Peter Ndegwa** confirmed that he conducted the post mortem on the deceased body, after it was identified by his brothers, PW4 and one Leonard Karanja. He observed that the deceased had sustained a penetrating wound injury to the stomach which had slit his liver and pancreas. He confirmed that the cause of death was due to septicemia and anemia due to perforated stomach injury caused by a sharp force trauma. He also observed that deceased had signs of chronic lung disease likely caused by TB, but the said observations were secondary findings not related to the cause of death.

14. **PC Moses Kihara** confirmed that previously in 2020, he worked at Karuri-Kanyangu police patrol base station and on 08.02.2020 had accompanied PW5 and Cpl Muema to the shopping center to intervene in a situation, where the accused had been suspected of stabbing the deceased and was held up on the 2<sup>nd</sup> floor of a building hosting, “*Buffalo bar*” where members of the public were assaulting him.

They rescued the accused and hauled him out through the back door to the police station. During the arrest, they had found the accused in possession of a blood-stained knife, allegedly used to stab the deceased and had confiscated the same.

15. At patrol base, they had immediately contacted Kingeroo police station and requested them to arranged for the accused immediate evacuation as the mob had followed them to the police patrol base and were still baying for the accused blood. Under cross examination he reiterated his earlier evidence and confirmed that he recovered the blood-stained knife on the floor in the room where the accused had rushed after the incident and later handed the said knife over to the DCI officers investigating the case.

16. **PW8 PC Wilfred Ireri** confirmed that on the material night he was the duty officer at Kingeroo police station, and at about 11.30am received a call from Karuri- Kanyugu police post requesting them to urgently pick up a remandee from the said police post as he was in danger of being lynched by members of the public on allegations that he had stabbed someone. He and his colleagues did rush and evacuated the accused and initially held him for the charge of assault. They thereafter went to see the deceased at Kiambu level 5 hospital and found him in critical condition.

17. He later went to the scene of crime and got contacts of all the relevant witnesses who saw the accused stab the

deceased and had them record their statements confirmed the said incident. He also sent the recovered knife to the government chemist accompanied by the deceased blood/tissue samples retrieved during the post mortem process and once he had completed investigation, he opted charged the accused with the offence of murder.

18. **PW9 Hendry Sang**, an analyst working with the Government chemist department confirmed that he undertook the DNA examination on the blood-stained knife and compared it with the deceased blood sample of the deceased and concluded that the DNA profile of the blood extracted from the knife matched the deceased blood. He did generate his report dated 18<sup>th</sup> May 2022, which he produced as an exhibit before the court. The prosecution closed their case at that point and the accused was placed on his defence and opted to give sworn evidence.

### **C. DEFENCE CASE**

19. The accused gave sworn evidence and stated that on the material day he was at his workshop and after completing his work at about 5.00pm, went home to freshen up and later went to a club known as “sweet water” and called for his drink- Vienna Vodka. At the said club he met the deceased and other friends but did they did not share a table. At about 9.00pm, he changed venue and went to, “Tumanini bar”, which was nearer to his residence and

went and sat near the deceased, who asked him why he was following him and before he could reply proceeded to slap him twice. He opted not to respond and simply left and went to sleep.

20. At about 11.00pm, he heard/commotion outside his house and when he went to check through the window on what was happening, was shocked to find a crowd baying for his blood. The said crowd managed to break down the door to his room and subjected him to mob justice until he fell unconscious. The following day he found himself at Kingeroo police station and was informed that he was being held for stabbing the deceased but denied being the culprit. He was initially charged in court with the offence of causing grievous harm, which was later changed to murder after the deceased died.
21. He denied being the owner or being in possession of the knife produced into evidence and insisted that he never stabbed the deceased on the material night. Under cross examination he confirmed that he met with the deceased at the two aforementioned clubs but insisted that they never had any verbal disagreement and/or physical fight as alleged. He also reiterated that the knife recovered and produced in court did not belong to him and urged the court to acquit him of the charge faced.

#### **D. DETERMINATION**

22. I have considered the evidence on record and submissions filed by both parties, and the question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein participated in the murder of **Henry Maina**, the deceased herein.

23. **Section 203 of the [Penal Code](#)** defines the offence of murder as follows:

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

24. In the case of **Republic v Okwara (Criminal Case E015 of 2023) [2024] KEHC 1360 (KLR)** the court stated as follows;

***“Mens rea in murder causes takes the form of malice aforethought, and the elements are set out in section 206 of the Penal Code. They relate to intention and knowledge. Intention to kill or cause grievous harm or to commit a felony. Knowledge that the act or omission causing death could cause such death, and being indifferent to the consequences of the act or omission. Intention and knowledge are mental elements. One forms an intention, in***

***their mind, to do or not to do something, and has knowledge, within his mental faculties about something. So, the mental element for the offence of murder is either intention or knowledge.***

***Has the prosecution adduced evidence to establish such intention or knowledge, that the accused had formed an intention to kill or cause grievous harm or to commit a felony, or knew that whatever he was doing was likely to cause death, but remained indifferent to the consequences? Well, the mens rea of an offence is usually to be inferred from conduct or action, being a mental element, unless the intention is voiced by the perpetrator.”***

25. Further in ***Joseph Kimani Njau vs Republic (2014) eKLR***, the Court of Appeal in concurring with an earlier finding of that Court (but differently constituted) in ***Nzuki vs Republic (1993) KLR 171***, held as follows: -

***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 his acts, and commits those acts deliberately and without lawful excuse with 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 in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed. 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 a crime of murder. (See Hyman vs. Director of Public Prosecutions (1975) AC 55".**

26. I will now proceed to interrogate each issue.

**(i) The death of the deceased and its cause.**

27. Every homicide is unlawful unless authorized by law or is excusable under the law. **See Sharma Pal Singh [1962] EA 13, see also Guzambizi Wesonga v Republic [1948] 15 EACA 63** where the court held:

***“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-defense or in defense of property.”***

28. It is common ground that **Henry Maina**, died as a result of fatal knife stab wound injury sustained in his stomach. This was confirmed by all the witnesses and corroborated by the evidence of Dr. Peter Ndegwa (PW 6), the pathologist who conducted the post mortem on 12.02.2020. He confirmed that the deceased died as a result of sharp wound injury, which perforated his stomach, causing a lobe on the liver and pancreas. The cause of death was established to have been caused by septicemia and anemia due to perforated stomach caused by sharp force trauma.

29. This court therefore finds as a fact that the deceased died as a result of the said extensive injuries sustained as enumerated above.

**(ii) Whether it has been proved that the accused committed the unlawful act which caused the death of the deceased:**

30. PW1, PW2 and PW3 all saw the accused and the deceased quarrel while inside, “*Tumaini Bar*” and they both left to go finish their fight outside the said club. Shortly thereafter the deceased sustained fatal knife wound injury to his stomach, which left his intestines hanging outside. The accused took off from the incident scene but was immediately chased and cornered by members of the public who administered mob justice on him. Luckily, he was saved by the timely intervention of PW5 and PW7. They not only arrested the accused and whisked him away from his rented room, but in the process also recovered the blood-stained knife, which PW9 confirmed was stained by the deceased blood.

31. From the evidence adduced, nobody saw the accused harm the deceased but the circumstantial evidence gathered laid a strong basis to support an inference of his involvement in the said crime. Be that as it may, where the said evidence meets the legal threshold, it may well be a basis for finding the accused person culpable of the offence charged.

32. In the case of **R v Hillier (2007) 233 A.L.R 63,**  
**Shepherd v R (1991) LRC CRM 332** the courts observed that:

**“The nature of circumstantial evidence is such that while no single strand of evidence would be sufficient to prove the defendant’s guilt**

**beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant's guilt is proved beyond reasonable doubt. It is not the individual stand that required proof beyond reasonable doubt but the whole. The cogency of the inference of guilt therefore was built not on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence.**

33. Similarly, the Court of Appeal in **Simon Musoke v R 1 EA 715** held that:

***“In a case depending exclusively upon circumstantial evidence, he (the judge) must find before deciding upon conviction that the inculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt.” (See also R V Kipkering Arap Koske 16 EACA 135, Musili Tulo v R (2014) eKLR).***

34. PW1 to PW3 confirmed the confrontation that occurred within, “*Tumaini Bar*” between the accused and the deceased and saw them leave to go finish their quarrel

outside the said bar. Shortly thereafter a fight ensued between the accused and the deceased, which left the latter with a fatal stomach knife stab wound, which he later succumbed to. The accused took off and was chased by the mob to his rented room, where he was arrested in possession of the blood-stained knife. His defence that they had not quarreled and/or was not in possession of the said knife therefore rings hollow and is plainly untruthful

35. Therefore in totality, when all the evidence presented is considered, the veracity of the prosecution evidence forms a complete chain of events that unerringly points at the accused as the guilty party who had a hand in the murder of “ **Henry Maina**” and leads to the inescapable conclusion that within all human probability, the murder which occurred was without doubt committed by him.

### **(iii) Malice Aforethought**

36. The offence of murder is complete when “**malice aforethought**” is established. **Section 206** of the **Penal Code**, provides that:

***“(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.”*

37. It is sufficient to say that the mental element required by **section 206 of the Penal Code** can be equated to broad guidelines set out in the case of **Tubere s/o Ochen vs. Republic [1945] 12 EACA 63:**

*“The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”*

38. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased.

39. A similar statement of Law was made in the persuasive authority of **S. vs. Sigwahla 1967 4 SA 566** in which the court stated:

***“The expression intention to kill does not in Law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such a result. This form of intention is known as a dolus eventualis as distinct from dolus directus.”***

40. The accused deliberately stabbed the deceased in his stomach and the said wound directly punctured the deceased liver and his pancreas and as a result caused the deceased to suffer septicemia and anemia. PW5 Dr. Peter Ndegwa did produced the post mortem report (Exhibit II), which confirmed the same.

41. From the above analysis of the injuries inflicted, it is clear that the accused did not have any other intention other than to inflict grievous harm upon the deceased. It is my finding that the accused person knew or ought to have known that his action would result in death, and it can be safely inferred from the nature of injury inflicted on the deceased that the accused person's action was premeditated.
42. In the circumstances I am persuaded beyond reasonable doubt that the prosecution has proved their case and specifically the presence of malice aforethought on the part of the accused too has been proved.

### **G. DISPOSITION**

43. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, **NELSON THURANIRA KANGO'RIA** beyond reasonable doubt and convicted her accordingly under ***section 215 of the Criminal Procedure Code***.
44. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.

45. It is so Ordered.

**Judgment, signed at KIAMBU this 27<sup>th</sup> day of APRIL, 2026.**

**FRANCIS RAYOLA OLEL  
JUDGE**

**Judgment read and delivered in open court on this 27<sup>th</sup> day of APRIL 2026.**

**FRANCIS RAYOLA OLEL  
JUDGE**

**In the presence of:-**

.....Accused

.....For O.D.P.P

.....Court Assistant

ORIGINAL