



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Egesa (Criminal Case E021 of 2023)
[2025] KEHC 7178 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7178 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E021 OF 2023
WM MUSYOKA, J
MAY 29, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

EVANS WANDERA EGESA ACCUSED

JUDGMENT

1. The accused herein, Evans Wandera Egesa, stands charged with the murder of Benard Odonyo Wafula, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya. He denied the charges, and the prosecution presented eight witnesses.
2. PW1, Benson Yosum Wandera, testified that on the material evening, the accused knocked at his door, and informed him that he had killed the person who had been stealing his arrowroots. He showed him a rungu, which he said was the weapon that he used in that killing. He and the accused both went to the scene, and he found the deceased lying there, still alive. When he spoke to him, he said the accused had beaten him very badly. PW2, Dixon Richard Were, was a brother of the deceased, who received the report of the assault from PW1, and rushed to the scene to see him for himself. He testified that he saw the accused at the scene, with a large rungu, and he heard him say that it was that rungu that finished the accused.
3. PW3, Barasa Oyata Maibe, was the liguru for the area, who was telephoned by PW1 about the assault. He rushed to the scene, where he spoke to the deceased, who said that it was the accused who hurt him. He saw the accused at the scene. After the deceased died, later that evening, PW3 went to inform the accused, who said he would go to the police. PW4, Samson Wafula, was a nephew of the deceased, who rushed to the scene, after he got the information. He found that the deceased by then could not even talk. He brought the blanket that was used to cover the body, after he died.



4. PW5, Dr. Mike Odhiambo, was the medical officer who performed post-mortem on the body of the deceased. The body had wounds on the head, fractures on one of the arms and one the legs, and multiple soft tissue injuries on various parts of the body. PW5 opined that the head injury caused the death, and that that particular injury had been caused by either a blunt or sharp object. PW6, No. 232732 Inspector of Police Odhiambo Osur, recorded a confession statement from the accused. PW7, No. 118830 Police Constable David Cheruiyot, was Investigating Officer. PW8, No. 109245 Police Constable Shem Othoo, was a scenes of crime officer. He produced photographs that had been taken at the scene, and which he had processed.
5. I was persuaded that the prosecution had established a prima facie case, and I put the accused on his defence. The defence hearing happened on 25th February 2025. The accused was the sole witness. He denied killing the deceased. He said that he went to his shamba, at the time the murder was alleged to have happened, and he found someone in his farm. He was scared, so he raised an alarm. A crowd gathered. The people chased after him, and he ran to the liguru to report, leaving the man he had found at his farm behind. He said that he did not know what happened to the deceased. He said that PW3 told him that PW1 had said that they had caught the person and beat him. He stated that PW3 advised him to report to the police. He went to the police. While he was at the police post, the crowd came to report the death of the deceased. He told the police he had nothing to do with that death. He said he was not at the farm when the deceased was attacked.
6. At the conclusion of the oral hearing, the defence filed written submissions. It is submitted that there was no evidence that the accused caused the death, that the injuries on the body of the deceased could have been caused through assault by a multitude, and that the evidence was circumstantial. Several judicial decisions are cited in support.
7. The elements of murder are four, and the offence is established when all four are proved. They are the fact of the death itself, the cause of the death, the role of the accused in it and that it was caused with malice afterthought.
8. On the death itself, there is ample proof. The deceased was so badly beaten and injured, that he could not walk himself from the scene, nor be moved by wheelbarrow from the scene, in that state. He died at the scene, and his body was moved from the scene after that. There is overwhelming evidence on that. Post-mortem on his dead body was performed by PW5.
9. On the cause of death, PW5 testified. He performed post-mortem on that body. It had a deep linear cut wound on the mid-section of the head, a cut wound on the temporal region of the head and a punch wound on the frontal side of the head. There was a distal fracture on the left forearm, a mid-shaft fracture of the femur and a distal femur fracture. There were lacerations on the anterior aspect of the right leg, and a deep cut wound on the lateral aspect of the left leg. There were bruises on the foot bilaterally, and the right knee was swollen. He opined that the death was caused by severe head injury secondary to assault. The P3 form he produced, recorded a linear fracture of the midline of the scalp, extending from the frontal region to the mid-parietal region, with intracerebral haematoma on the right parietal region of the right hemisphere. There was also diffuse intracerebral haematoma, on the left frontal region and the occipital region of the brain.
10. On the role of the accused person in the causation, PW 1 testified that it was the accused himself who reported to him that he had finished the person who had been stealing from his farm. He showed PW1 a rungu. When PW1 rushed to the farm of the accused, he found the deceased there, lying badly injured. The deceased was still conscious, and he told PW1 that it was the accused who had beaten him. PW3 also went to the scene, and the deceased told him that it was the accused who beat him. PW2 said that when he went to the scene, he found the accused there with his large rungu, and he,



the accused, said that it was that rungu which finished the deceased. PW3 also saw the accused with that rungu at the scene.

11. The accused surrendered himself to the police. Nothing should, really, be read from that, for he could have done it for safety, and not because he was guilty of anything. However, he went on to confess to the killing. That confession was taken by PW6. The defence did not contest its production in court as an exhibit.
12. When placed on his defence, the accused denied the killing. He placed himself at the scene, and placed the deceased at the scene too. He, however, explained that he did not attack the deceased, instead he was scared of him, which prompted him to raise alarm, which was responded to, and it was the persons who responded to the alarm who attacked and beat the deceased.
13. What should be made of the evidence? Which of the two versions should the court believe? The defence cannot be credible for two reasons. One, the accused recorded a confession, which he did not contest at trial. Two, his claim that he raised alarm, and responders came to the scene in response, is not backed by the recorded evidence. None of those who testified, for the prosecution, talked of any alarm being raised by anyone, least of all the accused person. PW1 testified that he went to the scene on invitation by the accused, on grounds that he, the accused, had finally cornered the thief who had been stealing his farm produce, and that he had dealt with him, and finished him. PW1 did not respond to any alarm. PW2 and PW3 went to the scene after being alerted by PW1. They were not responding to an alarm. PW1 did not raise any alarm. He walked to the home of PW2, and informed him in person. PW1 telephoned PW3. PW4 learnt of it from PW2, after he got home from work. There was no evidence of any alarm raised by the accused, nor of any evidence of the deceased being attacked by responders.
14. The recorded evidence points to the deceased being attacked viciously by the accused, using his large rungu, which he was not even afraid of displaying at the scene where the deceased was lying, dying.
15. On the matter of malice aforethought, the starting point could be with defining it. It is the mens rea for murder. It manifests itself in the form of an intention or knowledge. There could be a direct intention to kill, where the intention is verbalised. The suspect may say he will kill, and then the person he had said he will kill is killed. Or he may say, for all to hear, or to a specific person, that he killed a particular person, and that person is found dead. The second aspect of it is where it is inferred from conduct, very common in cases where a person causes a very bad injury to another. In such cases, an inference would be drawn that he did so with an intention that the person dies from that injury, or that he is indifferent that the person could die from that injury.
16. Intention to kill could also be read into from an intention to commit some felony, any felony, in course of whose commission someone dies. A robber would be deemed to have an intention to kill, if, during the robbery, somebody is killed. A person intending to cause grievous harm to another will be deemed to intend to, should the victim die. Knowledge is a factor in malice aforethought, where injury is caused on the victim, of the nature that could cause death, but the person inflicting the injury knows or would know, as a reasonable person, that such injury would cause or result in death, but he is indifferent to that.
17. The overwhelming evidence in this case is that the accused caused the death of the deceased. The question that remains is whether he caused the death with malice aforethought. There are several ways of looking at it. The first is to be found in the testimony of PW1. After assaulting the deceased, the accused went to report to PW1, that he had finished the thief, the thief being the deceased. He then showed PW1 the rungu, that was used to beat the deceased, telling him that the accused could not survive a beating with it. The accused then showed up with the rungu, at the scene where the deceased was lying slowly dying, and said, to the hearing of those present, that that rungu had finished the



deceased. Never mind that these remarks were made while the deceased was still alive. That was conduct from a person who had a clear and direct intention to cause death.

18. Secondly, the accused person had no qualms at all about what happened. He made no effort to hide. He mingled freely with those who came to see the deceased at the scene. He went to the police to report himself, or to surrender, instead of going into hiding. He confessed it. At his trial he did not recant or denounce that confession. He did not have a care in the world. Such conduct can only come from a person who had done what he had intended, hence he was not remorseful at all about it.
19. Thirdly, and perhaps more importantly, malice aforethought can be read from the nature of the injuries inflicted, and to which parts of the body of the deceased. There are severe multiple injuries to the head, including fractures. There are other severe fractures to other parts of the body, including limbs, which meant that the deceased could not even flee. The cause of death is said to be the head injuries. The inference to be drawn from the fact of the fatal head injury is that anyone targeting that part of the body, must have had an intention to kill the deceased. The injuries inflicted on the deceased, clearly point to malice aforethought, on the person who inflicted them, and that person has been established to be the accused person herein.
20. In view of everything said, I hereby find the accused person herein, Evans Moses Wandera, guilty of the murder of the deceased herein, Benard Odonyo Wafula, contrary to section 203 and 204 of the Penal Code, and I do hereby convict him accordingly, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya.
21. For the purposes of sentencing, I do hereby direct the Busia County Director of Probation to investigate the antecedents of the accused, and to take the views of the family of the deceased and the community, and to thereafter file a report in fourteen days. The sentencing hearing shall happen on 17th June 2025. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 29TH DAY OF MAY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Tony Onanda, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Tyson Otieno, instructed by Masiga Otieno & Associates, Advocates for the accused person.

