

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO. E019 OF 2023**

STATE ..... PROSECUTION

- VERSUS -

MAUREEN AKOTH ONYANGO ..... ACCUSED

**J U D G M E N T**

1. The accused was charged with the offence of murder contrary to ***section 203 as read with section 204 of the Penal Code***. It was alleged that that on **2/7/2023** at Katito Township area in Nyakach sub-county within Kisumu County, the accused murdered **Kennedy Onyango Olonde**.
2. The accused pleaded not guilty and trial ensued. The prosecution called eleven (11) witnesses in support of its case. **Pw1 Dr. Bernadette Achieng**, a medical doctor stationed at Chulaimbo County Hospital testified that she conducted the post-mortem on the body of the deceased on the **5/7/2023** at Bethlehem Funeral Home. That she examined the deceased's body which was of a Male of 28 years old whose body was well nourished of lean physique and 180cm height.

3. There were no external injuries on the body. There was cyanosis on the peripheries, a dressing on the epigastric region of the abdomen. Internally, no abnormality was detected in the respiratory, cardiovascular and digestive system. That there was a cut 8x1cm and 8cm deep in the epigastric region, haemo peritoneal cavity and the spleen had a big cut of 4 x 2cm x 3cm deep while the stomach had a 10cm x 5cm cut. That the liver had haematoma on the posterior aspect.
4. As a result of the examination, she opined that the cause of death was *hypovolemic shock due to excessive bleeding secondary to penetrating abdominal injury*. That she issued a death certificate and took a nail from one of the fingers for forensic examination.
5. **Pw2 Susan Adhiambo Onyango**, a scrap metal dealer from Katito testified that she knew both the accused and deceased as wife and husband. That on the **2/7/2023** at 7pm, she was outside her doorstep when she heard the accused call out “*Asu Asu*” so she called back Awuor but the accused replied in the negative stating that she was Maureen and not Awuor. That the accused was naked, with only half petticoat on her chest so she took a lessa and covered her and that the accused was crying and held a new stainless steel knife with a brown handle.
6. That the knife was blood stained and the accused was crying as she said she screamed “*Asu Asu, nimeua*”. When asked who she had killed, the accused

replied '*nimeua Ken, nimeua Ken*' which when translated to English means '*I have killed Ken, I have killed Ken*'. The accused asked **Pw2** to go to the police station before many people arrived.

7. **Pw2** testified that the accused informed her that she and the deceased had taken chicken from one Abala to slaughter. That however, the deceased had refused to settle and that when Abala came seeking payment, the deceased started beating her up. That she got annoyed and stabbed the deceased. It was her testimony that the accused and deceased used to fight all the time. That the accused used to smoke bhang and drink alcohol. That the accused would tell her that the deceased used to beat her up because he wanted her to become pregnant which she could. Conversely, the deceased would inform her that the accused used to sleep out and even come with men in the house. The accused asked her to escort her to the police station as she was scared of the deceased's relatives.
8. That on their way to the police station, **Pw2** saw a police officer whom she knew and informed him that the accused had killed her husband. The officer recovered the knife from the accused. When they went back to the house, they found the deceased had not passed on. He told her that the accused had killed him. He later passed on.

9. In cross-examination, **Pw2** stated the accused was bleeding and had a swollen face and it seemed like the two had fought. That the accused used to beat the deceased as she was stronger than him.
10. **Pw3 No. 116910 PC Arnold Marogo** stationed at Nyalenda Police Station testified that he previously used to be at Katito Police station. He testified that on **2/7/2023** at about 7.50pm in the company of his colleague **PC Evans Omondi** as they were walking towards Katito Township, they were approached for help by 2 women.
11. That one of the women stated that the other had stabbed her husband and wanted to surrender to the police. That he saw a lady holding a knife in her hand, approached her and held her right hand which had a blood-stained kitchen knife. That he told his colleague to go to the joint nearby and bring a serviette which he did and his colleague grabbed the knife from the woman's hand. That his other colleagues **PC Etyang** and **PC Koech** came and escorted the woman to Katito Police station. It was his testimony that the woman who was escorted to the Police Station was the accused.
12. In cross-examination, he stated that the woman who was escorted to the Police Station was tensed. That the knife recovered from her was a stainless steel knife. That he did not examine the injuries on the said woman.

13. **Pw4 No. 254935 PC Evans Omondi** attached to Katito Police station corroborated the testimony of **Pw3** on how they secured the accused before escorting her to the Police Station. That they went to the scene where they found that the deceased had been taken to hospital. In cross-examination, he testified that he saw the accused as there was light and that the accused had no injuries on her.
14. **Pw5 Derrick Odhiambo** from Katito testified that the deceased was his brother and that he knew the accused as she was married to the deceased. That on **2/7/2023**, he was with the deceased at around 5pm. That the deceased was a bit drunk and that he sent him to go and buy food and upon returning, he found him lying on the floor.
15. That the deceased implored him to call their sister because the accused had stabbed him. He took a turban and covered him. He saw a stab in the chest and that he called his sister but also looked for bodaboda who came and helped him take the deceased to the Medical Centre where they were referred to Russia. That their mother arrived as they were leaving but the deceased passed away while being stitched.
16. In cross-examination, he explained that on that day he did not know if the accused was injured because he never saw her. He left the deceased and the

accused arguing over money which the accused claimed she had kept in the house.

17. **Pw6 Levi Makita Orimba** testified that he is the deceased's paternal cousin and that on 5/7/2023 he identified the deceased's body to the doctor. **Pw7 Polycarp Lutta Kweyu**, the Principal Chemist, Kisumu Government Chemist produced a report prepared by his colleague **Godwin Waliama Khamala**. It was his testimony that the following 3 items were received at their offices on the 1/8/2023 with a request to indicate the genetic relationship between the exhibits;

*i) A knife with a grey handle 'A'.*

*ii) Finger nails from Kennedy Onyango Olonde 'B'.*

*iii) Blood sample of Maureen Onyango*

18. That the findings were that the stains on the knife was blood of human origin and as such concluded that the *DNA profile from the knife matched the DNA profile of the deceased Kennedy Olonde* while the *DNA profile of the accused did not match any DNA profiles in the other items submitted*. He produced the report dated 21/2/2024 as **PExh3**.

19. **Pw8 Nahashon Olonde Orimba** testified that he was the deceased's father. That the accused married the deceased in 2018. On 2/7/2023 at about 7.50pm, he received a call from his daughter **Eva Achieng** to the effect that the accused had quarreled with the deceased whereby the accused stabbed the deceased.

20. That he later learnt that the deceased had passed on and he subsequently attended the deceased's postmortem and identified the body to the mortician. He testified that he did not know that the accused and deceased had issues as they used to visit him every 2 weeks.
21. **Pw9 No. 47461, Corporal Josiah Rotich** testified that on **5/7/2023**, he attended a post-mortem conducted at Bethlehem mortuary by Dr. Bernadette Achieng on the body of the deceased. He took 5 photographs of the body and forwarded the same to the scene of crimes personnel for processing. He produced the Exhibit Memo dated **24/7/2023** as **PExh2**.
22. **Pw10 No. 97529 Corporal Benard Kiplagat Serem** attached to CSI office, Kisumu testified that on **24/7/2023** at 0900hrs while at Kisumu County he received a memory card from Corporal Rotich to print out which he did and returned the memory card to the investigating officer. That he did a certificate of photographic evidence and signed it on **24/7/2023**. He produced the certificate as **PExh 4** and the 8 photographs as **PExh5 – 12**.
23. **Pw11 No. 92274 PC Nathan Ochola** the Investigating Officer testified that on the **3/7/2023** past midnight, he received a call from DCIO Richard Okeri to the effect that there was an incident at Katito Township on **2/7/2023** where a victim had been assaulted and taken to Katito Hospital.

24. In the morning, he took the suspect who had been arrested and escorted her to Nyando Law Courts after receiving information of death of the victim for custodial orders. That he went to the rental house of the victim where he lived with the accused as a couple and saw items scattered and blood stains strewn all over. That he processed the scene then proceeded to the station and recorded statements of officers who had arrested the accused as they handed over a knife recovered from the accused.
25. On **8/7/2023**, he witnessed the deceased's postmortem in the presence of his family members, took samples of blood recovered from the scene, the knife and the deceased's fingernails to the Government Chemist in Kisumu. That he recorded statements of witnesses.
26. In cross-examination, he stated that when he visited the scene on the **3/7/2023**, he found blood at the entrance and the floor and tables disorganized. That when he met the accused in the cells, she was injured and she informed him that they had fought with her husband and that she was defending herself. That her husband wanted to assault her. It was his testimony that one of the witnesses informed him that the accused and deceased used to have domestic fights.
27. When placed on her defence, the accused elected to give an unsworn testimony. It was her testimony that she used to live in Katito with her husband,

the deceased. That her husband was violent. That on **3/7/2023**, she went to have a bath and on returning found the deceased standing at the centre of the house.

28. That one of her customers had come to the house for money which she had given the deceased to hand over to the customer whenever he showed up. That on her return from the bathroom, she found her customer leaving angrily not impressed that he had not gotten his money.

29. When inquired from the deceased whether he had given the customer the money, the deceased started assaulting her. That he approached her with a knife intending to stab her. She tried to restrain him and take it from him but by bad luck, it ended stabbing him. She called her neighbour and went to the police to report the incident. She stated that she was remorseful for the act as she did not intend to kill the deceased.

30. The parties filed submissions which were highlighted on the **10/12/2025**. I have considered the same as well as the evidence on record. The accused was charged with the offence of murder. The onus was on the prosecution to prove the offence beyond reasonable doubt. The ingredients of murder that must be proved by the prosecution to that standard are: -

a) ***the fact of death;***

b) ***the cause of death;***

*c) that the death was caused by the wrongful act or omission of the accused; and*

*d) that the act or omission of the accused was with malice aforethought as defined under section 206 of the Penal Code.*

31. I have examined the evidence by the prosecution witnesses. There's no doubt about the deceased's death. The same is confirmed by the testimonies of the prosecution witnesses. **Pw6 & Pw8** testified that they identified the deceased's body prior to the autopsy being carried out, which autopsy they also witnessed. Accordingly, I am satisfied that the prosecution proved this element to the required standard.

32. The second element is the cause of death. **Pw2, Dr. Achieng** produced a post-mortem report that she carried out on the deceased. She told the Court that post-mortem was carried out on **5/7/2023**. That on examination, the deceased had a deep cut in the spleen and stomach and had a haematoma on the liver. She concluded that the cause of death was excessive bleeding secondary to penetrating abdominal injury.

33. On the foregoing, I am satisfied that the cause of death was excessive bleeding secondary to a stab wound in the abdomen.

34. The third element is whether, the cause of death was as a result of the wrongful act or omission of the accused. From the evidence on record, there is no doubt that it was the accused's action that caused the deceased's death. In her unsworn testimony, she admitted that she did stab the deceased but by bad luck as the deceased was assaulting and attempting to stab her with a knife and in the ensuing melee, she ended up stabbing him.

35. This Court is thus faced with the query as to whether the plea of provocation or self-defence has been successfully raised. The *Penal Code* makes provision for provocation under *sections 207 & 208* as follows: -

***“207. When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.***

***208(1) The term “provocation” means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal***

*relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.”*

*(2) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.”*

36. In **Peter King’ori Mwangi & 2 others v Republic [2014] eKLR**, the Court of Appeal addressed the defence of provocation stating as follows: -

*“We start from the premises, that provocation is not a complete defence that if advanced and proved would entitle the accused to an automatic acquittal. It is a partial defence, the effect of which is to leave it open to court to return a verdict of guilty to manslaughter if the court is satisfied the killing was as a result of provocation. So what is provocation? In the case of *Duffy (1949) 1 ALL ER 932*; provocation was defined as; ‘some act, or series of acts, done by the dead man to the accused which would cause in any reasonable person, and actually causes in the accused, a*

*sudden and temporary loss of self-control, rendering the accused so subject to passion as to make him or her for the moment not master of his mind ...’*

*Inherent in this definition at common law, is the requirement of two conditions to be satisfied for the defence to be made out, namely: -*

*The “subjective” condition that the accused was actually provoked so as to lose his self-control; and the “objective” condition that a reasonable man would have done so.”*

37. In a previous case, the Court of Appeal differently constituted in the case of **Elphas Fwambatok v Republic [2009] eKLR** held thus: -

*“In our view once a person is provoked and starts to act in anger he will do so until he cools down and starts seeing reason. This is because he will be suffering under diminished responsibility and the duration of that state may very well depend on individuals. In any case several injury can be inflicted within a very short time particularly if one has a panga – we cannot agree that whether a person is acting on provocation or not would depend on the number of injuries inflicted on the victims ...”*

38. It is evident from the appellate court that, a plea of provocation is available to an accused facing the offence of murder. That plea only acts to eliminate the element of mens rea which is malice aforethought. If successfully pleaded and proved, then the accused will be found guilty of manslaughter, and not murder.

39. Further, not every act of provocation will reduce the act of murder to manslaughter. In **Tei s/o Kabaya v. R. [1961] EA**, the Court of Appeal for East Africa, outlined the circumstances which a court should consider in deciding whether certain provocation is sufficient for purposes of ***section 207 of the Penal Code***, to reduce a charge of murder to manslaughter. The Court stated: -

***“In considering whether provocation was sufficient to reduce the offence to manslaughter, it is material to consider the degree of retaliation as represented by the number of blows and the lethal nature of the weapon used.”***

40. The evidence on record is that the accused and deceased would normally fight. On the particular night, the accused testified that she was in a fight with the deceased whereby she ended up stabbing the deceased following a struggle between them. It was her evidence that when she came from the bathroom, she found the deceased with the knife and that he wanted to stab her.

41. **Pw3** who first encountered the accused person after the incident testified of the regular fights between the accused and the deceased. She told the Court that on the material night when she met the accused after the incident, the accused was bleeding a little, her face was swollen a bit and it was reddish. The Investigation Officer similarly testified that when he encountered the accused person for the first time in the police cells, she had an injury.

42. These are clear indications that there was a struggle between the accused and deceased. The knife recovered from the accused person similarly when examined by the Government Analyst was found to have the blood of the deceased signifying that she used it to stab the deceased as she had testified. Guided by the decision in *Tei s/o Kabaya v. R (supra)* I find that the plea of provocation holds.

43. The above notwithstanding, it is trite that a plea of self defence as raised by the accused is recognized under the law under *section 17 of the Penal Code*, which states that: -

***“Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.”***

44. When the justification of self-defence is established and demonstrated, it not only serves to legitimize an act resulting in the death of a deceased individual, which is otherwise unlawful, but also effectively negates the presence of malice aforethought. A conclusion that the defendant acted in self-defense not only refutes the claim of the act causing death being unlawful but also the assertion of an accused having acted with malice aforethought. Thus, the issue that must be addressed is if the claim that the accused acted in self-defense is credible. See the Court of Appeal Case of **Ahmed Mohammed Omar & 5 Others V. Republic [2014] eKLR.**

45. As earlier stated, the evidence presented by the prosecution and the accused's only defence all point to a couple that were in a violent relationship. **Pw3** was clear that the accused used to beat her husband as she was stronger than him. However, on the date of the incident, the deceased seemed to have violently attacked the accused as her face was swollen, reddish and she was bleeding.

46. Looking at the actions of the accused after the stabbing of the deceased similarly point an individual who realized what she had done and was immediately remorseful. She surrendered herself to a person of authority and even attempted to get aid to the deceased before surrendering herself to the

police. Further, her testimony was clear and remained unchanged on the manner the incident unfolded. In my view, there was no evidence to show that she attempted to flee from any alleged attack. The defence of self defence fails but provocation holds.

47. In the premises, the Court finds that the prosecution failed to prove that there was malice aforethought in the killing of the deceased.

48. However, it is the unlawful act of the accused that caused the death of the deceased. Guided by the Court of Appeal decision in *Peter King'ori Mwangi (supra)* I return a conviction of manslaughter against the accused and convict her of unlawfully causing the death of the deceased. I convict her of the offence of manslaughter contrary to *section 202 as read with section 205 of the Penal Code*.

It is so decreed.

**DATED** and **DELIVERED** at Kisumu this 30<sup>th</sup> day of **April, 2026**.

**A. MABEYA, FCI Arb**

**JUDGE**