



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Ndungu (Criminal Case E007 of 2024)  
[2025] KEHC 10214 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10214 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL CASE E007 OF 2024**

**GL NZIOKA, J  
JUNE 30, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JAMES NDUNGU ..... ACCUSED**

**JUDGMENT**

1. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (Cap 63) Laws of Kenya. The particulars of the charge are that, on the 12<sup>th</sup> day of June, 2024, at Kambi Somali village in Gilgil Sub-County, within Nakuru, murdered Francis Ngige Mungai.
2. The charge was read out to the accused and he pleaded not guilty thereto. The prosecution case proceeded to full hearing. The prosecution called a total of nine (9) witnesses. It is the prosecution case that, on 12<sup>th</sup> June, 2024 at 6.00pm (PW1) Fred Wanjala Wasike was patrolling along Kenya Railway line when he saw someone lying at the railway line. Upon checking on the person, he realized that he was dead and was a body of a male person who had worn a jacket, trouser and gumboots. The police were notified, visited the scene and took the body to the mortuary.
3. As the investigations proceeded on, evidence was received from witnesses that the accused and deceased had disagreed over Ksh 100. According to (PW2) Grace Njoki Wanjiku, the accused's elder sister, she heard noise while asleep and went to establish what was happening. That she found the accused arguing with a customer, the deceased herein, over a sum of Ksh 100. That she took a cane and canned the accused as he was making noise and he left, while the deceased was left drinking alcohol.
4. Apparently, the deceased and the accused were at a local drinking place and were taking alcohol. (PW2) Grace Njoki further testified that, later on she learnt that the deceased had died and his body found at the railway line.



5. (PW3) Jane Wanjiru Nyambura also testified to the effect that on 12<sup>th</sup> June, 2024, she too was attracted to noise made by the accused who is her uncle. That he was causing fracas and was disagreed with the deceased over Kshs 100 which the accused was demanding from the deceased. That eventually, the accused left and the deceased remained drinking alcohol.
6. (PW4) Miriam Wambui also testified that, on 12<sup>th</sup> June, 2024, she was selling alcohol when Francis, the deceased, asked her to sell to him local beer. That after 30 minutes, the accused arrived and started asking the deceased for his Kshs 100. That the deceased asked the accused why he kept asking him for the money wherein the accused started a fracas and the sister Grace (PW2) intervened. That (PW2) Grace took a whip and beat the accused and he left. That later, she learnt that Francis had died.
7. Joseph Mwangi Wangari (PW5) also gave evidence similar to the evidence led by PW2, PW3 and PW4, to the effect that on the 12<sup>th</sup> June, 2024, he was drinking alcohol at Margaret Nyambura's place when the deceased bought alcohol and later the accused arrived at the place. That an argument arose between the accused and the deceased over Kshs. 100 and (PW2) Grace beat the accused and he left. That later he learnt the person the accused was arguing with had died.
8. (PW6) No. 239614 Inspector Henry Momanyi testified that he received a call from PW 1 Wasike that a dead body was at a feeder road and in the company of the Officer Commanding Station (OCS) and Directorate of Criminal Investigations Officer (DCIO), they visited the scene. That they found a body that had no physical injuries lying at the railway line facing upwards and took it to the mortuary. PW6 further stated that, at 1.00pm, a crowd of people took a suspect to the police station. That he interrogated the crowd but none was willing to record a statement. However, he placed the suspect in the cells for his own safety.
9. That, by the following day, no information had come in and he released the suspect and informed him to return to the station on 17<sup>th</sup> June, 2024. However, he did not return. In the meantime, the post mortem done revealed that the deceased died of a deep cut on the neck. The accused was then traced, arrested and charged.
10. At the close of the prosecution case, the accused was placed on his defence. He was informed of various ways and manner in which he could offer his defence. Initially, he indicated that he was going to testify on his own and not call any witness however, when defence hearing commenced, he decided to keep quiet.
11. At the close of the entire case, the parties relied entirely on the evidence on record without filing any submissions. I note that the offence the accused is charged with is the offence of murder provided for under Section 203 of the [Penal Code](#) as follows:

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
12. Pursuant thereof, the ingredients of the offence of murder are settled as stated by the Court of Appeal in the case of; Joseph Githua Njuguna vs Republic (2016) eKLR stated as follows: -

“ Under section 203 of the [Penal Code](#), any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. It is clear from this section that there are three elements which the prosecution must prove beyond reasonable doubt to secure a conviction for the offence of murder. These are: (a) the death of the deceased and the cause of that death; (b) that the appellant committed the unlawful act which caused the



death of the deceased; (c) and that the appellant had harboured malice aforethought. See Milton Kabulit z& 4 others v Republic [2015] eKLR.”

13. Based on the foregoing provisions of the *Penal Code* and the Court of Appeal decision, the ingredients of the offence of murder can be summarized as follows; a) occurrence and cause of death, b) whether the death was lawful or unlawful, c) proof of commission of the offence by the accused and d) malice aforethought.
14. In the instant matter I have considered the evidence and find as regards death, it is evidence that the deceased was found dead as stated herein by (PW1) Fred Wanjala and confirmed by (PW7) Peter Ndungi his brother and (PW8) Dr. Titus Ngulungu the pathologist who performed the post mortem procedure on the deceased’s body. The issue of death is thus resolved.
15. The next issue is the cause of death. In this regard Dr. Titus Ngulungu (PW8) clearly testified and produced a post mortem report where he stated that, the deceased sustained bruises on the right forehead measuring 15mm, swelling on the left temporal of the head measuring 15mm in diameter, bruises on the left shoulder hematoma was noted thereon and right hand consistent with blunt trauma.
16. That internally, the deceased had hematoma on the back of the neck and on the left side of the head. Further the lungs had collapsed, and sub-scalp bruising extending to the medulla and subluxation on C1–C2. Consequently, the doctor arrived at the conclusion that the cause of death was medullary injury due to blunt object trauma to the posterior neck.
17. In cross-examination, the doctor stated that the injuries were not consistent with a fall. That they were as a result of direct trauma to the affected area. Further they were too severe to have been occasioned by a fall and were inflicted by use of a blunt object. Consequently, the cause of death is thus well established.
18. The next crucial issue to determine is whether it is the accused who committed the offence and whether he had malice afore thought. From the outset, it is evident that there is no direct evidence to the occurrence of the offence. None of the witnesses who testified saw the accused kill the deceased. As such, the case rests purely on circumstantial evidence.
19. The law on circumstantial evidence is settled. In the case of Ahamad Abolfathi Mohammed and Another v Republic [2018] e KLR, the Court of Appeal stated as follows: -

“However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in R v Taylor, Weaver and Donovan [1928] Cr. App. R 21: -

“It has been said that the evidence against the Applicant is circumstantial. So, it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.” (emphasis mine)

20. The parameters for admission of circumstantial evidence were well settled in Rex vs. Kipkerring Arap Koske & 2 others [1949] EACA 135 as follows;

“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.”

See also *Sawe versus Republic* [2003] KLR 354, *Musili versus Republic* CRA No.30 of 2013 (UR) and *Abanga Alias Onyango versus Republic* CRA. No. 32 of 1990 (UR)).

21. In summation, based on the afore case law, it is settled that, before any conviction is based on circumstantial evidence, that evidence must be adequate to prove the case beyond reasonable doubt.
22. In that regard, the court will admit circumstantial evidence if it meets the following criteria: -
  - a. The evidence is logically connected to the case.
  - b. The evidence must prove or disapprove a fact relevant to the case.
  - c. The evidence should be reliable, trustworthy with minimal chance of falsehood.
  - d. Its potential to influence a decision should not outweigh the probative value.
  - e. The evidence should not be hearsay
23. Pursuant to the aforesaid and taking into account the circumstances of this case, I note that the witnesses who testified as PW2, PW3, PW4 and PW5 stated that, on the material date, when the deceased died he had been involved in a fracas, argument and/or disagreement with the accused. That, the accused was demanding from the deceased a sum of Ksh. 100 which he owed him. That it took (PW2) Grace, the accused’s sister, to whip or beat him and sent him away. The witnesses stated that the accused was making noise and it is the noise that attracted them to the scene. That, when the accused left the deceased was left drinking alcohol. It suffices to note, at this stage, that the accused by opting to keep quiet has not rebutted the evidence of these witnesses.
24. In addition, it is in evidence that the deceased eventually left the place they were drinking alcohol and was soon thereafter found dead. As already stated, the pathologist (PW8) has clearly stated that the deceased died due to a blunt injury on the neck.
25. The question is, who occasioned the fatal blow? Is it too farfetched to attribute the infliction of the blunt injury on the deceased to the accused who had just confronted the deceased demanding to be paid the Kshs 100 the deceased owed him? I don’t think so. All the circumstance of the case led to only one conclusion, that the only person who would have killed the deceased is the accused.
26. Similarly, evidence of (PW6) Inspector Momanyi the Investigating Officer is that, after the accused was arrested and released to return to the police station, he did not do so. He had to be re-arrested again before being charged. Again, against all that evidence, the accused opted to keep quiet. If he was not involved in the commission of the offence, why didn’t he return to the station as directed?
27. The final issue to determine is whether the accused had malice aforethought before committing the offence. The evidence of PW2, PW3, PW4 and PW5 answers this question. All these witnesses were consistent in their respective testimony that the accused was demanding that the deceased pay him Ksh 100 he owed him. In fact, had the accused’s sister (PW2) not chased him away, most likely the argument between the deceased and accused would not have ended. Obviously the accused must have been on a revenge mission to inflict the fatal injury upon the deceased for not paying him Ksh 100 he owed him.
28. More evidently, (PW4) Miriam stated that when the accused asked the deceased of the Ksh 100, the deceased replied “what was this Ksh 100 the accused kept asking for”. This evidence reveals that, it was



not the first time the accused had asked for the money. It is therefore the finding of this court that, in the absence of contrary evidence by the accused, the accused had malice aforethought in committing the offence.

29. The upshot of the aforesaid is that, the accused is guilty as charged and I accordingly convict him.

30. It is so ordered.

**DATED, DELIVERED, SIGNED ON THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Ms Chepkonga for the State

Mr Lumasai for Karanja for the accused

Ms Hannah – Court Assistant

