



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Kikwai (Criminal Case 4 of 2019)  
[2025] KEHC 11869 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11869 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL CASE 4 OF 2019  
CM KARIUKI, J  
JULY 31, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**PAUL KIKWAI ..... ACCUSED**

**JUDGMENT**

**Introduction**

1. The accused, Peter Kikwai, is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 9th day of February 2019 at Chepkubei village within Narok County, the accused unlawfully murdered one Nicholas Koross.
2. He denied the charge, and the matter proceeded to a full trial. The prosecution called a total of eight witnesses. The accused gave an unsworn defence and did not call any witnesses.

**Summary of Prosecution Evidence**

3. PW1, Irene Langat, a resident of Chepkutbei, testified that on 9th February 2019, she was at her home, where she sells chang'aa. At around 11:00 a.m., the deceased, Nicholas, and one Robert came to her house. They requested her to charge a cellphone and asked for chang'aa on credit, which she agreed to. They consumed chang'aa worth Kshs. 250, taking five cups at Kshs. 50 each.
4. Later that day, at about 3:00 p.m., the deceased left, saying he was going to fetch money to settle the debt, leaving Robert behind. In the evening, while PW1 and her husband were herding cattle near their farm, two other men, Paul (the accused) and Wesley, came from their shamba and requested chang'aa. PW1 accompanied them back to her house and served them.
5. At around 5:00 p.m., the deceased returned as promised. He paid her Kshs. 300 and instructed her to retain the Kshs. 50 change, indicating he would buy more chang'aa later. She returned his phone,



- which had been charging. Meanwhile, Paul also paid Kshs. 200 for chang'aa, and she gave him Kshs. 150 in change. The deceased, who was present, saw Paul pocketing the change and demanded Kshs. 50 from him, claiming it was owed. Paul replied that the money was for the posho mill.
6. Shortly thereafter, Paul left the house, followed by the deceased. The deceased held onto Paul's shirt and punched him in the face. PW1 then called her husband, Jackson Langat, who arrived and separated the two. He escorted Paul toward the road leading to his home, and PW1 handed Paul his jembe. Robert, on the other hand, escorted the deceased in a different direction.
  7. A short while later, the deceased returned, though not to PW1's home, screaming loudly. Robert soon came running to her house and reported that someone he had been with had been cut. PW1 and her husband rushed to the scene, where they found schoolchildren, approximately 12 years old, screaming upon seeing the deceased lying on the ground. The time was approximately 7:00 p.m. PW1's husband apprehended Paul, and later the village elder, Johnstone Langat, arrived and tied Paul with a rope before taking him to his home. The deceased, who had a visible head injury, was taken to the hospital by members of the public.
  8. PW1 testified that at the time, visibility was not very poor as it was dusk, and with the aid of her husband's torch, she was able to identify the deceased. She described the deceased as having worn a bluish jacket, a whitish-black tie, and a hat, which she later identified in court when shown the item marked MFI-1. She also confirmed she could identify the jembe marked MFI-2. She pointed out the accused in court and stated that she had known him since childhood. She asserted that she bore no grudge against either the accused or the deceased and had known the deceased for about two years, although he was not from her clan.
  9. In cross-examination, PW1 confirmed that she was indeed selling chang'aa at her home on the material date and that she wrote her statement at around 4:00 p.m. She admitted to selling chang'aa to several men that day, including the deceased, Robert, Paul, Wesley, Richard, and Richard Arap Yegon. She reiterated that the deceased was the first to assault Paul and that the altercation arose from the deceased's demand for money from Paul. She stated that Paul did not cause trouble and had only come to drink chang'aa. She did not witness what transpired after the two men were separated, and only learned from Robert that the person he was with had been cut. At the scene, she found some schoolchildren and their mother, although the mother did not record any statement. She was not certain whether Robert had returned to the scene.
  10. PW2, Jackson Langat, a resident of Chepkutbei and a farmer, testified that on 9th February 2019, he was tending to his cattle in the shamba when his wife, Irene Langat (PW1), called him to the gate. Upon arrival at their compound, he found the deceased, Nicholas, and the accused, Paul, engaged in a quarrel. He intervened by calling Paul aside and instructing him to stop. He then led Paul away towards the road while Nicholas was taken in a different direction by Wesley and Robert.
  11. After escorting Paul, PW2 returned home. Sometime later, his wife went to milk the cows. Shortly thereafter, Robert came running and informed her that Nicholas had been cut. PW2 and his wife followed the direction of the screams to the scene.
  12. At the scene, they found Nicholas lying on the ground and bleeding from the head. Paul was also present, having been restrained with ropes by Wesley. PW2 and others moved Nicholas to the roadside. The village elder, Johnstone Langat, subsequently arrived and escorted Paul to the Administration Police (AP) post at Chemuroleter.



13. PW2 stated that the following day, they received information that Nicholas had died. Police officers came to the scene that morning, took notes, and recovered a jembe that had been left there. PW2 identified the jembe shown in court, marked PMFI-2, as the one he saw at the scene.
14. He testified that both Paul and Nicholas had been drinking alcohol at his home earlier that day. He reiterated that he had quickly separated them when the quarrel started and led Paul away. He stated that he had no familial relation with Paul, but had known him since childhood. He also confirmed that he had never had any dispute with Paul.
15. In cross-examination, PW2 confirmed that his wife phoned him at around 6:00 p.m. to inform him that Paul and Nicholas were quarrelling over Kshs. 50/=. He understood the money in question belonged to Paul. When he arrived, the two had already been separated and were no longer fighting. He acknowledged that there was alcohol being consumed at his home at the time.
16. He was called again approximately 25 minutes later by Robert, who reported that Nicholas had been cut. However, Robert did not say who had cut him. He stated that the scene was about two acres away from where he had led Paul. Upon arriving at the scene, he found both children and adults present, and Paul had already been restrained.
17. PW2 confirmed that nightfall was setting in by the time he arrived at the scene. He did not witness Paul cutting Nicholas and only saw the jembe at the scene the following morning, which was later collected by the village elder.
18. There was no re-examination.
19. PW3, Robert Langat, a farmer residing in Ilmotiok, testified that on 9th February 2019, he was at the home of Jackson Langat (PW2), where he had been drinking alcohol with Nicholas, the deceased. He stated that he had been in the company of the deceased and his mother from morning until lunchtime, after which the deceased's mother left. The deceased also left to fetch more money and later returned.
20. At around 6:00 p.m., Wesley and Paul (the accused) arrived at Jackson's home. Shortly thereafter, a quarrel arose between Paul and the deceased. The two began to push each other and moved outside the house during the scuffle. The deceased was holding onto Paul's shirt. Jackson and Wesley intervened and separated them. Jackson took Paul toward the road, while Wesley escorted the deceased in a different direction.
21. The deceased then called PW3 to accompany him. As they were walking, PW3 saw Paul running after them. Paul called out to Nicholas to stop and wait for him. When Paul caught up with them, he raised a jembe and struck the deceased on the head with it. PW3 testified that he witnessed the attack and immediately ran back to Jackson's home, where he found Jackson's wife milking a cow. He informed her of what had occurred. Many people learned of the incident and went to the scene, though PW3 did not return to the scene himself. He stated that the incident took place about 200 meters from Jackson's home.
22. PW3 stated that he had no familial relationship with either the deceased or the accused. He had no prior quarrel with Paul, whom he knew from working together in the past. He described the jembe used in the attack as relatively new and identified it in court as the one marked PMFI-2. He stated that the scene of the incident was about two kilometers from Paul's home and that Paul had come from the shamba, hence had the jembe with him. He recalled that the deceased was wearing a jacket with red stripes, though he could not remember the rest of his attire. He recorded his statement at Ololulunga Police Station the following day. He identified Paul in the dock as the person who had committed the assault.



23. In cross-examination by Ms. Nchoe, PW3 confirmed that he and the deceased were drinking together when the quarrel broke out, but he did not know what caused it. He observed the deceased holding Paul's shirt as the two pushed each other out of the house. He reiterated that Paul had just arrived and had not consumed alcohol like the rest of them. He confirmed that the quarrel began almost immediately after Paul arrived.
24. There was no re-examination.
25. PW4, Johnstone Langat, testified that he is the village elder of Chepkutbei. On the evening of 9th February 2019, while at home listening to his radio, he was alerted by his child about screams coming from nearby. He took his torch and ran toward the direction of the screams.
26. Upon arrival at the scene, he found Jackson (PW2) and Wesley restraining the accused, Paul. He shone his torch and observed a person—later identified as Nicholas (the deceased)—lying on the ground and bleeding. He also saw a jembe lying near the injured person and a cow tethered at the scene. Concerned about the growing crowd and the potential for mob justice, he used the rope from the cow to tie Paul and took him away to prevent a public lynching.
27. PW4 testified that he called for a vehicle to transport the injured person to the hospital. He took Paul to his home while waiting for the police to respond. When police from Milelo Police Station delayed in responding, he contacted another village elder, Ngelecho, and together they took Paul to the Administration Police (AP) Post at Chemwokter.
28. The following morning, he received a call informing him that the injured person had died. He went back to the scene and recovered a jembe and a cap near the location where the body had lain. He noted that the jembe was slightly removed from the exact spot where the body had been. He identified the cap and the jembe shown in court as the same items he recovered, marked PMFI-1 and PMFI-2, respectively. He stated that he took both items to the police station.
29. PW4 further testified that Nicholas's body was moved from a feeder road to the main road in order to facilitate transport to the hospital. He confirmed that he knew both Paul and Nicholas well, as they lived near him.
30. In cross-examination, PW4 confirmed that when he arrived at the scene, Paul was already being held by Jackson and Wesley. He reiterated that he took Paul to his house to prevent mob justice. He noted that Paul appeared to have taken alcohol and was heard saying, "The person I injured should not die," which PW4 described as a form of prayer.
31. There was no re-examination.
32. PW5, Wesley Yegon, a manual laborer residing in Moroto, testified that on 9th February 2019, he was working with the accused, Paul, weeding a maize plantation belonging to one Mercy. They completed their work around 2:30 p.m., and were jointly paid Kshs. 200/=, which they shared equally.
33. Later that day, at about 5:00 p.m., he and Paul went to the home of Jackson to drink traditional brew. While there, an argument erupted between Paul and the deceased, Nicholas, over a debt. PW5 stated that Paul owed Nicholas money—specifically Kshs. 50/=—and this led to a quarrel that escalated into a physical confrontation. At that point, Jackson led Paul away in one direction while PW5 led Nicholas in another to diffuse the situation. He noted that neither man was armed at the time.
34. PW5 stated that Jackson had taken Paul's jembe and placed it inside the house during the confrontation. After the two were separated, Paul asked Jackson to return his jembe so he could leave, and Jackson complied. Meanwhile, PW5 resumed drinking inside the house. He had taken three cups



- of brew, and Paul had taken two. He emphasized that neither of them was drunk, opining that three cups could not cause intoxication.
35. While still inside, he heard screams coming from outside and ran toward the source. He arrived at the scene to find Nicholas lying on the ground, bleeding from a cut on his head. He stated that Paul was armed with a jembe and appeared poised to strike Nicholas a second time. PW5 intervened and restrained Paul with the help of Jackson. They tied Paul with a rope to prevent further violence. PW5 confirmed that Nicholas was still alive at that point.
  36. The village elder, Johnstone Langat (PW4), also arrived shortly thereafter and took custody of Paul, whom he later escorted to the AP Post at Chemwokter. Nicholas was transported to Longisa Hospital by a man named William. PW5 remained at home. He later learned that Nicholas was referred to Eldoret for specialized treatment and died there the following day.
  37. PW5 identified the jembe presented in court as PMFI 2, confirming it was the same jembe Paul had used earlier in the day while working at Mercy's farm. He described it as a new jembe and stated it was used for the first time that day. He reiterated that Paul had retrieved it from Jackson's house after the earlier fight had been broken up.
  38. In cross-examination, PW5 confirmed he and Paul had been paid for their labor and had gone together to Jackson's home to drink. He maintained that Nicholas started the physical altercation after a verbal quarrel. He also explained that he had sold his own jembe to a man named Richard Lalkanen, who was present at the drinking den but did not bring the jembe with him. PW5 reiterated that Paul retrieved his jembe after requesting it from Jackson.
  39. In re-examination, he clarified that Paul had asked for his jembe so that he could go home. He also reaffirmed that the dispute arose over a Kshs. 50/= debt that Nicholas was demanding from Paul.
  40. PW6, Stephen Ngeleche, a resident of Kaprent and a cattle trader, testified that on the evening of 9th February 2019 at around 8.00 p.m., he received a phone call from the village elder, Johnstone Langat, informing him that his son had assaulted another person. Upon receiving the call, he rushed to the scene. By the time he arrived, the injured individual, one Nicholas, had already been placed in a vehicle for transportation to the hospital. Although he did not see Nicholas himself, he confirmed knowing him and stated that they were not related.
  41. At the scene, the village elder showed him the assailant, who had been tied up and was outside the elder's house. PW6 identified the assailant as Paul (referred to as Paulo), who is a close relative, the son of his deceased brother. PW6 did not observe any weapons at the scene.
  42. Together with the village elder, he escorted Paul to the AP Camp. He later learned that Nicholas had been taken to Longisa Hospital and was subsequently referred to Eldoret for further treatment. At around midnight, he received a phone call informing him of the referral, and at approximately 4.00 a.m., he was informed by his son Richard that Nicholas had succumbed to his injuries. PW6 stated that he was not aware of any prior disagreements between Paul and Nicholas. He positively identified the accused in the dock as Paul.
  43. PW7, Peter Towett, a farmer residing in Kaprant, testified that on 18th February 2019, he attended the post-mortem examination of the deceased, Nicholas Koross, who was his nephew, being the son of his brother. He stated that he identified the body for the purposes of the post-mortem. He observed that the deceased had a cut on the skull. A report was prepared by the doctor who also signed it, although PW7 did not read the contents of the report. He confirmed that Nicholas had died on 10th February 2019 and that he was informed of the death. He also confirmed that he was aware the deceased had been cut. PW7 was not cross-examined.



44. PW8, No. 89123 Police Constable Paul Kabuchi, is a police officer stationed at the Directorate of Criminal Investigations (DCI), Narok South, and was the investigating officer in this matter. He testified that on 10th February 2019, he was informed by his superior that a murder had occurred at Chepkubei. He proceeded to Ololulunga Police Station, where he found that the suspect had already been brought in by the village elder, Johnson Langat, and Administration Police (AP) officers. He re-arrested the suspect after gathering preliminary facts from the village elder and placed him in police cells.
45. PW8 then visited the scene of the incident at a homestead in Chepkubei, in the company of other officers and the village elder. The scene was described as a chang'aa (illicit brew) den operated by Irene Langat and her husband, Jackson Langat. The couple informed the officer that the deceased, Nicholas Koross, had spent most of the day drinking chang'aa at their premises. Later in the evening, the accused, accompanied by a friend named Wesley, arrived at the den carrying a jembe, suggesting they had come from the farm.
46. According to the narrative provided to PW8, the accused paid for chang'aa, and later a dispute arose when the deceased demanded a debt of Kshs. 50/= from the accused. This led to a commotion, and the two were separated—Jackson led the accused away while Wesley led the deceased in the opposite direction. Moments later, a scream was heard from where the deceased had gone. Wesley rushed to the scene and found the deceased lying on the ground with blood oozing from his head, while the accused was in the act of lifting a jembe, seemingly intending to strike the deceased again. Wesley restrained the accused. The village elder responded and arrested the accused at the scene.
47. The deceased was taken to Longisa Hospital and later referred to Moi Teaching and Referral Hospital in Eldoret, where he succumbed to his injuries. On 18th February 2019, PW8 attended the post-mortem at Moi Referral Hospital, during which the post-mortem report (P. Exh. 3) was prepared and later produced in court. He also received from the village elder a jembe (P. Exh. 2), believed to be the murder weapon, and a cap (P. Exh. 1) identified as belonging to the deceased. He noted that the jembe had traces of mud, possibly due to rainfall, but no visible bloodstains.
48. In cross-examination, PW8 confirmed that the altercation arose from the Kshs. 50/= debt, and that the accused had claimed he intended to use his money at the posho mill. He further confirmed that Wesley did not witness the initial blow but arrived shortly after to find the accused in the act of attempting a second strike. PW8 clarified that the jembe and cap were not subjected to forensic analysis as their ownership and use during the incident were sufficiently confirmed through eyewitness accounts and prevailing circumstances.
49. In re-examination, he stated that as an experienced investigator, he deemed further examination of the jembe and cap unnecessary, given the direct evidence and corroborating witness testimonies.

### **Defence case**

50. The accused, Peter Kikwai, gave an unsworn statement in Kipsigis through an interpreter. He stated that on 9th February 2019, he spent the day tilling land belonging to one Mercy, together with a person named Wesley Yegon. At the end of the day, each of them was paid Kshs. 200. Thereafter, they proceeded to the home of one Irene Langat to partake of alcohol. The accused stated that they were each served one cup of chang'aa and continued drinking. He observed that Wesley sold his jembe to Richard Laltaget for Kshs. 250 and used the money to buy more alcohol.
51. While at Irene's place, the deceased, Nicholas Koross, joined them. At some point, Irene demanded payment of a Kshs. 50 debt from the accused, which he settled with Kshs. 200 and was given back



Kshs. 150 as change. The deceased then demanded that the accused buy him alcohol, but the accused declined, stating he needed the money to buy food for his children. The deceased became aggressive and allegedly grabbed the accused by the shirt and hit him with a blow to the head. A struggle ensued, and the two fell down. According to the accused, Robert and Wesley intervened to restrain the deceased.

52. The accused then asked Irene for his jembe and began to leave. As he walked away, he heard the deceased wailing and later saw him chasing after him with a rungu. The accused claimed that the deceased attempted to hit him, but he defended himself with the jembe. In the process, the rungu was broken. As the deceased reached for the jembe, they both slipped and fell due to the slope of the terrain. While they struggled over the jembe, the deceased was accidentally cut by it. School children passing by screamed upon witnessing the altercation, prompting people to rush to the scene. The deceased was taken to the hospital, while the accused was taken to the police station.

### **Directions of the court**

53. Both parties to file written submissions. None has filed.

### **Analysis And Determination.**

54. The issues for determination are:
- i. Whether the death of the deceased occurred, and the cause of death;
  - ii. Whether the accused inflicted the fatal injury;
  - iii. Whether the accused had the necessary mens rea for murder;
  - iv. Whether the accused acted in self-defense or provocation.
  - v. Whether the offence disclosed is murder or a lesser offence.

### **Whether the death occurred and the cause**

55. There is no dispute that Nicholas Koross died on 10th February 2019. The post-mortem (P. Exh. 3) established the cause of death as severe head injury due to blunt force trauma. The nature and location of the injury were consistent with a forceful blow using a blunt object such as a jembe. It is not in dispute that the deceased died as a result of a cut wound. Several witnesses identified the jembe as the weapon used, and it was recovered at the scene.

### **Whether the accused inflicted the injury**

56. The evidence of PW2, Wesley, is pivotal. He witnessed the deceased lying injured and the accused attempting to strike him again with a jembe. The jembe (P. Exh. 2) was recovered at the scene and handed over by the village elder. The accused admitted being at the scene, being involved in a fight, and being in possession of the jembe. His defence that the injury was accidental during a struggle is not supported by the eyewitness account of Wesley, who restrained him while he attempted a second blow. This evidence was cogent and credible.
57. The accused was positively identified by several prosecution witnesses, including PW1, PW2, PW4, and PW5. His presence at the scene and his interaction with the deceased are not in doubt. The only issue is whether he unlawfully and with malice aforethought caused the death of the deceased.

### **Whether the accused had malice aforethought**

58. Under Section 206 of the Penal Code, malice aforethought includes:



- i. Intention to cause death or grievous harm;
  - ii. Knowledge that the act will probably cause death or grievous harm;
  - iii. Intent to commit a felony.
59. The circumstances as narrated show that the accused acted out of sudden provocation arising from a demand for Kshs. 50. The evidence suggests a spontaneous escalation into violence rather than a premeditated intention to kill. The use of a jembe, a lethal object, and the targeting of the head region support a finding that the accused intended to cause grievous harm. However, the genesis of the incident – a drunken quarrel, and the prior separation of the parties – reduces the probability of malice aforethought as contemplated under Section 206.

### **Defence of Self-defence**

60. For self-defence to be upheld under Section 17 of the Penal Code and common law principles, the force used must be necessary and proportionate. The accused claimed he was attacked by the deceased with a rungu and acted in defence. However, there is no evidence that the deceased was armed. No rungu was recovered or produced. More importantly, PW2 found the accused attempting a second blow on an already downed and bleeding man. This action exceeds the bounds of reasonable self-defence. Therefore, the defence fails.

### **Defence of Provocation**

61. Under Section 207 of the Penal Code, provocation may reduce the offence of murder to manslaughter if the accused acted in the heat of passion caused by sudden provocation. In this case, the accused was provoked by the deceased's persistent demands for alcohol and a physical assault (holding by the shirt and blowing). Witnesses confirmed the accused and deceased were both intoxicated, and the altercation arose spontaneously. The law in such circumstances recognizes that the accused may not have had the requisite mens rea for murder.
62. In *Republic vs Chumba (Criminal Case E080 of 2021) [2023] KEHC 387 (KLR) (25 January 2023)* (Judgment), the deceased picked a quarrel with the accused person that escalated into a fight that led to his untimely demise. The deceased died due to a stab wound to his stomach that caused excessive bleeding. The court, while sentencing the accused, noted that the accused did not have a premeditated intention of killing the deceased and sentenced him to 3 years' imprisonment.

### **Conclusion and Findings**

63. After evaluating the evidence, the Court finds that the prosecution proved beyond reasonable doubt that the accused caused the death of Nicholas Koross. However, the prosecution did not establish malice aforethought. The accused was provoked and acted in the heat of passion during a drunken quarrel.
64. The prosecution did not produce evidence suggesting that the accused planned the attack or harboured any prior ill motive against the deceased. Several witnesses (PW1, PW2, PW6) testified that the accused and the deceased were acquaintances and there was no history of prior quarrels.
65. The court is guided by the provisions of Section 203 of the Penal Code, which defines murder as causing the death of another by an unlawful act or omission with malice aforethought. Malice aforethought is defined under Section 206 and includes intent to cause death or grievous harm.



66. From the totality of evidence, it is clear that the confrontation was spontaneous, fuelled by intoxication, and escalated quickly. The accused was not armed in advance, and the fatal injury appears to have been inflicted in the heat of the moment during a physical struggle.
67. The court finds that malice aforethought was not established beyond reasonable doubt. However, the accused's actions in using a potentially lethal weapon (a jembe) during a confrontation were unlawful and excessive in the circumstances, especially if he was indeed acting in self-defence.
68. Accordingly, the offence of murder is not established. I find the accused guilty of the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

Verdict

- i. Accordingly, I find that the prosecution has proved its case not for the offence of murder, but for the lesser and cognate offence of manslaughter. I hereby find the accused guilty of manslaughter and convict him accordingly under Section 205 of the Penal Code. The accused, Peter Kikwai, is hereby convicted of the offence of manslaughter.
- ii. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS  
31<sup>ST</sup> DAY OF JULY, 2025**

.....

**CHARLES KARIUKI**

**JUDGE**

