



**Republic v Kariuki alias “Eddy” (Criminal Case E011 of 2022)  
[2025] KEHC 1754 (KLR) (26 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1754 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E011 OF 2022  
SM MOHOCHI, J  
FEBRUARY 26, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**EDWARD MUREI KARIUKI ALIAS “EDDY” ..... ACCUSED**

**JUDGMENT**

1. Edward Murei Kariuki alias ‘Eddy’ was on the 18<sup>th</sup> February 2022 arraigned before court and charged with the offence of Murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars were that, on the 2<sup>nd</sup> February 2022 at Bondeni Market in Nakuru East Sub-County within Nakuru county, murdered George Oluoch Were. The accused person pleaded “not guilty” to the charge.

**Prosecution’s Case**

2. The state called 8 prosecution witnesses in support of the charges and produced a post mortem examination report.
3. PW1- Fredrick Otieno Were the brother to the deceased and a boda boda rider testified that on the 22/2/22 at 7p.m., he was with the deceased and we went into a wines and spirits “Centa” called “Kimtai Wines and Spirits.” He was called to transport a client to 58 area and upon his return he found a fracas ongoing between “Mato” a policeman and the deceased. The deceased was telling “Mato”, “wewe hauna pesa.” Both Mato and Kimutai are police officers and were in the Wines and Spirit. Calm was restored, Martin went and sat with the accused. The deceased asked the witness if he had Kshs.40 which the witness gave out for an order of alcohol.
4. That when the witness and the deceased finished their drinks they went outside where the accused started manhandling the deceased, the accused threatened to stab the witness while holding two rocks. That the witness used one rock and hit the deceased on the head.



5. The witness had earlier attempted to restrain the accused when he threatened to stab him and he left him. That the accused knocked down the deceased on the right-hand side of the head, the witness called a friend to assist in carry the deceased on his motorbike to his place at Manyani.
6. That after the attack, the accused fled the scene and the deceased was disoriented until he took him to his house in Manyani.
7. The next morning, he received a call from Beth (deceased wife) asking that the deceased needed to be taken to the hospital as he was disoriented and the witness went to take him to hospital, “Medico”.
8. The deceased was admitted and witness went and reported a case of assault at Bondeni Police Station and the police went to the hospital saw the deceased and when PW1 went back to the hospital the deceased had succumbed and died. PW1 never knew why the accused attacked the deceased. The witness positively identified the accused in court and he knew the accused as a friend for almost 10 years referring to him as “Edward”.
9. In cross-examination the witness admitted that;
  - i. He went with deceased to Kimutai Wines and Spirits at 7 p.m. that they had come from another bar to go to Kimutai. he recorded this on his statement. he never looked at his statement on after recording the same.
  - ii. That it is not true that the deceased came to the stage.
  - iii. That is true that the deceased bought the 1<sup>st</sup> drink at Kimutai and that Martin found (deceased) George with Eddy.
  - iv. That he did not find accused in a scuffle with the deceased. I don’t know if Martin is a witness. The deceased bought alcohol and not me.
  - v. The deceased drank from the counter and he stood next to him. The accused was aside with Kimutai and Mato.
  - vi. The accused attacked the deceased when he got out. The attack took place at 7.00p.m. almost 20 minutes.
  - vii. The deceased paid via Mpesa. The accused was outside waiting for the deceased.
  - viii. There were many people outside the Wines and Spirits including Pablo.
  - ix. During the attack, Kimutai was inside the bar. The accused run away. It is true that the witness went to inquire if the bill has been settled; the deceased was with him. he was told deceased had paid by Mpesa. That they voluntarily left the Wines and Spirits.
  - x. That the Deceased was not bleeding at this juncture. The witness stated that he went to accused the next morning to inform him to take care of the injured.
  - xi. That the Deceased was hit on the right-hand and fell down on a rocky surface. The witness was unaware of any prior differences between accused and deceased.
10. PW2- Paul Wainaina Kiganane also known as “Pablo’ or “Paulo” described the deceased as a friend, and the accused as “kijana wa mtaani,” Centa Kivumbini. He recalled in testimony how on 2<sup>nd</sup> February, 2022 at 8.30 he had left “Matex bar” a bar owned by “Martha.” On his way home a short distance to his house he met Fredrick Otieno Were - PW1 and the deceased who could not stand on his feet and kept falling down. PW1 requested for assistance and the witness placed him on the motor bike.



11. That the Deceased insisted on walking staggering and the witness and PW1 kept following from behind and he requested PW1 not to leave the deceased.
12. That the witness and PW1 took the deceased on boda boda to his house and met his wife. His condition had deteriorated and he was incoherent and kept falling down appearing more intoxicated than he had been earlier. PW1 returned him to the spot they had met.
13. On the next day he heard that the deceased had been admitted to ICU and police were tracing the attacker at the bar. That, he was present when police came looking for “Eddie” accused and arrested him having been pointed out by bar employees.
14. PW3 - Beth Wambui the deceased wife and a mother of two, recalled how on 2<sup>nd</sup> February, 2022 at 8.30 p.m. while in the house with the kids, waiting for the deceased. PW1 entered asking her to go out and collect the deceased. She thought he was drunk and intoxicated as he kept going towards the opposite direction to the house but she managed to lead him back in. There was no illumination outside but once inside the house she noted he was injured on the forehead and some bleeding on the rear of the head was swollen. He was nose-bleeding and she attempted to administer First Aid.
15. That she noticed he was bleeding when he placed him in bed. The next morning, she woke him up, he was confused, incoherent he could not recognize her or the kids.
16. That the witness called PW1 to inquire what had happened to the deceased and he responded by coming to her house.
17. That, PW1 and Kate went to Eddie “accused” and they later came the three of them. she asked the accused why he had done this to her husband and his response was that, “he never knew things will be like this”.
18. That the accused promised to bring a vehicle to take the deceased to hospital but he disappeared never to be seen until the day the witness was testifying in court.
19. That the witness, and the deceased’s brother PW1 took the deceased to Nakuru Level 5 Hospital where he was admitted, and succumbed and died on 3<sup>rd</sup> February, 2022 at 8.30p.m. while awaiting a surgical procedure.
20. That on 11<sup>th</sup> February, 2022 she identified the body of the deceased when witnessing the postmortem conducted by Dr. Titus Ngulungu whose opinion was that the skull of the deceased had opened and he had bleeding in the brain. The witness identified the postmortem dated 11<sup>th</sup> February, 2022 as MFI 1.
21. PW4- P.C. David Njogu. A police Officer attached to Bondeni Police Station recalled that, on 3<sup>rd</sup> February, 2022 at 12.00 hours he was in the report office perusing the occurrence book and noted that a matter reported as an assault had been assigned to him by C.I. Erick Wekesa.
22. The witness conducted investigations in company of Snr. Sgt. Kiler, P.C. Gathuri, Cpl. Driver Wanjiku and in company of deceased brother proceeded to Nakuru Level 5 Hospital to visit the deceased who was admitted at ward 5 and found him on bed No.15 and beside him was his wife Beth Wambui.
23. That, the Deceased was in a serious condition, head injuries as confirmed by doctor and could not communicate and later in the course of the day the accused was sighted by members of the public who called OCS. He proceeded and effected the arrest of the accused in a bar (Matex bar) near Bondeni Police Station and booked him in the cell.
24. After arresting accused he was positively identified by brother of deceased as the person who committed the offence. He confirmed that he was not the Investigating officer who is Mochoge and Mr. Kipkurus.



25. PW5- Dr. Titus Ngulungu the government Pathologist testified how he conducted a post mortem examination on the body of the deceased George Oluoch Were at the Nakuru Level 5 Hospital on 11<sup>th</sup> February, 2022 the body was identified by identified by wife of deceased and cousin to the deceased the request was from DCI Nakuru.
26. The deceased was admitted in hospital following an assault on 3<sup>rd</sup> February 2022 and succumbed on 4<sup>th</sup> February 2022 at the same hospital.
27. That his general Examination was; Male African 46 years. Nutrition was good Body embalmment in formalin. There was lack of oxygenation of tissue. The body also had injuries bruises on the forehead, head, and right part of head 50mm. And on the part of elbows 20 x 10 and 10mm.
28. When he dissected the skin, he found there was hematoma in dorsum of left hand and fore arm. Other parts of body had no injuries.
29. That his Internal Examination revealed the Lungs collapsed and when he opened the head he found subcortical hematoma front and back. There was a soft fracture on both sides and back head. There was laceration on front of brain.
30. That this was clearest form of brain injury. Other systems were normal.
31. He concluded cause to be severe brain injuries occasioned on blunt object injuries to the head.
32. The expert produced his signed Post Mortem Examination report as Exhibit 1.
33. PW6- P.C. Martin Murangeri a police officer currently stationed at Nakuru East Regional Office (police) recalled how on the 2<sup>nd</sup> February, 2022 at 4 p.m. he was at work and went to AP Camp Kivumbini Police Canteen and thereafter he went to Center at “Mama Alex Bar”.
34. While there he met the accused (Edward) who was playing pool with others. He took alcohol and came out and went to the neighboring bar belonging to “Mutai” who is also a police officer.
35. While at Mutai’s bar he found Fredrick Otieno and George Oluoch -the deceased, that both Fredrick and Oluoch contributed money to buy and share alcohol.
36. That, Fredrick split the alcohol twice for George Oluoch and George Oluoch differed with the accused. That he never witnessed their disagreement.
37. That, they were sent out of the bar. Mutai was the bar owner. The witness remained in the bar drinking and after one hour he went out and found deceased and his brother Otieno and asked what was wrong and was told that George-deceased was drunk. He left took motor bike and went home.
38. That, on the next day he was informed that George had been beaten. That he never knew what transpired outside the bar.
39. PW7 P.C. Mutai Kipkoech a police officer stationed at Rongai Sub-County was the bar owner “mutai bar” he knew deceased as a client and at material time he was doing business of wines and spirits and deceased was his client in the wines and spirits shop.
40. That the business was “Plywood Wine and Spirits” located at Burma near Bondeni Police station.
41. He recalled that on the 2<sup>nd</sup> February, 2022 at 8 p.m. he was within his premises doing his business (wines and spirits), when a friend and colleague and client Martin Muragiri came and entered in company of friend who is also his client. Both were drunk.



42. That the accused accompanied Martin Murangiri, they were a bit disorderly. He advised them not to be served as they were totally drunk.
43. He was busy doing his calculation and after 20 minutes he heard some commotion outside and went outside to inquire what it was all about. It was 20m from his shop alongside the road and he intervened and found one person lying unconscious and the person in question was surrounded by boda boda people and members of the public.
44. That he advised them to take him to hospital and report matter to the police. He wanted to know who assaulted the person and he was told by boda boda guys that he is well known and described him.
45. On the following day on 3<sup>rd</sup> February, 2022, he was called by Insp. Muriuki OCS Bondeni Police Station and informed that in case he saw “tall man” he should inform the police and on same day he saw the accused and called Inspector Muriuki.
46. That, he knew the accused by description the boda boda gave and it was same as Inspector Muriuki referred.
47. He was described as the person who was with Murangiri. That he called Inspector Muriuki to come and identify if the person they wanted is the person he had seen.
48. That, Inspector Muriuki responded, identified the suspect, arrested him and escorted him to Bondeni Police Station.
49. In cross-examination the witness stated that he was on the veranda of his premises working he could not tell where deceased was, but saw him 20 minutes later after commotion across the road. He could not identify the boda boda people.
50. That following the call from Inspector Muriuki, he saw him (the accused) entering Matex bar next to his shop and it was afternoon hours. Accused was not hiding and it was in broad day light between noon and 4 p.m. That he was not called to identify accused at the police station because he knew accused as his client.
51. PW8 - No. 241239 Inspector Dick Mochoge currently attached to R.C.S. Office Rift Valley recalled that on 3<sup>rd</sup> February, 2022 while he was attached at Nakuru DCI Office he was assigned by the DCIO Benson Mutie to proceed with David Kipkoros to Bondeni Police Station to follow up on matter earlier reported as assault and had evolved to murder. The assault report was made filed as OB 16/3/2/22 at 11.45 p.m. for assault by one Fredrick Otieno.
52. That when they arrived at Bondeni police station they had a suspect by name Edward Murei Kariku a.k.a. Eddie who was in custody. The OCS briefed them that matter of assault had been reported where the suspect had assaulted George Oluoch now deceased.
53. That, as they were in process of investigating, the relatives of the deceased came and informed the OCS that the said victim George had died.
54. That is when they called the DCIO to take over the matter. That, they interrogated the suspect and recorded witness statements confirmed that the two, Edward and George were together at the Pywood Wines and Spirit at Bondeni market, where they were partaking drinks on 2<sup>nd</sup> February, 2022. Also, from witness statement confirming the two had a fight and later separated and that a conducted postmortem and doctor who did postmortem confirmed that deceased had head injuries that caused his death.
55. That they processed the suspect and he was accordingly charged.



56. In cross-examination the witness conceded that, the accused assaulted deceased outside the wines and spirits. That the reported assault was the preliminary report.
57. That he visited the scene, the premises is adjacent to Bondeni market, wines and spirit on left hand side and that the fight started from inside and spilled over to the road.
58. That the, brother to the deceased and boda boda operator witnessed the fight and took deceased home.
59. The Prosecution closed its case and the court determined that a prima-facie case had been established warranting the accused being placed to his defence. The accused was found with a “case to answer” and placed to his defence.

### **Defence Case**

60. The accused elected to give sworn evidence and stated that the deceased was his friend for over ten years and he recalled on the fateful day on the 2<sup>nd</sup> February 2022 he was at “center” at “Matex Club” with friends playing pool then his friend Martin came in his friend requesting Martin to buy him a drink which he agreed but said it will be in the next pub.
61. That Martin and the accused left to Pinewood Wines and Spirits and at the entrance the accused found the deceased and his brother leaving.
62. That the deceased brother spoke to the accused as they passed each other. That he could not say he was drunk but he was inebriated.
63. That, he found Martin with the owner “Mutai” and went to the counter to buy. That that was the last time he saw the deceased.
64. That, he left the wines and spirits between 7.30 and 8pm and that there were many people when he left. That he had received a phone call from his wife hence the departure.
65. That the next day in the morning he received knock at his door at 8.30am from Fredrick Otieno (PW1) accompanied by “Kate” who requested him to take the deceased to the hospital. That he prepared and they left together to the deceased house where he saw the condition of the deceased and he offered to get a motor vehicle from a friend who does school transport to take the deceased to the hospital but upon his return found the deceased had already been taken to the hospital.
66. In cross examination the accused admitted knowing the deceased as a friend for ten years and that on the fateful day he met the deceased at Mutai bar where he was with his friends Pablo, Ben and many more whom he left by the pool table before he went to the Plywood Wines and Spirit.
67. That he met Martin PW6 who he asked for alcohol which Martin offered from the next bar and that Martin’s evidence states the truth.
68. The he never knew why he was accused of hitting the deceased with a rock as he had no pre-existing dispute with PW1.
69. He denied injuring the deceased or knowing what happened.
70. The Defence thus closed their case.
71. The court afforded parties an opportunity to filed written submissions which only the defence complied by filing written submissions dated 28th November 2024.



## Defence Submissions

72. In its filed written submission the defence attacks the prosecutions case on two fronts firstly that no malice aforethought has been proven and secondly that the evidence of PW1 was not credible as he was intoxicated, that the same is uncorroborated and that he witnessed a scuffle between deceased an Martin which scuffle nobody else witnessed and that his evidence was contradictory and he may have been harboring a grudge and that the pathologist contradicts PW1 and that PW6 never witnessed the alleged fight.
73. The defence equally cited the contradictory timings of the alleged incident and place of scuffle by PW1, PW6 and PW7.
74. The Defence pleads novus actus intervenes that the accused actions were not the sole cause of the deceased death and that there were other intervening acts.
75. That the police did not conduct independent investigations and that the contradictions were not clarified and should be resolved in favor of the accused.
76. The Defence relied on the following cases in support; Mola & Another v Republic Kisumu Criminal Appeal 103 of 2016. Republic v Tubere s/o Ochen [1945] 12 EACA 63 (Quoted with approval in Kajiado Criminal Case No. 20 of 2015- Republic v Benard Mbuvi)

## Determination

77. I have carefully considered all the evidence availed before court and the only issue in question in this case is whether the prosecution have proved whether the accused person caused the death of the deceased persons and was there actual malice Aforethought?
78. The offence and punishment for murder is provided for under Section 203 and 204 of the [Penal Code](#). The said provisions provide that;
  - “ 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
  204. Any person who is convicted of murder shall be sentenced to death.”
79. To establish the offence of murder, the prosecution is required to prove beyond reasonable doubt, proof of death, proof that the death was caused by the accused, by an unlawful act or omission and that, the unlawful act or omission was through malice aforethought.
80. 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.”

### **Proof of Death**

81. PW1, PW2, PW3, PW4, PW5 and PW7 testified in proof of the deceased being injured and succumbing to the injuries and the death was documented in the postmortem produced as P-Exh1.

### **Whether the death was caused by an unlawful act or omission**

82. There was an eye-witness account of the accused hitting of the deceased by a stone him falling down in a rocky surface and the prosecution’s case was anchored single witness eye account corroborated by secondary evidence in the nature of expert witness account as well as forensic medical documentation.
83. In criminal cases, for the Prosecution to secure a conviction on the charge of murder, it has to prove three ingredients against an Accused person. The Court of Appeal at Nyeri in Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari v Republic [2014] eKLR, 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.
84. In the present case before me, there is direct evidence of an assault upon the deceased person, PW1, it is noteworthy that all non-police officers testifying are all either friends or acquaintances including the accused. PW3 was Pablo whose evidence supports the theory of a scuffle on the fateful night and the condition of the deceased afterwards until the witness assisted in taking him home. PW3 was the wife who corroborated the condition in which the deceased was brought home, the circumstances surrounding the next morning how he was taken to hospital and the role of the accused. PW4’s evidence corroborates the initial report of assault and how it mutated into a murder case, how the accused was positively identified and arrested.
85. That, the circumstantial evidence deduced from the circumstances of each individual case is often the best evidence available and can be sufficient if the conditions for its admission are satisfied as was held in PON v Republic [2019] eKLR, the Court of Appeal cited with approval the case of Rex Kipkerring Koske [1949] where the principles for admission of circumstantial evidence as a basis for conviction was laid down.

“In order to justify a conviction on circumstantial evidence the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt and the burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is always on the prosecution and never shifts to the accused.”



86. The Medical Evidence corroborates the fact irresistible conclusion that the deceased was on the 2<sup>nd</sup> February 2022 at Bondeni Market subjected to beating resulting in his unlawful killing and that no evidence was laid indicating that the deceased of the fateful day received injuries elsewhere prior to the encounter with accused.
87. The Cause of death was severe brain injuries occasioned on blunt object injuries to the head. Dr T. Ngulungu in cross examination ruled out the Internal head injuries to a single fall saying that; That the injuries to the head cannot be occasioned by falling down.
88. In the case *Kimweri v Republic*[1968] EA 452 it was held that,
- “although death may be proved by circumstantial evidence, that evidence must be such as to compel the inference of death and must be such as to be inconsistent with any theory of the alleged deceased being alive, with the result that, taken as a whole the evidence leaves no doubt whatsoever that the person in question is dead. Sir Charles Newbold, then President of the Court of Appeal, had this to say on page 453 letter 1 and page 454 letters A, B:
- “While death may be proved by circumstantial evidence, without evidence as to the production of the body of the allegedly dead person, and without any evidence of a person who saw the body of dead person, and without a confession by a person accused that he caused the death, yet where a court is asked to find in a murder charge that a person is dead in the circumstances which we have stated, the evidence on which the court is asked to infer the death must be such as to compel the inference of death, and must be such as to be inconsistent with any reasonable theory of the alleged deceased being alive, with the result that, taken as a whole the evidence leaves no doubt whatsoever that the person in question is dead”.
89. Applying these principles of law to this case it is my holding that the deceased is dead and he was unlawfully beaten on the 2<sup>nd</sup> February 2022 succumbing to the injuries on the 3<sup>rd</sup> February 2022. To hold otherwise would be unreal.
90. While there is evidence of violent assault upon the deceased by Accused using a stone and no blunt weapon was recovered, this court is persuaded that circumstantially the physical scuffle, the beating, the fall would cumulatively result in the deceased being hurled against hard surface that would include the ground.
91. He had multiple facial injuries and injuries on the arm that would lead one to a logical conclusion that the deceased head was never spared in the assault and the internal injuries sustained were as a result of the assault.
92. As for there being “malice aforethought” this court finds that the prosecution has not proven any malice aforethought in fact it is apparent that the accused and deceased were well known to each other to the extent that after the scuffle PW1 and PW2 reached out to the accused and according to PW1 was because of his role in occasioning the injuries, to assist in having the deceased accessing medical attention.
93. The role of the accused in visiting the deceased having been called and the statement made to the wife by the deceased that, “he never knew things will be like this” goes further to fortify the circumstantial evidence that the deceased was in good health before the fight that occurred the previous night and that the assault by the accused as alleged was the only incident on that material day. Save for the police officers involved in arrest and investigations all other witnesses were well known to each other.



94. The contradictions in the witness evidence was insignificant to displace the fact that there was a fight that occasioned upon the deceased the fatal injuries and that the identity of the accused was not impugned as the perpetrator of the offence.
95. This Court is thus persuaded that, the prosecution has presented evidence satisfying three tests:
- i. the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
  - ii. those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Subject;
  - iii. the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
96. This Court finds that; the prosecution has proved its case against the Accused beyond reasonable doubt on a substituted charge of manslaughter. I find Edward Murei Kariuki alias ‘Eddy’ guilty of manslaughter and convict him accordingly.
97. The Court shall reserve sentence for one month to await the Probation Department pre-sentence report and victim-impact statement. The Accused person shall in mitigation file written submissions within 14 days from today.
98. The Prosecution shall file written submissions on sentencing within 14 days from today.

It is so ordered.

**JUDGEMENT READ, SIGNED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2025**

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**MOHOCHI. S. M.**

**JUDGE**

