



**Republic v Bodole (Criminal Case 24 of 2017)
[2025] KEHC 9300 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9300 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CRIMINAL CASE 24 OF 2017**

**RK LIMO, J
JUNE 30, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDULLAHI IBRAHIM BODOLE ACCUSED

JUDGMENT

1. Abdullahi Ibrahim Bodole, the accused herein is charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars are that on 15/11/2017 at Nzunguni Village, Mutha Location, Mutomo Sub County within Kitui County he murdered Mulwa Kitheka hereinafter to be referred to as the deceased for ease of reference.
2. The accused person denied committing the offence and the prosecution presented a total of 11 witnesses to prove their case. The accused person defended himself on oath with no witnesses. The prosecution's case is hinged on circumstantial as well as direct evidence and below is a summary of the evidence tendered during trial.
3. Shadrack Mwadhi Ngume (PW1) testified that he recalled the events of 15/11/2017 (hereinafter to be referred to as the material date for ease of reference) at around 4pm. He stated that a lorry Reg No.KCA 918E driven by the deceased arrived at Syungani area where he was burning charcoal. He stated that the deceased handed them the thread to seal the charcoal sacks and went to the lorry to take a nap.
4. He testified shortly he heard screams from where the lorry was parked which was around 10 metres away in his estimation. He stated he went to where the lorry was and saw the accused armed with a knife and a club (rungu). He stated that the knife was about 1 foot long and that it had blood stains and sharpened on both ends. He stated that the accused person hit him with a club and told him to go back to his manyatta (tent). He stated that he went to his manyatta and called the brokers known as Mrefu and Peter who notified the police.



5. He stated under cross-examination that he did not witness the stabbing of the deceased but only found the accused standing over the deceased while holding a knife. He identified the knife (sword) in court recalling that it was blood stained when he saw the accused holding it next to where the deceased lay.
6. He further clarified under cross-examination that “Mrefu”, Peter and Mwala were all at the scene and the body of the deceased was around 7 metres from the lorry when he saw it. He stated that “Mrefu” called the police from Mutha police station who arrived about at about 5pm. He stated that he saw the deceased with a stabs on the neck, throat, the rib side and the head.
7. Jeremiah Munyoki (PW2) testified and informed this court that he was popularly known as ‘Mrefu’ in his place of work which was casual work of loading charcoal to lorries in a game reserve in Nzunguni. He stated that he was employed by a lady called Rhoda who had lorries transporting charcoal for business. He stated that he used to work with Peter Mwala. He stated that he knew the deceased well because he used to drive one of the lorries belonging to Rhoda and had worked with him for many years as s turn boy.
8. He also stated that he knew the accused as a broker who used to demand payment of Kshs.20/- for every sack of charcoal and that he often used force for compliance from transporters.
9. He recalled that on the material day, the deceased drove the lorry headed to Syunguni and on reaching there he got sisal threads to seal the charcoal sacks and gave them to the loaders. He stated that he then left with Mwala leaving the left deceased in the lorry as they went to a nearby kiosk to look for food. He recalled that the deceased was then taking a nap in the lorry when they left.
10. He stated that as they were in the kiosk he heard a motorbike arrive and then shortly heard noises. He stated that they went out to find out what it was. He stated that he saw the deceased running towards the kiosk and raising his hands screaming;

“Mrefu! nimedungwa na Abdullahi.”
11. He stated that he saw blood oozing from the chest of the deceased and that the deceased had been stabbed twice. That he fell down before he reached the kiosk. He stated that as he rushed to rescue him the accused person also approached to where he was. He stated he was with Isaak and that Isaak hit him with a club as the accused lifted the knife he had and aimed at his chest but he swiftly swerved and the knife caught him at the back near the shoulder blade. He stated that he screamed and ran for his life to the bush.
12. He said that he turned back and found the deceased lying down facing up dead. He stated he went to where the body of the deceased lay and found the deceased bleeding from the nose. He stated that the accused and Isaak were standing where the lorry was and that they shortly walked on foot towards the bushes.
13. He stated that he got into the lorry and drove to Inyali Centre from where he called the owner of the lorry before reporting the incident to the police. He stated that the police from Mutha police station later went and collected the body.
14. He further recalled that when the accused and Isaak attacked him, Mwala and Peter ran away on foot and that as he later drove to Inyali Centre he found them walking on foot and he picked them and took them to Inyali. He further stated that the accused attacked him without any provocation adding that he was armed with a Somali sword which he identified in court. He further identified the picture of the body of deceased taken at the scene stating that he was dressed in jeans shorts and T-shirt.



15. He further stated under cross-examination that the accused used to demand 20/- per sack of charcoal from transporters adding that he used to count the number of bags and demand payments. He recalled paying him on several occasions adding that the deceased also used to pay him and that even on that day the deceased had paid and did not understand why he was demanding more payments.
16. He stated that when he heard screams from the kiosk he rushed out and saw the deceased coming out of the lorry with hands raised screaming that Abdullahi (accused) had stabbed him.
17. He conceded that there was animosity between the people from Kamba Community who were charcoal burners and the people from Somali Community over the resources in the area. He stated that the accused person was from the Somali Community and that he used to demand money for nothing and that when they met him that day he was paid Ksh.3400/- because he knew they were going to load charcoal from Nzunguni.
18. Peter Mutie Musya (PW3) testified that he used to be a charcoal dealer and recalled that in 2017 he was a loader who used to load charcoal on lorries in Nzunguni area. He stated that he knew the accused well having met him in Dadaf- a forest reserve near Inyali Trading Centre. He stated that the accused used to collect Kshs.20/- per sack from lorries adding that on average he used to collect Kshs.2000/- per lorry. He stated that the accused and members of his Community used to claim that the forest reserve belonged to them and that is why he was collecting the levies.
19. He stated that anyone failing to pay the levy would be in trouble. He stated that the deceased used to pay the levy to the accused and he used to load the charcoal on the lorry.
20. He recalled that on the material date, he was with the deceased and Mrefu (PW2) and that when they reached Syunguni, they opened the lorry and gave out threads to seal the charcoal sacks. He said that they counted the sacks before accompanying “Mrefu” to a nearby kiosk to get some food to eat. He stated shortly they heard screams and when they came out of the kiosk he heard Mulwa (deceased)calling out loudly;

“Mrefu! Mrefu! kimbiени mniokoe nimedungwa kisu na Abdullahi”.

He stated that they went closer and saw the deceased falling down. He stated that he saw the accused coming to where the deceased fell with a stick and that he hit “Mrefu” and removed a knife which he used to stab Mrefu. He stated that he feared for his life and fled. He stated that the accused was from Orma Community and that he was in the company of another person from his Community whom he did not know. He stated that Mrefu was stabbed at the back and he saw the knife clearly which he identified in court. He stated that Mrefu fled after the attack.

21. He stated that Mrefu later went back and drove the lorry toward Inyali Centre. He stated that he was hiding in the bush and when he saw Mrefu driving he ran to the road and stopped him. That they went to Inyali Centre and reported the incident.
22. He stated that the accused was later arrested after about a month and that he positively identified him in an identification parade at Mutomo police station.
23. He stated under cross-examination that he saw the deceased running with his hands raised screaming that he had been stabbed. He said that he saw the accused stabbing the deceased and that when they got out of the kiosk after hearing screams it is “Mrefu” who went ahead and that the accused first hit Mrefu with a rungu before stabbing him using a knife. He stated that the accused was brought to where they were to load the charcoal by a motorbike ridden by a person from Orma Community who he did not know.



24. Amani Masive (PW4), another charcoal burner in the area testified that on 1/12/2017 he met the accused at a place called Kona Kaliti. He stated that he knew him well. That he asked him to pay him Kshs.5000/- and when he told him that he did not have he threatened him with a knife. He recalled that the accused was with another accomplice known as Isaak Koredi. That the accused removed a sword and stabbed him on the hand and he screamed attracting the attention of people around who rushed in to rescue him.
25. He stated that they caught the accused as Isaac ran away. He identified the sword in court as the same knife the accused used to stab him adding that he saw the accused remove the sword from his hip and that he was also armed with a spear. He showed this court a healed scar on his right arm which was roughly 10cm long. He stated that many people went to rescue him and recalled that one Willy Munyao rushed to help him and that he was bitten by the accused as he held him. He stated that the crowd then rushed in and tied the accused with ropes before calling the police from Mutha police station. He stated that the police came and arrested the accused and took him to Mutomo hospital for treatment on the stab wound on his right hand.
26. He insisted under cross-examination that the accused was also charged because he had stabbed him after killing the deceased a few days earlier.
27. Willy Munyao (PW5), testified that he knew the accused well as a camel herder as he used to see him with camels in the bush when he was burning charcoal in a game reserve. He recalled that on 1/12/2017 at around 5pm he was near Kona Kaliti when he heard screams and that when he rushed to check he found Amani (PW4) screaming as the accused held him asking him for money. That the accused was armed with a knife and that he also screamed as the accused held PW4 by the neck and stabbed him with the knife/sword. He stated that people rushed and they managed to apprehend the accused before calling the police who came and arrested the accused. He stated that the accused bit him on the neck as he held him firmly. He stated that the accused wanted to bite him on the throat but people rushed and they managed to subdue him by tying him with sisal ropes which they used in sewing the charcoal sacks. He stated that he was later taken for treatment.
28. He stated that the accused person was troublesome and violent adding that any charcoal dealer who failed to pay him would be in trouble.
29. Victor Masila Mwanzia (PW6) stated that he was a driver and used to drive lorries. He stated that knew the accused well and got to know him from Mutha bushes where he used to go to collect charcoal from charcoal burners. He stated that they faced many challenges in the bushes because they used to get beaten and robbed and forced to pay local groups so as to avoid harassment. He stated that the groups were brokers in the bushes and the accused person was one of them. He stated that the deceased was a colleague employed by one boss Rhoda. He stated that he drove lorry Reg No.KBY 047Y while the deceased drove KCA 918E.
30. He stated that 'Mrefu' (PW2) and Peter (PW3) used to alternate as his turn boys and used to assist the deceased as well. He recalled that on the material day, he drove from Nairobi to Inyali to transport charcoal. That on arrival he met the deceased with PW2 and PW3. He stated that they informed him that there was charcoal nearby to be loaded at Syunguni and were headed there which was about 4KM from Inyali.
31. He stated that he remained at Inyali as his charcoal was not nearby. That after 3 hours he saw the lorry approach at high speed driven by 'Mrefu' and he went to inquire why only to see Mrefu bleeding from the head. That "Mrefu" told him that they had been attacked by the accused and feared that the



- deceased was dead. He stated that Peter (PW3) was in the lorry and was in shock. He stated that he told them to call for assistance as he headed to the scene with his lorry carrying some people.
32. He stated that when they arrived at the scene they found the deceased lying down dead in a pool of blood. That he drove back where he got network to call his Boss that his Boss informed him to call the police which he did.
33. He recalled that the accused was a broker in the area and that when they arrived at Inyali from Nairobi that material day, he asked him for payment and he gave him Kshs.1000/- and promised him balance later adding that he used to pay him Kshs.2000/-. That after he had paid him a thousand shillings he did not see where the accused went as he remained waiting at Inyali.
34. C.I.P Nicholas Mulei (PW7), a gazetted crime scene officer testified that on 3/1/2018 he received a memory card from CPL Ndubia and was requested to process photographs in memory card. He stated that he processed the photographs;
- i. A picture of the deceased lying on the ground facing up – Pexhibit 2(a).
 - ii. A close photo of the body of deceased facing down – Pexhibit 2(b).
 - iii. A close up photograph of stab wounds – Pexhibit 2(c).
 - iv. A close up photograph of the deceased facing up – Pexhibit 2(d).
 - v. A report dated 16/1/2018 on the photographs – Pexhibit 6.
 - vi. Exhibit Memo was marked for identification.
35. Dr. Muli Simeon Kioko (PW8) a doctor who conducted autopsy on the body of deceased testified that on 24/11/2017 he carried out post mortem on the body of deceased and observed the following;
- (1) Externally
 - (a) Multiple stab wounds and that the body looked pale.
 - (b) A stab wound on the neck measuring 4 ½ cm.
 - (c) A stab wound at the back of the head 2x3cm.
 - (d) A stab would on the back of the neck measuring 4x1cm.
 - (e) Stab wound on posterior body trunk.SUBPARA (f)
Stab wound on the occipital region.
 - (2) Internally.
 - (a) Right chest hematoma on thorax.
 - (b) Severed right arteries.
36. The doctor opined that the cause of death was cardio pulmonary arrest due to massive loss of blood and bleeding within the chest. He tendered the post mortem report as PExhibit 8 adding that the injuries were caused by a sharp object.
37. Benjamin Mwanzia (PW9) a clinical officer working at Mutha Hospital testified that Amani Masive (PW4) went to Mutha Hospital with a report of being stabbed on the right arm. He stated that he



- treated him and filled a P3 Form on 4/12/2017. He tendered it as PExhibit 4. He also tendered another P3 Form with respect to Willy Munyao (PW5) whom he found to have sustained a human bite on his neck. He tendered the P3 Forms as PExhibit 5. He stated that he saw both victims a day after the incident.
38. PC Kennedy Wekesa (PW10), the investigating officer in the case testified that on the material day he was based at Mutha police station when he got a report by a business lady known as Rhoda that one of her lorry drivers had been attacked at Nzunguni area within Kitui South.
 39. The officer stated that he accompanied the OCS to the scene where he found the body of the deceased lying in a pool of blood with stab wounds on the back of his head and the chest. He stated that they collected the body and took it to Mutomo Hospital Mortuary. He further testified that the assailant had also inflicted injuries on two other people PW2 and PW3 both of whom were referred to Mutha Hospital for treatment.
 40. He further testified that on 1/12/2017, he got information that the accused had been spotted at Kona Kaliti after assaulting PW4 and PW5. He stated that Amani (PW4) had been stabbed while Willy Munyao (PW5) was bitten on the neck by the accused. He stated that he informed the OCS who dispatched a team to arrest the culprit, the accused herein. He testified that the accused was on wanted list after the murder incident and that he was well known to charcoal burners in the bushes within the game reserve.
 41. CPL Elijah Kongu (PW11) on his part testified that on 1/12/2017 he was at Mutha police station, where he was based at the time, when he was informed by the OCS to proceed to Misuuni to arrest a suspect who had been arrested by members of the public. He stated that he together with 6 other officers proceeded to the scene which was 85 KM away and found the accused at Kona Kaliti having been arrested and beaten by members of the public. He stated that they escorted him to Mutha police station and then to Mutha Hospital for treatment for the injuries sustained from the mob justice.
 42. He stated that the accused was well known in the locality and that apart from murder he had assaulted two other people though he was not sure about the progress of assault cases. He stated that the accused was a broker in charcoal business who used to collect illegal fees for the charcoal business.
 43. When placed on his defence, the accused denied on oath that he murdered the deceased. He wondered why he was charged with murder. He denied doing any other business apart from herding camels. He stated that he was arrested on 1/12/2017 while herding camels at Kona Kaliti which he claimed was the border between Kitui and Tana River County.
 44. He stated that he was going to the people from Kamba Community for payment of camel milk deliveries he had made when he was arrested for murder. He stated that he was beaten and tied and that the people assaulting him were talking in Kamba language which he did not understand. He stated that they took his phone and Kshs.700 before calling the police who went and arrested him.
 45. He stated that he did not know how the deceased was killed. He acknowledged that the sword produced in court was his but denied using it to kill the deceased. He stated that it was common for people from Orma Community to walk with swords which is used for defence. He stated that there are disputes between Kambas and Somalis at Mutha which at times see markets being closed.
 46. He admitted under cross-examination that he was well known in the area and that all the witnesses who testified are well known to him. He stated that on the material time he was at Woldena. When challenged to state if he had a witness, he said he had none. He acknowledged that there was charcoal business going on at the game park and used to see lorries from Nairobi ferrying charcoal from the area. He however denied having disputes in the charcoal trade. He stated that the only disputes in the



area related to grazing rights and charcoal. He stated that while he had no grudge against the witnesses they might have framed him because of tribalism.

47. This court has set out in summary the prosecution's case as well as the defence. As observed above the accused is charged with the offence of murder and as seen from the evidence tendered the prosecution's case is mainly based on both circumstantial and direct evidence.
48. For an offence of murder to be sustained as provided under Section 203 the following elements must be proved beyond reasonable doubt;
- i. The fact of death and the cause.
 - ii. Actus reus or that unlawful act causing the death is linked to the accused.
 - iii. Mens rea or malice or malice aforethought.

(i) Fact of death and its cause.

49. The prosecution's case on this element is well established. All prosecution witnesses saw the body of the deceased lying in a pool of blood. Dr. Muli Simeon (PW8) who did post mortem examination tendered post mortem report (PExhibit 8) which corroborated the evidence of CIP Nicholas Mulei (PW7) who tendered photographs of the body of deceased as was found at the scene murdered. The photographs tendered are horrid and illustrates the gruesome way he died. The fact of death and its cause was well established and proved. The doctor (PW8) opined that he died of cardio pulmonary arrest due to massive hemorrhage and right haemopriemothorax. The doctor stated that the fatal injuries were caused by a sharp object. The element of fact of death is proved beyond any doubt.

(ii) Actus reus or that the accused unlawfully caused his death.

50. It is apparent from the evidence that though there were witnesses who were at the scene of murder at the time, there was no eye witness who saw the accused stabbing the deceased. PW1, was in his manyatta near where the deceased had parked his lorry ready to load sacks of charcoal once the dealers were done with sealing/sewing the sacks. He stated that he was inside his tent (manyatta) when he heard screams about 10 metres away and when he went out to find out he found the accused standing with a knife with blood stains next to the deceased who was lying down. He stated that the accused ordered him to go back to his manyatta which he obliged.
51. PW2 and PW3 were more candid in there testimonies. PW2 also known as 'Mrefu' stated that he was with the deceased on the material date and that he had finished giving out sisal ropes to charcoal loaders to seal the charcoal sacks when he decided to go to a nearby kiosk to take a meal. He stated that he left the deceased taking a nap inside the lorry cabin. Before long he heard sounds of motorbike and then screams. When he heard the screams he came out and saw deceased running frantically calling him,

“Mrefu! Mrefu!, nimedungwa na Abdullahi”.

He said that the deceased fell down about 20 metres from the lorry and he rushed to rescue him. He found him with stab wounds and saw blood oozing from chest and the accused approached accompanied by one Isaak. PW2 stated that the accused then stabbed him on the back forcing him to run for his safety.



52. The evidence of PW2 was well corroborated by PW3. He stated that he was also ordering for food at a nearby makeshift kiosk when he heard screams and when he went out with PW2 he saw the deceased calling out loudly

“Mrefu! Mrefu! kimbieni mniokoe nimedungwa kisu na Abdullahi....”.

He then saw the deceased fall down bleeding and saw the accused assaulting Mrefu (PW2) who was close to the deceased. PW3 appeared to have sensed danger because he says he did not go near.

53. From the evidence of both PW2 and PW3, they heard sounds of a motorbike when they were inside the kiosk and it is likely that the motorbike might have dropped the accused and his accomplice known as Isaak. This is because no one saw them arrive at the scene but after hearing the screams from the deceased PW1, PW2 and PW3 all saw the accused in the company of Isaak. PW3 saw the accused arrive at the scene and dropped by a motorbike.

54. The 3 witnesses at the scene PW1, PW2 and PW3 saw the deceased running and raising his hands screaming that he had been stabbed by the accused who was following him with a blood stained sword also referred to as the knife by witnesses.

55. The evidence of PW1, PW2 and PW3 taken as a whole point to the accused person as the culprit. He was seen armed with a knife or sword which was blood stained and began attacking PW2 by stabbing him on the back and had he not swerved and taken off he would perhaps have met the same fate if he had not fled. From the circumstances explained by the witnesses including the supporting evidence by PW6 this court finds that inference drawn points only to the accused and no one else as the person who stabbed the deceased.

56. The evidence of PW6 – Victor Masila who was a colleague of the deceased was quite revealing with respect to the character of the accused and how he operated. PW6 a driver employed by the same employer – one Rhoda stated he knew the accused well and used to pay him to avoid being beaten, robbed or being harassed. PW5 stated that the accused was well known in the area and that he was troublesome and had committed crimes but kept dodging the police by running into the bush. PW3 stated that the accused used to collect illegal levies. This is what he said in his evidence in chief;

“Abdullahi (accused) used to collect money from lorries. He used to be paid Kshs.20/- per sack and used to get Kshs.2000/- per lorry..... I do not know what the money was for but the accused and his community used to claim that the place where the charcoal was collected was theirs and they should be paid.....if one failed to pay, he would be in trouble”.

57. It is clear from the above narrative that the accused person might had had beef with the deceased over payment of illegal fees. There was no evidence that the deceased had refused to comply but PW6 was clear in his evidence that he paid the accused Kshs.1000/- on the material date when he arrived at Inyali Centre and promised to pay the balance after loading. He stated that he let the deceased go and load his lorry because the charcoal he was to collect was ready and so he decided to wait. He did not see the accused leave but 3 hours after the deceased left he saw PW2 driving back at high speed and when he stopped he found him stabbed at the back and got report that the deceased had been stabbed and was lying dead at Nzunguni.

58. The evidence tendered by the prosecution when taken collectively paint the accused as a violent man who enforced illegal collection of fees through force. PW5 and PW6 were attacked on 1/12/2017 over the same issue of illegal payments. This court finds that from the evidence of PW1 and PW2 both of



who heard the deceased screaming that the accused had stabbed him and the fact that the accused was seen holding a blood stained knife to be significant and points to the accused person as the culprit.

59. It is now well settled as was observed in *Abanga Alias Onyangaov R (2020)KEHC 3570 KLR*) that where a case rests on circumstantial evidence, the evidence must satisfy the following criteria;
- i. The circumstances from which inference is drawn must be cogently and firmly established.
 - ii. Those circumstances should be of a definite tendency unnervingly pointing towards the guilt of the accused.
 - iii. The circumstances taken cumulatively, should form a claim 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.
60. The Court of Appeal in the case of *Ahamed Abolfathi Mohammed & Anor v Republic [2018] KECA 743 (KLR)*, reiterated the above criteria and added that the prosecution must establish that there are no other co-existing circumstances which would weaken or destroy the inference of guilt.
61. This court has considered the evidence placed before me and find the cause of death of the deceased has positively been linked to the accused. As held in *Musili Tulo v Republic [2014] KECA 412(KLR)* circumstantial evidence can be best evidence because it is evidence of surrounding circumstances which are capable of proving a proportion with the accuracy of mathematics. This court finds that the prosecution's case has established beyond any shadow of doubt that the accused person and no one else stabbed the deceased. That explains the screams he made mentioning the accused before he fell down with stab wounds inflicted by a blood stained sword the accused was seen holding next to the deceased.

(iii) Mens rea

62. The horrid pictures showing the body of deceased with injuries were tendered by PW6 (CIP Nicholas Mwanzia) as PExhibit 2(a) (b) and (c). The doctor noted the injuries in the post mortem report (PExhibit 8). There is no doubt about the intention of the person who inflicted those serious injuries. He was out to kill. PW2 ran in an attempt to rescue the deceased but got attacked viciously as well. Section 206 of the *Penal Code* provides as follows:-

Malice aforethought

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”.

This court finds that the evidence tendered by the prosecution clearly proved that the accused was ill-motivated when he carried out the vicious and fatal attack on the deceased. The element of mens rea and the other two elements as observed were established and proved beyond reasonable doubt.

In short this court finds that the prosecution has proved its case against the accused to the required standard in law. He murdered the deceased in a most cruel gruesome manner in an attempt to enforce



his illegal collection of fees from charcoal dealers. He is hereby found guilty as charged and is convicted under Section 306 of the *Criminal Procedure Code*.

DELIVERED, DATED AND SIGNED AT KITALE THIS 30TH DAY OF JUNE, 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Judgment delivered virtually

In the presence of;

Njehia for the State

Kariuki for the Accused

Mwata Court Assistant

