



**Republic v Naliaka (Criminal Case 28 of 2019)  
[2025] KEHC 1638 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1638 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL CASE 28 OF 2019  
AC MRIMA, J  
FEBRUARY 28, 2025**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**LYDIA NALIKA ..... ACCUSED**

**JUDGMENT**

1. Lydia Naliaka, the accused herein, was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that; on the 3<sup>rd</sup> day of October 2019 at Matisi location, Rafiki Sub-location, Trans-Nzoia West Sub-County within Trans-Nzoia County murdered Peter Simiyu.
2. The Accused pleaded not guilty and she was tried.

**The Prosecution's case:**

3. The prosecution called 7 witnesses in a bid to prove its case against the accused. Eunice Namaemba, the accused's sister-in-law testified as PW1. It was her evidence that on 28<sup>th</sup> September 2019 she went to the accused's home, but did not see the Peter Simiyu [hereinafter referred to as 'the deceased']. She stated that the deceased, a nine-year-old boy, was the accused's step son. On asking her where he was, the accused told her that he had gone to a funeral and spent the night there. PW1 stated that she returned home and the following day she went back to the accused's home to inquire about the deceased in vain. She went back home and conducted another search the following day.
4. PW1 further stated that on 3<sup>rd</sup> October 2019, a good Samaritan called and informed her that the deceased had been seen at a place called Marangachi. She went there, found him well and took him home where he fed him. He then went to fetch water and she prepared lunch. It was her evidence that he made the deceased take a bath. PW1 testified that the deceased then demanded to be taken to



- his school, Victor Royal Centre [hereinafter referred to as ‘the School’]. She obliged and on reaching school, she met the teachers and explained to them how she had found the deceased. At about 4pm, she was woken up by a child in the same school as the deceased and was informed that the deceased had died and had been taken to Kitale District Hospital.
5. It was her further evidence that she rushed to the Hospital where she saw the deceased dead. She met with the accused and police officers there. She observed the deceased and noted wounds all over his body, scratches and that the neck was loose.
  6. On cross examination, it was her evidence that she did not know when the deceased died and she admitted not seeing the accused kill him. She stated that the deceased’s father was in prison and the deceased was left with the accused.
  7. Emma Nekesa, a 14-year-old student and in Class four at the school. She testified as PW2. It was her testimony that on 3<sup>rd</sup> October 2019 she was in school and on breaking for lunch, she saw her Auntie [PW1] with the deceased coming to school whom she left with a teacher and went back. She further stated that she was summoned by teacher ‘Kevo’ [PW3] who asked him what was wrong with the deceased. In her response, she stated that the deceased had been beaten by her mother [the Accused] and as a result ran away from home. Thereafter, she rushed to take lunch and left the deceased queuing. It was her evidence that while in class, she heard the deceased screaming. She rushed to where the screams were coming from and found her mother, the accused, beating the deceased using a green pipe with wire mesh. She stated that she saw her holding the neck of the deceased and killed him.
  8. She testified that teachers gathered as the deceased laid on the ground quiet. They asked the Accused to take the deceased to hospital but she took him to a dispensary where she was advised to proceed to Kitale County Referral Hospital. PW2 was in their company. She saw several marks on the body of the deceased as a result of the beating. On cross examination, she stated that she did not see the pipe the accused used. She also stated the accused was her step mother and that they had not been in good terms at all as the accused was of the habit of beating the deceased and the deceased used to run away from home.
  9. Kevin Mbongo Sadide who was the School Manager testified as PW3. He stated that on 3<sup>rd</sup> October 2019, the deceased was brought to school by PW1 at about 1 pm. On asking him where he had been, the deceased stated that he had run away from home. He stated that he interrogated him with another teacher and then asked him to go to the kitchen to get his lunch so as to discuss the issue later. It was his evidence that at about 3pm the accused came to his office and told him that the deceased was unwell. He gave her money to rush him to the hospital. He stated that the kitchen was about 50 metres from his office but did not know what had happened to him there.
  10. On cross-examination, he stated that the accused told him that the deceased could not stand and was unwell, hence, his decision to give her money to go to the hospital. He however, confirmed that he did not know of what had transpired in the kitchen.
  11. Margaret Nyagothi Kariuki was PW4. She was the School Director. She stated that on 3<sup>rd</sup> October 2019, at about 1pm, he joined the School’s Headteacher to discuss the absence of the deceased from school. Shortly, they allowed the deceased to go drink water. Later, she went and found the deceased lying unconscious on the floor with some teachers around. She directed that the deceased be taken to a dispensary. On reaching the dispensary the deceased was referred to Kitale District Hospital where he passed on.
  12. She recalled that she was at school when she saw the accused, who was the School Cook, with the deceased aboard a motorcycle on the way to hospital. The accused later called and informed her that



- the deceased had died. On cross-examination PW4 stated that the deceased did not report to school on Monday and had been away for four days. PW4, however, clarified that she did not see the accused assault the deceased.
13. PW5 was Consent Kinana, the School's Head Teacher. It was his evidence that on the 3<sup>rd</sup> October at about 3.10pm after finishing a lesson with Grade 4 students, he found the deceased at the door of the staff room lying on the floor. Teachers and the accused, who was the mother to the deceased and the School Cook had gathered there and upon asking what had happened, no one responded. It was his evidence that the accused then carried the deceased to the dispensary. Elium Barasa, the Teacher on duty [not a witness] followed them and came back with the information that the deceased had been referred to Kitale District Hospital. He was later informed by his Deputy that the deceased had died.
  14. On cross-examination, PW5 stated that no one answered him when he found the deceased lying on the door at the Staff room and that he did not hear any of the screams of a student being beaten. He also admitted that he did not see the accused beating the deceased.
  15. Joyce Simiyu testified as PW6. She was an M-Pesa agent and a Nurse Aid and used to work at the Rafiki Dispensary. She testified that on 3<sup>rd</sup> October 2019, at about 3pm, as she was at the dispensary, the accused brought in the deceased with two teachers; Edwin and Margaret. The child could not speak and on asking them what had happened, the accused stated that she did not know because the deceased had been away from home for three days and had just returned.
  16. PW6 observed the deceased and since the Dispensary did not have a laboratory, she referred him to Kitale District Hospital. She was later informed that the deceased passed away. She stated that she did not observe the child since she wanted him to be attended to at a better facility.
  17. No. 237282 Inspector Nancy Logeshere, the investigating officer testified as PW7. It was her evidence that upon being given instructions by the DCIO to take over the investigations in the matter, she visited the police cells where she interrogated the accused who had already been apprehended. She later proceeded to the Mortuary where she observed the body of the deceased and noted bruises all over. She further stated that she gathered more evidence and recorded statements from witnesses. She also organized for a post mortem examination of the body of the deceased which was conducted by Dr. Barasa [not a witness]. The autopsy was attended by Corporal Rotich on her behalf as well as two of the deceased's Aunties namely Rai Muchuma and Margaret Nekesa [not witnesses], who identified the body. PW7 stated that after the autopsy, the Doctor filled a Post Mortem Report and formed the opinion that the cause of death was assault. The report was produced in evidence.
  18. PW7 further testified that on 9<sup>th</sup> October 2019, she visited the School and interrogated the teachers and PW2 who was a pupil and a sister to the deceased. On cross-examination, PW7 testified that there was no Register to confirm that the Accused was in School of the fateful day. He admitted that there were many other people in school during the incident. She also stated that corporal punishment in school is not permissible in law.
  19. On the basis of the above evidence, this Court found the Accused with a case to answer and was placed on her defence. She opted to give sworn testimony and did not call any witness.

**The Defence:**

20. The Accused stated that on 3<sup>rd</sup> October 2019, as she was working at the School's kitchen, she was informed by the teachers that the deceased had been brought to School by PW1 after he had disappeared from home for a couple of days. She proceeded working and went to the milling plant and on coming back, she found the deceased weak and lying in the kitchen floor. That, she hurriedly



carried him to the hospital where he was pronounced dead. She stated that if she had wanted to kill the deceased, she would not have taken him to hospital. It was also her evidence that she related well with the deceased's father and that she was the deceased's foster mother. The Accused alleged a plot to fix her so that she would be jailed alongside her husband who was already serving a jail term. To her, the deceased was already unwell when he was brought to School by PW1. The Accused vehemently denied committing the offence and produced the Police Investigating Diary in evidence.

21. On cross-examination, the Accused stated that the deceased and PW2 were not her biological children and that the deceased used to disappear from home. She also affirmed that the deceased had been brought to School by PW1, a 61-year-old lady, who she admitted is elderly. She claimed that she lived with the deceased well but had disappeared from home a fact she readily informed PW1 about. She conceded that it was PW1 who found the deceased and brought him to School where she worked. The Accused clarified that she was not angered by the disappearance of the deceased. She stated, however, that she was aware he died of assault.
22. On re-examination, it was her case that she had no grudge with the deceased and that she took him to hospital because he cared for him. She maintained that no one saw her beating the deceased.
23. On tendering her defence, the defence case was closed.
24. On the Court's directions, the prosecution and the Accused filed their rival written submissions dated 28<sup>th</sup> February 2023 and 30<sup>th</sup> January 2024 respectively whose analysis are synthesized in the next segment of this judgment.

#### **Analysis:**

25. From the comprehensive appreciation of the parties' respective cases and evidence, the only issue for determination is whether the prosecution proved the charge of Murder beyond the required threshold. In Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari -vs- Republic [2014] eKLR, the Court of Appeal established the elements that, if proved, constitute the offence of murder. It enumerated them 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.
26. This Court will, hence, interrogate each of the elements in turn.

#### **The death and its cause:**

27. The fact of death is not in contest. It was affirmed by several witnesses including the Accused who took the deceased to hospital and died as he underwent treatment.
28. The cause of death was ascertained during the post-mortem examination where it was confirmed that the deceased died as a result of assault. The Post Mortem Report was not challenged and as such this Court finds that indeed the deceased died of such a cause.



## Who caused the death?

29. The only witness to have had a firsthand account of what transpired was PW2. Therefore, the evidence incriminating the Accused is by a single witness. The Court of Appeal in *Peter Mwangi Wanjiku v Republic* [2020] eKLR addressed the aspect of single identifying witness as follows: -

13. Section 143 of the *Evidence Act* provides that a court can convict on the evidence of a single witness. The said section reads, “No particular number of witnesses shall in the absence of any provision of law to the contrary be required for the proof of any fact.” Nonetheless, this does not remove the obligation of the trial court to test the evidence of a single witness. As was held in *Mailanyi vs Republic* [1986] KLR 198:

1. Although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult.
2. When testing the evidence of a single witness a careful inquiry ought to be made into the nature of the light, available conditions and whether the witness was able to make a true impression and description.
3. The court must warn itself of the danger of relying on the evidence of a single identifying witness. It is not enough for the court to warn itself after making the decision, it must do so when the evidence is being considered and before the decision is made.
4. Failure to undertake an inquiry of careful testing is an error of law and such evidence cannot safely support a conviction.

14. It is clear from the record of appeal that the trial magistrate was alive to his obligation to carefully test the evidence of Solomon. The issue is whether this was actually done. In *Mailanyi v Republic* (supra), the Court emphasized that: What is being tested is primarily the impression received by the single witness at the time of the incident. Of course if there was no light at all, identification would have been impossible. As the strength of light improves to great brightness, so the chances of a true impression being received improve. That may sound too obvious to be said, but the strange fact is that many witnesses do not properly identify another person even in daylight. ....

There is a second line of enquiry which ought to be made, and that is whether the complainant was able to give some description or identification of his or her assailants to those who came to the complainant’s aid or to the police.



30. In *R v Turnbull & Others* [1973] 3 ALL ER 549, which decision has been generally accepted and greatly used in our judicial system, the Court considered the factors that ought to be considered when the only evidence turns on identification by a single witness. The Court stated thus: -

... The Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have with the Accused under observation? At what distance? In what light? Was the observation impeded in any way...? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? how long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? Recognition may be more reliable than identification of a stranger but even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

31. In *Wamunga v Republic* [1989] KLR 426 the Court of Appeal stated as under: -

.... It is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of conviction.

32. In *Anil Phukan v State of Assam* [1993] AIR 1462 the Court held as follows: -

A conviction can be based on the testimony of a single-eye witness and there is no rule of law or evidence which says to the contrary provided the sole eye witness passed the test of reliability in basing conviction on his testimony alone.

33. Deriving from the foregoing, it is the legal position that the evidence of a single identifying witness can be sufficient to positively settle the issue within the permissible legal parameters. In this case, PW2 saw the Accused chastise her brother, the deceased. She was prompted to go to the kitchen where she heard his brother screaming from. On reaching, she saw the Accused beating the deceased with a green pipe and a wire mesh while holding the deceased's neck. PW2 also stated that the Accused used to always beat the deceased and that the deceased had to run away from home for his safety. PW1 narrated that the deceased's last trouble with the deceased before he died begun when the deceased was beaten by the Accused and, as usual, ran away from home. PW2 reported the matter to PW1. It was PW1 who went to the accused's home on more than one occasion to make inquiries about the whereabouts of the deceased but the accused told her that he had gone to a funeral and failed to return home.

34. The accused strenuously advanced the argument that the deceased must have been assaulted either by PW1 or at the place he had run away to, a sand harvesting site. She, therefore, was of the position that she had been implicated in the assault. She further submitted that the wounds the deceased had were not fresh at the time of his death, an indication that the deceased was assaulted earlier during the period of his disappearance. The accused, therefore, was of the submission that the investigations that were carried out were simplistic, narrow and lackluster.

35. This Court has sifted through the prosecution's evidence alongside the defence. The teachers who received the deceased at the School did not witness any injuries on him. Likewise, PW1 did not see any injuries on the deceased. The deceased walked to School on his own and he did not complain of any harm. To this Court, the allegation by the Accused imputing that it was PW1 who assaulted the



deceased before she took her to School is, far-fetched. If that were the case the teachers would not have admitted the deceased into the School in such a state.

36. There is credible evidence that spoke stridently to the indifference harbored by the Accused on the wellbeing of the deceased. The chastisement was regularly visited upon the deceased. PW2 was a straight-forward witness. She spoke with assurance and without any struggle. She also withstood cross-examination. Her evidence was not shaken at all and, to this Court, she was a credible witness whose evidence withstood the requirements on single evidence discussed above. This Court finds that the defence did not outweigh the prosecution's evidence. No doubts on the prosecution's case were created at all.
37. Therefore, in appreciating the evidence cumulatively, this Court returns the verdict that it was the Accused who assaulted the deceased and which assault caused the death of the deceased.

**Malice aforethought:**

38. The Court will now consider whether the accused acted with malice aforethought in injuring and killing the deceased.
39. Section 206 of the *Penal Code* defines 'malice aforethought' as follows: -
206. 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.
40. The Court of Appeal has also dealt with the issue of malice aforethought on several occasions. In *Joseph Kimani Njau v Republic* [2014] eKLR, the Court of Appeal in concurring with an earlier finding of that Court (but differently constituted) in *Nzuki v 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". (emphasis added).

41. Malice aforethought can be established expressly or by inferences to be drawn from the facts and circumstances before Court. The East African Court of Appeal explicated the circumstances in which malice aforethought can be inferred in the case of *Republic vs. Tubere s/o Ochen* [1945] 12 EACA 63 as follows: -
  - a. The nature of the weapon used; whether lethal or not;
  - b. The part of the body targeted; whether vulnerable or not;
  - c. The manner in which the weapon is used; whether repeatedly or not;
  - d. The conduct of the accused before, during and after the attack.
42. The accused stood in a position of care towards the deceased. She was the mother. However, she had turned into a monster. She would beat and terrify the deceased to the point of him running away from home for his own safety. The punishment the accused meted out on the deceased was not one that can be viewed as falling under the category of ordinary parental punishment meant to give guidance and to correct wrong doing.
43. The excerpts of the Post Mortem Report read as hereunder: -

...The body had physical injuries all over the body suspected to be caused.

Bruises distributed all over the body

Blood clot on the nostrils.
44. It is without doubt that the punishment transcended into the arena of assault, an unlawful conduct that is frowned upon by the law. Unfortunately, it caused the death of the deceased. From the Post Mortem Report, it is evident that the accused repeatedly whipped the deceased. The conclusion as to the cause of death was severe hemothorax/hemoperitoneum from blunt object secondary of assault.
45. From the evidence, the conduct of the accused, before, during and after meeting the deceased at the School kitchen lends credence to the fact that there was a clear intention to inflict harm on the young boy. She executed her intention without mercy. This Court is persuaded that the limb of malice afterthought was proved beyond reasonable doubt.
46. As such, the offence of murder was proved.

### **Disposition:**

47. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and subsequently elected into the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
48. In the end, the accused herein, Lydia Naliaka, is accordingly convicted of Murder pursuant to Section 322(2) of the [Criminal Procedure Code](#).



Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025.**

**A. C. MRIMA**

**JUDGE**

Judgment delivered virtually in the presence of:

No appearance by Mr. Bikundo, Learned Counsel for the Accused.

Mr. Mugun, Learned Prosecutor instructed by the Director of Public Prosecutions for the State.

Duke – Court Assistant.

