



REPUBLIC OF KENYA



**Republic v Barkwang (Criminal Case 42 of 2023)
[2025] KEHC 9119 (KLR) (Crim) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE 42 OF 2023**

KW KIARIE, J

JUNE 27, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER YATICH BARKWANG ACCUSED

JUDGMENT

1. Peter Yatich Barkwang is charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of the offence are that on the 26th day of May 2021, at Manguo sub-location, in Nyahururu South Sub-County of Laikipia County, murdered Ann Wanja.
3. The deceased and the accused were cohabiting. Some of the friends of the deceased went to check on her after failing to reach her or the accused on the phone. They decided to go and check on her. At the door, which was locked, they were met by a foul smell. They alerted the police and the landlord. When the door was forced open, the body of the deceased was found under the bed. A note recovered in the house linked the accused to her death.
4. In his defence, Peter Yatich Barkwang, the accused, denied any involvement in the offence and pleaded an alibi.
5. The issues to be determined are:
 - a) Whether the accused was at the place of the offence at the time when the offence was committed;
 - b) Whether the accused was involved in the death of the deceased; and



- c) Whether the offence of murder was proven against the accused.
6. Lucy Njeri Ngige (PW3) was a friend of the deceased. Her evidence was that on 21st May 2021, she attempted to call the deceased several times on the phone, but the deceased was unavailable. She then called the accused, the deceased's husband, but he did not answer her calls. She asked her sister to accompany her to check on the deceased. They were met with a foul smell when they reached her door, and the door was locked. They enlisted the help of the landlord, and the police were alerted. When the door was forced open, they discovered the body of the deceased under the bed.
 7. PC Josephat Lowana (PW6) was one of the officers involved in breaking down the door of the house where the deceased's body was discovered. This occurred after the landlady (PW4) had permitted them to enter the property. The two witnesses testified about the recovery of the deceased's body from underneath the bed. PW6 added that he had found a suicide note indicating that the deceased had committed suicide.
 8. Kiplagat Kimaywa (PW1) testified that when he examined the suicide note and the specimen handwriting obtained from the accused, he concluded that the same author was responsible for both.
 9. Peter Yatich Barkwang, the accused, contended that he relocated from where he was staying with the deceased on the 19th day of May 2021. He was therefore stating that when the deceased passed away, he was not present at the scene of the crime. The Court of Appeal in the case of *Kiarie v Republic* [1984] KLR, held:

An alibi raises a specific defence, and an accused person who puts forward an alibi as an answer to a charge does not, in law, thereby assume any burden of proving that answer, and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.

10. The forged suicide note written by the accused demonstrates that his alibi is false.
11. The evidence against the accused is circumstantial. In the case of *Mohamed & 3 Others v Republic* [2005] 1KLR 722, Osiemo, Judge, restated what is circumstantial evidence as follows:

“Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.”

12. The forged suicide note leaves no doubt in my mind that the accused caused the death of the deceased herein.
13. To secure a conviction based on the evidence on record, the prosecution must establish the presence of malice aforethought. In *Black's Law Dictionary*, 10th Edition, malice aforethought is defined as:

“The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called “abandoned and malignant heart”), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).”



14. Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:

“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.”

15. We may not know what transpired between the accused and the deceased, leading to her death. No evidence was presented to establish malice aforethought. I conclude that the prosecution has not established the offence of murder against the accused person. However, the prosecution has demonstrated beyond any reasonable doubt the lesser offence of manslaughter. I therefore reduce the charge of murder to that of manslaughter. I acquit the accused of the charge of murder. I find him guilty and convict him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.

DELIVERED AND SIGNED AT NYANDARUA THIS 27TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE

