

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIAMBU
CRIMINAL MURDER CASE NO. E036 OF 2023

REPUBLIC.....PROSECUTOR

VERSUS

GEORGE NDUATI GITAU..... 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 the 6th day of September 2023 at Mumbuini Village of Gatundu South Sub County within, Kiambu County murdered one **“PETER MWANGI NJERI.”**
2. The accused person denied the charge faced and pleaded not guilty. The case proceeded to full trial with the prosecution calling six (6) witnesses in support of their case.

B) PROSECUTION CASE

- 3.**PW1 George Nduati Njeri** testified and stated that the deceased was his brother, and his immediate neighbour at Kijanjo within Gatundu South sub county. He recalled that on

06.09.2023 he was at home the whole day and later in the evening at about 7.00pm his friend Brian Karanja came and requested him to accompany him to the local market. They came back at about 8.00pm and as he entered his compound, he heard the accused telling the deceased that, ***"I will kill you"*** in Kikuyu language and this raised his alarm. He walked back and heard commotion as if somebody was hitting a mabati and/or people fighting and crushing onto the said mabati. He dashed into his house, dropped the food he had gone to buy and rushed to the neighboring compound, which was about 50m away to go intervene. PW1 further confirmed that the neighboring compound, where the commotion had arisen, was where the deceased and the accused, who was his uncle resided.

4. When he reached the gate to the said compound, he met the deceased approaching and he stumbled and fell down before him. He lit his phone torch and saw that the deceased had a knife plunged deep into his chest and was grievously injured. He instinctively pulled out the said knife and told his wife, who had followed him to rush and get help, while at the same time decided to go and confront the person who had harmed the deceased. As he rushed forward, he saw the accused enter the house and closed himself therein and he proceeded to latch the said door from outside, so as to lock him inside. PW1, further clarified that the accused and the deceased resided within one house, which was his grandmother's house.

5. After locking the said house from outside, he rushed and called Brian Karanja (PW3) to come help him and they managed to effect public arrest of the accused and tied him up using a rope. He then rushed to Kiganjo police station to report the incident and by the time they came back, found that the accused had been untied by his brother and had taken off. After the police processed the scene of crime, they took the deceased body to the mortuary and later traced the accused to his hiding place at Gatundu and had him arrested.
6. Under cross examination, PW1 confirmed that he and the deceased were immediate neighbours, though they resided in different shambas and if there was noise or commotion, one could clearly hear what was happening in the next compound. He further affirmed that the deceased and the accused were good friends and that both were not married. He reiterated that on the material night he clearly heard the accused telling the deceased that he would kill him, and he was sure about the same, as knew his uncle's voice. Further though he did not witness the actual incident, he was sure it was the accused who stabbed the deceased, and that when he arrived at the scene and put on his phone torch, he had seen the accused run back to the house and locked himself therein. He then proceeded to lock him therein using the outside latch.

7. PW1 further confirmed that the house where the parties resided was a one roomed house and inside the said house had blood stains on the floor next to the bed and traces thereof as the deceased walked outside. The accused black jacket too had blood stains and that there was nobody else in the said compound when he arrived.

8. PW2 Jane Wamboi Kamunyu, confirmed that the deceased was her nephew, who resided with the accused at her mother in law's house. On the material night at about 8.20am she was at her house, when PW1 came and asked for a rope, which he wanted to use to tie up the culprit, who had stabbed his brother. She proceeded to give him the rope and followed him to her mother in laws compound, where she found the deceased lying by her gate half naked, with no trouser and was bleeding profusely from the stab wound inflicted on his chest. They called Fredrick Mwangi to come help them rush the deceased to hospital, and she remained with the deceased as PW1 rushed to tie up the accused. Other neighbours also came to the scene, but unfortunately the deceased died at the scene, before they could rush him to hospital.

9. PW2 confirmed that during this commotion, the accused did get a chance and took off, but was later traced and arrested. Under cross examination she confirmed that she too heard the commotion between the deceased and the accused but

did not bother to find out what was happening, as it was common of them to disagree.

10.**PW3 Brian Karanja**, confirmed that he knew the deceased and the accused, who was the deceased uncle. On the material evening he did meet PW1 at local shopping center and walked back home together. He left him entering his compound and proceeded to their home which was about 150m ahead. After a short while, PW1 came running to their home seeking help and told him and his cousin, Antony Mwaura that the accused had stabbed the deceased. They rushed to the scene and found the accused, who was drunk, trying to escape using the back footpath/shortcut to their home. They restrained him and tied him up using a rope. He also saw the deceased lying on the ground unconscious, and was bleeding profusely from the chest.

11.They did leave other neighbours at the scene and rushed with PW1 to Kiganjo police station to report the incident and when they came back with the police, they found that the accused had escaped. The police processed the scene and eventually took the deceased body to the mortuary. Under cross examination PW3 restated his earlier evidence and confirmed that the accused was drunk on the material night and had blood on his hands, at the time they had pinned him down and tied him.

12.**PW4 Jane Nyakio Mwangi**, confirmed that the deceased was her nephew and that on 12.09.2023, she did go to

Gatundu level 5 hospital Mortuary and identified the deceased body to the doctor before the autopsy was done. **PW5 Dr John Mathaiya** also confirmed that he did the post mortem examination on the said 12.09.2023 and established that the deceased had a stab wound between the 1st and 2nd rib measuring 3cm x 1cm, inflicted by a sharp object, and had penetrated into the deceased heart. He thus established that the cause of death was due to chest injury caused by a single penetrating sharp force trauma, consistent with homicide.

13. **PW6 PC Brian Kagiri**, stated that in September 2023, he was stationed at DCI Gatundu South and on the night of 06.09.2023, was on patrol, with his colleagues, when he was called by his boss Chief Inspector Lelekong, who informed him of a murder incident that had occurred at Kiganjo area. They immediately proceeded to the scene and found the lifeless body of the deceased lying by the roadside facing up and from his observation, had suffered a stab wound on the left side of his chest. They were directed to the house, where the incident had occurred and he saw blood stains soaked in plastic paper. After processing the scene, he took the body to Gatundu level 5 hospital mortuary and commenced investigations.

14. On 09.09.2023, they got information from the Area chief, and proceeded to arrest the accused at Gathiru area. He also attended the post mortem process on 12.09.2023 and

took samples of the deceased hair, nails and rib cartilage for purpose of forwarding the same to the government analyst for DNA analysis. Under cross examination he confirmed that he had taken the accused to the government chemist to have his saliva taken for DNA analysis, but was not sure, if his colleagues obtained any court order authorizing the same.

15. The prosecution closed their case at this point and upon considering the prosecution evidence, the court placed the accused on his defence.

C. DEFENCE CASE

16. The Accused (DW1) confirmed that on the material day, he went with the deceased to a club known as Wajehera, situated within Kijanja shopping center and partook of Keg beer. At some point the deceased left him to go look for his friend and said he would come back, but did not. He was at the club until about 10.00pm and when he arrived at his home, he found a crowd gathering, but did not join them and proceeded to sleep until the following morning, when he went to look for casual work to do. Later in the day as he left his work station, he met with four men and a lady who arrested him and informed him that he was being investigated over Mwangi's death.

17. DW1 insisted that he was innocent and had no grudge and/or motive to harm the deceased. Under cross examination he confirmed that PW1 stays about 30m away from where he resides with the deceased, but insisted that he was not at home on the material night and certainly did not utter any threatening words to the deceased. He reiterated that he and the deceased were close friends and would socialize daily. He thus had no motive or inclination to harm him.

D.DETERMINATION

18. I have read through and considered the evidence adduced by both parties and given due consideration to the submissions filed by both Counsels. The question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein murdered **PETER MWANGI NJERI**, the deceased herein.

19. **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.”

20. 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".

21. The Court of Appeal at Nyeri in **Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari vs. Republic [2014] eKLR**, also summed up the elements of the offence of murder as follows: -

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

22. I will now proceed to interrogate each issue.

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

23. It is common ground that **PETER MWANGI NJERI** died on 06.09.2022 at around 8.30pm at Mumbuini village, within Gatundu south Sub County, Kiambu having sustained a fatal stab wound that directly perforated his heart. This was confirmed by all prosecution witnesses, who went to the scene of crime. **PW5 Dr John Mathaiya** also produced the post mortem report dated 12.09.2023, wherein he confirmed that the deceased died as a result of chest injury due to a single penetrating sharp force trauma consistent with homicide.

24. Death and its cause were thus proved.

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

25. From the evidence presented, none of the prosecution witnesses saw the accused stab the deceased, but PW1 their immediate neighbour, who stays about 30m to 50m away gave cogent and material evidence of what occurred. He heard a commotion in the compound, where the deceased and the accused resided and, in the process, clearly heard the accused telling the deceased in Kikuyu that, ***“I will Kill you”***. He rushed to intervene and stumbled upon his brother as he came out of the gate and he fell before him. He noted the deceased had a knife ploughed onto his chest.
26. He proceeded to the house, where the two resided and found the accused who locked himself therein. With the help of PW3 and Antony Mwaura, they proceeded to tie the accused using a rope and confirmed that he had blood on his hands and on his black jacket. Further the incident occurred inside the house where the accused and the deceased resided, and its floor was blood stained. This fact was also independently confirmed by the evidence of PW6.
27. PW1 also confirmed that was nobody else in the said compound when he arrived, and later despite being tied, the accused managed to escape and ran away, which is another pointer to his guilt. All considered, the circumstantial evidence from which an inference of guilt can be drawn, in

this matter was without doubt cogently and firmly established by the evidence of PW1, PW2 and PW3 and unerringly pointing towards guilt of the accused as the person who fatally stabbed the accused. See **Abanga Alias Onyango vs. Rep CR. A No.32 of 1990 (UR) & Sawe -vs- Rep [2003] KLR 364**

28. In Defense, the accused denied harming the deceased, but the same rings hollow, in light of the evidence of PW1, PW2 and PW3 who squarely placed him at the scene of crime. Further even though there was evidence of him being drunk on the said evening, it cannot be said that he did not know what he was doing and he literally, warned the deceased that he would kill him, before actually stabbing him. That connotes someone who was in control of his senses and did not act spontaneously out of drunken stupor.
29. Simply put, 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 “ **Peter Mwangi Njeri**” and leads to the inescapable conclusion that within all human probability, the murder which occurred was without doubt committed by him.

(iii) Malice Aforethought

30. Having found that the prosecution has proved **actus reus**, the other issue for determination is whether malice aforethought can be inferred from the prosecution's evidence presented. 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.”

31. 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.”

32. 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.

33. 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.”

34. From an analysis of the injuries inflicted, it is clear that the accused did not have any other intention other than to murder the deceased as he directly stabbed his left chest using a sharp knife. It is my finding therefore, that 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 the injury inflicted on the deceased that the accused person's action was premeditated.

35. 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 the accused, too, has been proved.

E. DISPOSITION

36. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, **GEORGE NDUATI GITAU**, beyond reasonable doubt and accordingly convicted both of them under **section 215 of the Criminal Procedure Code**.

37. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.

38. It is so Ordered.

Judgment, signed at KIAMBU this 22nd day of APRIL, 2026.

FRANCIS RAYOLA OLEL

JUDGE

Judgment read and delivered in open court on this 22nd day of April 2026.

In the presence of:-

.....**Accused**

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

.....**Court Assistant**

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