



**Republic v Muhati (Criminal Case E020 of 2022)
[2025] KEHC 11305 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11305 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE E020 OF 2022**

**RK LIMO, J
JULY 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SYLVESTER MUHATI ACCUSED

JUDGMENT

1. Sylvester Muhati, 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 7/8/2022 at Shanty Village, Matisi Sub-location, Trans-Nzoia West within Trans-Nzoia County he murdered Peter Ondele (deceased).
2. The accused denied committing the offence and the prosecution has presented six witnesses to prove their case. The offence occurred during a raid in the Shanty village by the local administration who were trying to deal with the menace of illicit alcohol in the area. The prosecution's case is mainly hinged on the dying declaration by the deceased.
3. Dr. Alex Wanyonyi Barasa (PW1) the doctor who performed post mortem on the body of the deceased testified that he did the autopsy on 15/8/22 and observed the following external injuries;
 - i. A penetrating stab wound around 6th and 7th ribs, measuring 6cm in length.
 - ii. Another stab wound on the left temporal region about 6cm long.
 - iii. A penetrating wound on detroid region abut 6cm.
4. Internally the doctor made the following observations;
 - a. Collapsed right lung through stab wound.
 - b. Punctured right diaphragm with haemothorax.



- c. Right ventricle ruptured.
- d. Right vein punctured around 6cm.
5. The doctor concluded that the cause of death was severe internal and external hemorrhage from penetrating stab wound secondary to assault.
6. He stated that he issued a Burial Permit No.0316380 and tendered the Post Mortem report as Pexhibit1.
7. Moses Wafula Wamalwa (PW2) the Area Assistant Chef Matisi Sub-location testified on 7/8/2022 at around 7.30pm he mobilized village elders to deal with the illicit alcohol dealers in the area. He stated that he was with the accused Sylvester Muhati, Geoffrey Wamalwa, John Situma and Reuben Simiyu.
8. He stated that they proceeded to Shanty village and divided themselves so that they could raid various homes at once. He stated that he went with Geoffrey Wamalwa and that shortly Reuben Simiyu called him telling him that there were threats from those who are indulging in illicit alcohol.
9. He stated that 5 minutes later the accused called and told him that Reuben had been attacked and was being killed forcing him to rush to the area. He stated that as he rushed to the scene, he met a boda boda carrying an injured person and that the injured person was bleeding and did not talk to him. He stated that the lady who was holding the injured victim told him that the accused had injured him.
10. He stated that when he asked the accused what had happened, he kept quiet. He stated that the accused was holding a piece of iron in his hand and when he asked why he was holding it, he reportedly told him that he had disarmed the injured person.
11. He stated that he allowed the injured person to be taken to hospital as he proceeded to rescue Reuben who was being attacked.
12. He stated that he recovered the metallic rod the accused had and told him and Reuben to go for treatment as he headed home. He stated that 2 days later he learnt that the person who had been injured died adding that the accused was arrested when he went to record his statement.
13. He confirmed under cross-examination that Shanty Area was known for illicit brews and bhang. He stated that the accused was part of his team that raided the area and was therefore not a popular figure in the area. He further stated that he conducted the raid without involving the police.
14. Suleiman Zubedi (PW3) a boda boda rider from Shanty Area testified that on 7/8/22 at around 7.30pm as he headed home within shanty Area he met people running saying that the Area Chief had come with his officers and were arresting people. He stated that he also decided to run away but after a short distance, he went back for his motorbike and went to the stage to join his colleagues.
15. He stated that after around 10 minutes a person was brought to him injured and asked him to carry the person to hospital. He stated that the person was bleeding and was accompanied by a lady and that as he was about to leave for hospital, the Area Chief (PW2) arrived and stopped him but when he noticed that he was carrying an injured person, he allowed him to proceed and take him to hospital. He stated that he took the injured to Kitale County Referral Hospital where he was admitted for treatment.
16. He stated that he noted injuries on the head, neck, chest and stomach. He recalled that while on the way to hospital the injured man recognized him and told him that the accused had injured him. He said;

“Muhati ameniua”.



He stated that he later went home and the next day he was informed that the person had died.

17. The witness stated that he knew the accused well as he was one of the vigilante for the Chief and that he is now a police officer. He stated that he is feared in Shanty Area as he was known to beat up people adding that the Shanty Area is infamous for illicit alcohol and drugs. He insisted that the deceased told him that the accused caused the injuries from which he was bleeding profusely.
18. Geoffrey Wamalwa Wanyonyi (PW4) another boda boda operator from Shanty Area testified that he was a member of Nyumba Kumi in Matisi and that on 7/8/2022 at around 7.30pm he had accompanied the Area Chief in an operation to flush out illicit brewers at Shanty Area. He stated that he was with the accused, John Situma, and Reuben as they accompanied the Chief. He stated that they divided themselves into groups and headed to different directions in the village. He stated that he shortly received a call from the accused that his group had been attacked. That they rushed to the area with the Chief ahead of them and when they arrived they found an injured person on a motorbike with a lady and that when the Chief asked what had happened he was informed that the injured man had been injured by the accused. He stated the Chief asked the rider to take him to hospital for treatment. He stated that they then went to rescue Reuben and proceeded to Kitale police station to report before Reuben was taken to hospital to treatment.
19. He recalled that the injured person pointed at the accused person as the one who had hurt him.
20. Reuben Simiyu Juma (PW5) testified that he was a member of Nyumba Kumi in Matisi and that on 7/8/2022 the Area Chief had called him and asked him to accompany him to Shanty Area to stop people drinking during the election period. He stated that the Chief was with the accused, Johnnie and Geoffrey and that when they arrived at Shanty Area they divided themselves into two groups. He stated that he was in the same group with the accused and headed to a changaa den and he went to the owner of the house to pass over the message from the Chief. He stated that he called the Chief over the phone so that the Chief could speak to her directly.
21. He stated that as he waited for the accused to finish giving the message to the next house, he heard someone say;

“piga hawa wanajifanya kuwa chief”.

He stated that suddenly a group of about 10 people surrounded them. He stated that he was hit on the back of the head and he fell down. He stated he had called the Chief when he realized that they were in danger and that the Chief arrived shortly and rescued him.
22. He stated that he did not know where the accused went because he fell unconscious after being hit on the head. He stated that he regained consciousness 20 minutes later.
23. He stated that they reported the incident at the police station and according to him they were not armed during the operation because their intention was not to arrest anyone. He further stated that he could not recall seeing the accused being armed that day but he confirmed that he was a fellow member of “Nyumba Kumi”. He stated that fracas started when a group of people confronted them threatening to harm them adding that he was injured and taken to hospital after the incident.
24. CPL Peter Maritim (PW6), the investigating officer in this case testified that a report was made regarding the killing of the deceased on 8/8/22 and he was charged with the task of carrying out the investigations. He stated that the Area Chief went and recorded a statement regarding the incident



25. He stated that the Chief gave him the background of the incident. He said that he visited the scene and recorded statements from the witnesses. He stated that the eye witnesses implicated the accused and that is why he preferred the charge. He tendered the metallic rod which was handed over to him by PW2 as Pexhibit2.
26. He stated under cross-examination that he got information from the OB that around 20 people attacked the accused and his colleague Sifuna.
27. When placed on his defence, the accused stated that on the material day (7/8/22) the Chief called him and his fellow Nyumba Kumi members to his office. He stated that they were five in number and that the Chief briefed them about the need to enforce an order against illicit alcohol.
28. He stated that towards that end, he was instructed to go to the home of Akinyi who was suspected to be a brewer of illicit drinks. He stated that when they entered the house, they found many people including the deceased drinking alcohol.
29. He stated that a fight broke out and the deceased was injured during the fight. He stated that he harboured no ill will against the deceased as he had not differed with him. He stated that he had just been instructed to go and stop brewing of illicit alcohol during campaign period as the General Elections was just around the corner.
30. According to him they were attacked by the people who were taking illicit drinks. He relied on an initial OB report which he tendered as Dexhibit 1.
31. When cross-examined by the prosecution, the accused stated that he had taken part in many raids on changaa dens before with the Area Chief adding that they were escorted by the police but on that material date, they did not have police cover.
32. He stated that he knew Akinyi well and that he had differences with her owing to the illicit drinks which she brew. He stated that when they entered Akinyi's house that night, lights were switched off.
33. In his written submissions through counsel M/s Bikundo & Co Advocates, the accused contends that the prosecution's case relies on circumstantial evidence because there was no eye witness.
34. He submits that the dying declaration ought to be treated with caution because of the fact that the incident occurred when it was dark. He relies on R –vs- Olulu s/o Eloku (1938) 5 EACA.
35. He further relies on Republic –vs- Emmanuel Toikan Mpaayei (2018)eKLR where the court treated a dying declaration with caution because the deceased was said to be of unsound mind and had been treated at Mathari on 2 occasions.
36. He further cites a Court of Appeal decision in Lechokitan Leswakeri –vs- Republic (HCCC No.122/03) where the court found that a dying declaration should be treated with circumspection and that it was unsafe to rely solely on it without corroboration and that the mental condition of the person making a dying declaration is important to be established.
37. The accused contends that the deceased was in a drinking joint and might have been drunk at the time. He submits that he may have suspected the accused just because he had been sent by the chief and that the fight that erupted might have confused him.
38. He submits that no motive was established by the prosecution. He contends that evidence tendered showed that there was confrontation and a fight at Akinyi's house which resulted to the injuries suffered by the deceased. He submits that there were doubts if the accused was responsible for those injuries



adding that the iron bar tendered was not subjected to forensic analysis to determine if the accused used it to cause the injuries to the deceased.

39. The State on the other hand submits that it has proved all the ingredients of the offence against the accused.
40. It contends that PW2 testified that he heard the deceased mention the accused as the person responsible for his injuries. It points out that the same was corroborated by PW3 and PW4. The State submits that at the time of making the statement the deceased was bleeding profusely. Mr Mugun submits that the statement by deceased was a dying declaration and that the provisions of Section 33(a) of the *Evidence Act* makes such evidence admissible in law. He relies on the case of *Simon Kiptum Arap Choge & 3 Others –vs- Republic (1986)KLR* where the Court of Appeal made observations regarding admissibility of dying declaration stating that such dying declarations are admissible if made by persons who are at a point of death, when every hope is gone so much that a situation so solemn and awful to be considered by law to be creating an obligation equal to that imposed by a positive oath administered to a party to tell the truth.
41. The State also relies on the decision in *Philip Nzaka Watu -vs- Republic (2016)eKLR* where the Court of Appeal held that under section 33(a) of *Evidence Act*, dying declaration is admissible as an exception to the rule against the hearsay rule and that declaration of a deceased are admissible where the cause of death is in question and the statements made by him/her are in relation to the cause of death. The court clarified that such statements are admissible whether the person who made them was or was not expecting death when he made them.
42. The State submits that the deceased told PW2, PW3 and PW4 that the accused who was present was the one who had injured him.
43. On malice aforethought, the State relies on the provisions of section 206 of the *Penal Code*. It submits that the nature of injuries suffered and the weapon used to cause the injuries is an indication that the perpetrator was malicious. Citing the decisions of *Republic –vs- Silas Magongo Onzere Alias Fredrik Namena (2017)eKLR* and *Reupblic -vs- Ismail Hussein Ibrahim (2018)eKLR*. The prosecution submits that malice aforethought can be inferred from the nature and type of weapon used to cause the injuries.
44. The State submits that the deceased was stabbed 3 times which suggests that there was malice aforethought.
45. This court has set out both the prosecution’s case and the defence. The accused as observed above is charged with the offence of murder contrary to section 203 of the *Penal Code*. For a charge of murder to be sustained under the above provisions, the following ingredients must be established and proved beyond reasonable doubt by the prosecution namely;
 - i. Fact of death and its cause.
 - ii. The fact that the death was caused by acts or omissions by the accused (actus reus).
 - iii. Malice aforethought.

Fact of death and its cause

46. This element was established and proved in this case through the evidence of Dr. Alex Wanyonyi Barasa (PW1). The doctor carried out post mortem examination on the body of the deceased which was identified by Jason Ondele and Peter Mukoa. The doctor noted 3 penetrating stab wounds on the chest, temporal region and shoulder joint. The doctor’s opinion as per Post Mortem report (Pexhibit



1) is that the deceased died due to severe bleeding caused by a stab wound. The deceased in other words was killed and this court is satisfied that the first ingredient of murder was proved by the prosecution beyond reasonable doubt.

Actus reus

47. The prosecution's case on this crucial ingredient is reliant on 2 factors;
- a. Circumstantial evidence and
 - b. Dying declaration pursuant to section 33(a) of the *Evidence Act*.
48. The defence has pointed out that the incident occurred at night which is true. The accused stated that when they entered the house of Akinyi which was the crime scene, the revelers switched off the lights. Reuben Simiyu (PW5) who was in the company of the accused during the incident stated that the place was dark. But PW5 stated that the accused was the first to enter the house and shortly heard someone saying;

“piga hawa wanajifanya kuwa chief”

He entered the house and was hit on the head and fell unconscious.

49. It is evident from the evidence tendered that there was a melee as everyone ran helter skelter because it would appear that the accused and his company were well known being Nyumba Kumi operatives or Community Policing Unit.
50. This court finds that the accused and PW5 were certainly attacked. What has caught my attention is the evidence tendered by Moses Wafula (PW2) or the Chief. The Chief was the boss of the Nyumba Kumi operatives who accompanied him during the operation to check brewing of illicit alcohol in the area. The Chief stated that he was called by the accused five minutes into the operation and informed that PW5 was under attack. The Chief rushed to the scene and on the way met the deceased on a motorcycle bleeding in the company of a lady and that he was told that the accused had stabbed him. When he turned to the accused and asked him to explain, the accused in Chief's own words “kept quiet” and that he had a metal rod in his hands. When the Chief asked what the metallic rod was for, the accused stated he had disarmed the deceased. That evidence in my view given the circumstances points at the accused as the person who caused the injuries suffered by the deceased.
51. Secondly, there were 3 witnesses to wit PW2, PW3 and PW4 who stated that the deceased said that the accused had stabbed him. PW3 in particular stated that as he carried the deceased on a motorcycle to hospital, the deceased called him by name and told him thus “Muhati ameniua”. PW3 was surprised that the deceased knew him by name and that fact dispels the defence theory that the deceased may have been too drunk at the time not to be taken seriously.
52. It is a matter of law that statements made by a dying person especially when it relates to the cause of death is admissible in evidence as an exception to the rule against hearsay evidence. Section 33(a) of *Evidence Act* states

“Statements, written or oral or electronically recorded, of admissible facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured, or whose attendance cannot be procured, without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves admissible in the following cases—



- (a) relating to cause of death when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question”.

53. This court is well guided by the Court of Appeal in Philip Nzaka Watu –vs- Republic (2016)eKLR where the court made the following observations;

“Under section 33(a) of the *Evidence Act*, a dying declaration is admissible in evidence as an exception to the rule against admissibility of hearsay evidence. Under that provision, statements of admissible facts, oral or written made by person who is dead are admissible where the cause of death is in question and those statements were made by him as to the cause of death or as to any circumstances of the transaction leading to his death. Such statements are admissible whether the person who made them was or was not expecting death when he made the statements.....:

The court however observed that a court should proceed with caution to ensure that conviction founded on death declaration is safe. In other words it is important that court relying on such evidence should have no doubt that given the circumstances, the declaration made was free from a possibility of error. That is where the need of corroboration comes in.

54. In this instance apart from the dying declaration of the deceased that points at the accused, it is evident as I have found out above that the circumstances when considered cumulatively points at the accused person and no one else as the person who caused the deceased to suffer the fatal injuries.
55. This court is satisfied beyond any doubt that the element of actus reus has been proved. The cause of death has been linked positively to the unlawful acts of the accused.

Mens rea

56. There is no evidence tendered in this case indicating that the accused harboured ill motive against the deceased or set out to harm the deceased. The evidence of PW2 supports the defence that the accused was heeding to a call from the Area Chief to stop brewing of illicit alcohol because it was electioneering period at the time. This court takes Judicial Notice of that fact. The General Election of 2022 was just around the corner and it is understandable that Chief perhaps in an attempt to keep his people sober and be able to vote had taken a pre-emptive action of stopping the brewing of illicit brews.
57. All prosecution witnesses present at the time stated that no one including the accused was armed.
58. The State has made a strong case owing to the nature of injuries suffered. Malice can be inferred by dint of Section 206 of the *Penal Code*. I have however considered the evidence of PW5 who stated that they were surrounded by 10 people with someone threatening them thus;

“piga hawa wanajifanya kuwa chief...”

Shortly thereafter PW5 was hit at the back of his head and fell unconscious. It was dark as stated by both PW5 and the accused. Given the situation where the accused found himself in, particularly seeing his colleague down must have felt threatened. The Chief stated that he found the accused with a metallic rod and on inquiry by the Chief he said he had disarmed



the deceased. This court is persuaded that the accused in self defence went overboard and caused fatal injuries to the deceased.

59. So while I find that the prosecution has established the 2 ingredients that is fact of death, its cause and actus reus, the element of mens rea was negated by the circumstances I have highlighted. The accused is therefore not found guilty of Murder contrary to Section 203 of the [Penal Code](#), but he is found guilty of the lesser charge of Manslaughter contrary to Section 202 of the [Penal Code](#) and is hereby convicted accordingly.

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

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Judgment delivered in open court

In the presence of

Ms Rop for the State

Mr Bikundo for the accused

Duke/Chemosop- court assistants

