



REPUBLIC OF KENYA



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**Republic v Ekitela (Criminal Case E013 of 2023)  
[2025] KEHC 12010 (KLR) (15 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12010 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
CRIMINAL CASE E013 OF 2023  
RN NYAKUNDI, J  
AUGUST 15, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ERII EKITELA ..... ACCUSED**

**JUDGMENT**

1. The Accused was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 13<sup>th</sup> day of May, 2023, at Pokotom village in Turkana West-Sub County within Turkana County murdered Irian Ewoi Ngimare.
2. Upon arraignment in court, the accused herein pleaded not guilty and the prosecution called four (4) witnesses in support of its case whose evidence is as follows:
3. PW1 Alimlim Lugera on oath told the court that the deceased was her daughter and the accused was her son-in-law. That on 13<sup>th</sup> May, 2023 while in church for prayers he received information that her daughter has been hacked to death following a domestic quarrel with the accused. She rushed to the scene, picked the body and took it to the mortuary as the investigation to trace and apprehend the accused person by the police were commenced.
4. Next was the evidence of PW2 Selina Apoo who testified that she is usually a charcoal dealer and on 13<sup>th</sup> may, 2023 while at her residence she heard the accused having a conflict with the deceased. The deceased happened to be her younger sister and the geographical difference of their homesteads is only by separation of a fence. It did not take long before receiving second credible information that the quarrel between the accused and the deceased had been escalated to a scale in which her sister suffered fatal injuries. The police came in the morning and collected the body which was escorted to Lodwar Referral Hospital for a post mortem examination.



5. In the same case PW3 Akamu Ekitela was also summoned as a witness when he told this court that on 13<sup>th</sup> May, 2021 that he had visited the home of the accused seeking a refund of the money borrowed out of the purchased goat from him but not yet fully settled. On arrival PW3 found the accused person quarrelling with his wife about a torch where he was demanding his phone with a torch. The wife left the accused and went to the house to make the bed. She however later came back and another fight ensued and the accused took a pair of shoes and used it to assault the deceased. In retaliation, the deceased took a bucket of Kasuku and threw it at the accused person and full-blown exchanges of punches and fists rend the air. From that fight the wife seemed to have suffered injuries as she started crying immediately. PW3 tried to administer first aid and at the same time informed the neighbors and the church congregation that the deceased unfortunately succumbed to death from the injuries inflicted by the accused person.
6. Last was the testimony of PC Eliakim Njeiha a police officer attached to DCI Kinangop but formerly of Lodwar at Turkana West. In the testimony of the police detective, he recalled having visited the scene of murder on 5<sup>th</sup> May, 2023 in which the accused and the deceased being man and wife had a scuffle which resulted in her death. In the course of the investigation, PW4 made arrangements for the body to be taken to Turkana Mortuary hospital for a post mortem examination. Thereafter, on appreciating the evidence, he recommended for an accused person to be charged with the offence of murder contrary to section 203 of the penal code.

### **The defense case**

7. On the part of the accused person under Section 306 as read with section 307 of the Criminal Procedure Code he elected to give a sworn statement in which he highlighted the following features of his testimony. The accused person was able to recall that on the material day he left his home and drove his livestock to the grazing field which he did until much later in the evening. According to the accused, on arrival at home, he found his wife was not present and there was nobody within the compound but in a little while she came back and handed over to him the young child whom she laid down to sleep. In the course of that evening, the wife complained of stomach problems and demanded to be served some water. The accused and the wife kept on monitoring the situation but at some time he told the court that he carried the baby and he left the house to the neighborhood where they were also served with water but the wife declined that she was not feeling well. In the turn of events, the wife seems to have passed on in circumstances which were difficult to explain. The accused denied the allegations of having participated in the death of his wife. He went on to state that they have been married for sometime and blessed with some five children who now remain a burden to maintain and support following the death of their mother. In cross examination by the lead counsel of the state Mr. Kakoi the accused denied assaulting his wife as alleged by the prosecution witnesses.

### **Decision**

8. I have considered the both the prosecution evidence and also the defence pursuant to the provisions of section 203 as punishable under 204 of the Penal Code. The duty of this court is to establish whether the presumption of innocence as underpinned in Art. 50(2)(a) of the Constitution as being disapproved within the spectrum of the four elements which include:
  - a. The death of Irian Ewoi Ngimare
  - b. That her death was caused by unlawful acts or omissions.
  - c. That such acts and omissions were actuated with malice aforethought of the accused.



- d. That the accused person before court was the one positively identified as the one who committed the heinous crime.
9. In the case at bar, there is no dispute from the post mortem report dated 17<sup>th</sup> May, 2023 by Dr. Ebenyo. That the referenced body examined at Lodwar County referral hospital was that of the deceased Irian Ngimare. As such the prosecution has established this ingredient beyond reasonable doubt.
10. The second significant element is on unlawful causation of death. the right to life is protected under Art. 26 of the Constitution. In sub-section (3), it provides as follows:
- “A person shall not be deprived of life intentionally, except to the extent authorized by this constitution or other written law.”
11. The provisions of section 213 of the Penal Code defines causation to include the following:
- “a. if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
- b. if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;”
12. The test for causation in criminal law is both factual and legal causation. Factual causation is where the accused conduct and actions contribute to the death in a way that was more than minimal whereas legal causation is the accused’s conduct which has a significant contributing cause of death even if other factors were also involved (see R v. Nette, 2001 SCC 77, R v. Harbottle 3 SCR 306 and R v. Creighton, 3 SCR 344).
13. In cases of homicide where death results from an unlawful act, the unlawful act must be objectively dangerous meaning a reasonable person will recognize the risk of harm. The distinction between culpable homicide and the offences under section 202 of the Penal Code and other offences in which death has been caused like causing death by dangerous driving is that liability for culpable homicide requires an accused or accused persons to have caused the victim’s death. It is trite that causation in homicide has never been about who performed the final act leading to death. The focus is on whether the accused factor was a significant contributing cause of death. It is important to note that PW1 told this court that the deceased was her daughter and the accused was her son in-law. According to her evidence, on 13<sup>th</sup> may, 2023 while worshipping in church she received information that her daughter had been hacked to death following a domestic quarrel with the accused. When she rushed to the scene he found her daughter’s body which was picked and taken to the mortuary. The evidence of PW2 is even more specific that on the material day as a neighbor to the accused’s homestead, she heard and witnessed a quarrel between the deceased and the accused which was escalated into a full-blown fight. The deceased suffered fatal injuries. The prosecution in strengthening this element produced in court documentary medical evidence in the form of a post mortem dated 17<sup>th</sup> May, 2023 which painted graphically the multiple injuries suffered in the entire body of the deceased without discrimination. This means that the accused person was inflicting injuries indiscriminately without due care and



attention that death was likely to ensue or occur as against his spouse. This element too has been established by the prosecution beyond reasonable doubt. (See *Miller v Minister of Pensions* [1947] 2 ALL ER 372-373).

14. In all crimes of murder, for an accused person to be found guilty, the fundamental element to be proven is that of Malice aforethought. As regard to proof of availability of malice aforethought in any indictment against an accused person, Section 206 of the Penal Code gives the following guidelines:

- “(a). An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.
- (b). Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person 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 be caused.
- (c). An intent to commit a felony.
- (d). An intention to facilitate the escape from custody of a person who has committed a felony.”

15. The court in *Rex v Tubere s/o Ochen* (1945) 12 EACA 63 held:

“The court has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say of a spear or knife than from the use of a stick”

16. In view of the above statutory provision, malice aforethought is the state of mind or mental state of the accused person at the time he/she committed the offence. The state of mind can be established through evaluation of circumstances surrounding the commission of the offence and particularly the manner the offence was committed. That indeed is the emphasis of the locus classicus case of *Tubere* (supra), that the prosecution must present evidence of preparation of committing the offence including even the attempts to conceal the accused’s identity or the manner in which he conceals and destroys the evidence after committing the offence of murder. The court also must look at the extent and nature of the injuries that were inflicted on the victim, significantly if they are more targeted at vulnerable parts of the body. Normally when most vulnerable parts of the human body are targeted, the inference is death was intended. The nature of the weapons used, also tell a story whether the intention was to cause death or grievous harm. The manifestation of multiple injuries and the conduct of the accused after inflicting those injuries manifest the intention to kill, intention to cause grievous harm and the foreseeability that death will be the ultimate. In the case of *R. v. Taylor wear and Denovan* (1928-29) 21 the court stated that:

“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 of evidence to say that it is circumstantial”.

17. A key principle in this branch of evidence is that when relying primarily on circumstantial evidence, the prosecution must prove a complete chain of events that leads to no other reasonable conclusion than the guilt of the accused. The prosecution’s case from PW1, PW2, PW3, PW4 provides an extensive overview of circumstantial evidence accompanied with direct evidence defining and outlining the role



the accused played in killing his wife. Why do I think that this offence was committed with malice aforethought? There is no evidence from the defense that the accused acted in self-defense under section 17 of the Penal Code or on the other hand, he was provoked by the deceased within the definition provided for under section 207 and 208 of the Penal Code. As stated in the Tubere case (supra), all the elements of malice aforethought were proven by the prosecution. In addition, post mortem report demonstrates a victim whose body was extensively inflicted with harm including the vulnerable parts of the her being. As a result of the examination, the pathologist formed the opinion that the cause of death was blunt abdominal injuries causing spleen rupture and hypolemic shock. There will be no other hypothesis save that of manifestation of malice aforethought as defined in all its four square elements under section 206 of the Penal Code.

18. The last element is on positive identification and placing the accused at the scene of the crime. The guiding principles on this element are as set out in *R vs. Turnbull and others* (1976) 3 All E.R. 549 where the court stated inter-alia:

“First, wherever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the Judge should warn the jury of the special need for caution before convicting the accused in reliance to the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Secondly, the Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation” At what distance” In what light” Was the observation impeded in any way, as for example by passing traffic or a press of people” Had the witness ever seen the accused before” How often” If only occasionally, had he any special reason for remembering the accused” How long elapsed between original observation and the subsequent identification to the police” Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and the actual appearance”

19. On the crucial element of positive identification, the prosecution has presented compelling evidence through multiple witnesses who had direct knowledge of the accused and the circumstances of the offence. PW1, being the mother of the deceased, testified that the accused was her son-in-law, establishing a familial relationship that would make mistaken identity virtually impossible. PW2, as a neighbor separated only by a fence from the accused's homestead, witnessed the quarrel and escalation that led to the deceased's fatal injuries. Most significantly, PW3 was present at the scene during the material time and provided direct eyewitness testimony of the assault, including the accused using shoes to assault the deceased and the subsequent exchange of blows that resulted in the deceased's injuries and eventual death.
20. The evidence of identification in this case does not suffer from the typical weaknesses cautioned against in *Turnbull* case (supra). The witnesses were not strangers to the accused but were family members and close neighbors who had known him well over time. The observations were made in familiar surroundings during daylight hours without impediment. There was no delay between the incident and the identification, as the witnesses were present during or immediately after the occurrence. The consistency in the testimonies of PW1, PW2, and PW3 regarding the accused's involvement in the domestic dispute that escalated to fatal violence provides a reliable foundation for positive identification.



21. Having carefully considered all the evidence presented by both the prosecution and the defense, I find that the prosecution has proven beyond reasonable doubt all the essential elements required for a conviction under sections 203 and 204 of the Penal Code. The death of Irian Ewoi Ngimare has been established through medical evidence. The unlawful causation of her death through the accused's deliberate acts of violence has been proven through post-mortem findings showing multiple injuries caused by blunt force trauma. The element of malice aforethought is manifest in the nature and extent of the injuries inflicted, the vulnerable parts of the body targeted, and the accused's continued assault despite the deceased's obvious distress. Finally, the positive identification of the accused as the perpetrator has been established through reliable eyewitness testimony from persons who knew him well.
22. The defense of the accused, while he exercised his constitutional right to give sworn testimony, does not raise any reasonable doubt as to his guilt. His version of events; that his wife simply fell ill and died of natural causes while he was caring for her, is inconsistent with the medical evidence of extensive blunt force injuries and contradicted by the testimony of multiple prosecution witnesses who witnessed the violent altercation.
23. In the result, I find the accused person ERII EKITELA guilty of the offence of murder contrary to sections 203 and 204 of the Penal Code as charged. A sentencing hearing is hereby scheduled on 10<sup>th</sup> April, 2025 when the parties shall present their mitigation for appropriate sentencing.

### **Ruling On Sentence**

24. The accused person has been convicted for the offence of murder contrary to section 203 of the Penal Code and as punishable under Section 204. The particulars as highlighted are that on the 13<sup>th</sup> day of May, 2023, at Pokotom village in Turkana West-Sub County within Turkana County murdered Irian Ewoi Ngimare.
25. The consequence is that the discretionary minimum sentence prescribed for the murder count is death. The main question to be addressed is whether there are substantial and compelling circumstances to deviate from this and whether a death sentence is proportionate to the crime.
26. The facts of this matter present yet another tragic case of domestic violence escalating to murder within the confines of a marital relationship. The accused Erii Ekitela and the deceased Irian Ewoi Ngimare were husband and wife, blessed with five children together. At the time of the incident on 13<sup>th</sup> May 2023, the couple resided at Pokotom village in Turkana West Sub-County, where tensions in their relationship had been simmering beneath the surface of their domestic life.
27. On the fateful day, the accused had driven his livestock to the grazing fields, returning home in the evening to find domestic discord awaiting him. According to witness testimony, a dispute arose between the couple over seemingly mundane household items - initially concerning a torch and the accused's mobile phone. What began as a minor disagreement about everyday objects quickly escalated into something far more sinister. The deceased attempted to defuse the situation by retreating to the house to make the bed, demonstrating her efforts to maintain domestic harmony despite the brewing tension.
28. The conflict reignited when the deceased returned from the bedroom. The accused, now consumed by anger, seized a pair of shoes and used them as weapons to assault his wife. The deceased, in an act of retaliation and perhaps desperation, threw a bucket of Kasuku at her husband. This act of defiance triggered a full-blown exchange of punches and fists that filled the air with violence, transforming their marital home into a battleground where love had been replaced by brutality. The conflict reignited



when the deceased returned from the bedroom. The accused, now consumed by anger, seized a pair of shoes and used them as weapons to assault his wife. The deceased, in an act of retaliation and perhaps desperation, threw a bucket of Kasuku at her husband. This act of defiance triggered a "full-blown exchange of punches and fists" that filled the air with violence, transforming their marital home into a battleground where love had been replaced by brutality.

29. The assault was witnessed by PW3 Akamu Ekitela, who had visited the accused's home seeking repayment of money owed from a goat transaction. This witness observed the accused's relentless violence against his wife, noting how the deceased began crying immediately after suffering injuries from the assault. Despite PW3's attempts to administer first aid and alert neighbors and the church congregation, the injuries inflicted by the accused proved fatal. The deceased succumbed to death from the trauma inflicted by her own husband - the man who had vowed to love and protect her.
30. The post-mortem examination conducted by Dr. Ebenyo on 17<sup>th</sup> May 2023 revealed the devastating extent of the accused's violence. The deceased's body bore multiple injuries inflicted indiscriminately across her entire being, painting a graphic picture of sustained and brutal assault. The pathologist determined that death resulted from blunt abdominal injuries causing spleen rupture and hypovolemic shock - medical terminology that barely captures the human tragedy of a wife beaten to death by her husband in their family home.
31. Following the fatal assault, the accused's conduct revealed no genuine remorse or acceptance of responsibility. When finally brought before the court, the accused maintained his innocence, weaving a fabricated narrative about his wife falling ill with stomach problems and dying of natural causes while he supposedly cared for her, a story wholly contradicted by the medical evidence and eyewitness testimony.
32. This case represents the tragic reality of intimate partner violence in rural communities, where isolation can intensify domestic disputes and delay life-saving intervention. The presence of five orphaned children serves as a stark reminder of the devastating ripple effects of domestic violence; children who have lost their mother to violence and their father to the justice system. The accused's actions have not only extinguished a life but destroyed a family, leaving vulnerable children to navigate their grief and trauma without either parent to guide them through their darkest hour.

### **Mitigation**

33. In mitigating for the accused person, learned Counsel Ms. Maryanne submitted that the accused is a first-time offender with no prior criminal history and has lived a law-abiding life up to that point. Moreover, the accused has apologized to the family of the deceased, to this honorable court, and his family, and society at large. That he is further remorseful of his actions and is praying that this court gives him a second chance to right his wrongs.
34. It is further submitted for the accused that PW2 who is the mother of the deceased testified that the accused had never quarreled with her daughter and that he is a responsible family man. That the accused and the deceased were best of friends and it was only due to provocation that he could not comprehend what he was doing since it was a fight between him and his wife that led to the death of the deceased.
35. Learned Counsel urged the court to consider that the children are alone and they need their father's love and protection. That he had no malice aforethought and as such the court should be lenient on the sentence.



36. As for the prosecution, Mr. Kakoi urged the court to consider the aggravating factors of the case and impose a custodial sentence that is commensurate to the offence committed, perhaps a life imprisonment.
37. In the Francis Muruatetu case, the Supreme Court guided as follows, both in the Original Petition and in the Directions given on 6/7/2021 while providing clarity on the judgment that had applied the principle that mandatory sentences were unconstitutional in as far as they deprived the trial courts of the discretion to mete out appropriate sentences having regard to the circumstances of each case and also denied the accused persons the opportunity to mitigate.
- “vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;
- (a) Age of the offender;
  - (b) Being a first offender;
  - (c) Whether the offender pleaded guilty;
  - (d) Character and record of the offender;
  - (e) Commission of the offence in response to gender-based violence;
  - (f) The manner in which the offence was committed on the victim;
  - (g) The physical and psychological effect of the offence on the victim’s family;
  - (h) ) Remorsefulness of the offender;
  - (i) The possibility of reform and social re-adaptation of the offender;
  - (j) Any other factor that the Court considers relevant.
- ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under Section 204 of the Penal Code before the decision in Muruatetu.”
38. In arriving at a just sentence, I am also reminded to consider the 2023 Judiciary of Kenya Sentencing Policy Guidelines which expressly provide that sentences are imposed to meet the following objectives:
- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
  - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  - c. Rehabilitation: to enable the offender reform from his/her criminal disposition and become a law-abiding person.
  - d. Restorative justice: to address the needs arising from the criminal conduct such as loss and damages.
  - e. Community protection: to protect the community by incapacitating the offender.
  - f. Denunciation: to communicate the community’s condemnation of the criminal conduct.



- g. Reconciliation: To mend the relationship between the offender, the victim and the community.
  - h. Reintegration: To facilitate the re-entry of the offender into the society.
39. The Constitutional Court of South Africa in *State v. Makwanyane* (1995) CCT/3/94 remarked as follows on mitigation and aggravating factors in sentencing:
- “mitigating and aggravating circumstances must be identified by the court, bearing in mind that the onus is on the state to prove beyond reasonable doubt the existence of aggravating factors, and to negative beyond reasonable doubt the presence of any mitigating factors relied on by the accused. Due regard must be paid to the personal circumstances and subjective factors that might have influenced the accused person’s conduct, and these factors must then be weighed with the main objectives of punishment, which have been held to be: deterrence, prevention, reformation and retribution. In this process any relevant considerations should receive the most scrupulous care and reasoned attention, and the death sentence should only be imposed in the most exceptional cases, where there is no reasonable prospect of reformation and the objects of punishment would not be properly achieved by any other sentence.”
40. The killing of women by intimate partners is the most extreme form and consequence of violence against women. In determining the appropriate sentence, I must balance the aggravating and mitigating factors while ensuring that the sentence serves the objectives of criminal justice. The aggravating factors in this case are substantial and deeply concerning. The accused committed this heinous act of domestic violence against his own wife, a person who was entitled to protection and safety within their marital relationship. The manner of the killing, involving the use of shoes as weapons and sustained physical assault resulting in multiple injuries across the deceased's body, demonstrates a callous disregard for human life and dignity.
41. The post-mortem evidence reveals the brutal nature of the assault, with the deceased suffering blunt abdominal injuries causing spleen rupture and hypovolemic shock. The accused showed no mercy despite the deceased’s obvious distress and injury, continuing the assault until she was fatally wounded. Furthermore, the accused’s conduct after the crime, including his attempt to fabricate a story about the deceased dying of natural causes, shows a lack of genuine remorse and an attempt to escape responsibility for his actions.
42. However, I must also consider the mitigating factors presented. The accused is a first-time offender with no prior criminal record. He has expressed remorse and apologized to the deceased's family, the court, and society. The testimony indicates that he was generally a responsible family man who had not previously quarreled with the deceased. The couple had been married for some time and were blessed with five children who now find themselves orphaned and in need of support.
43. The plight of the five children cannot be ignored. They have lost their mother to violence and now face the prospect of losing their father to incarceration. This presents a complex consideration in sentencing, as these innocent children bear the consequences of their father's actions. However, the court must be mindful that the accused's own conduct created this tragic situation for his children.
44. While acknowledging these mitigating factors, I cannot ignore the gravity of the offense and the need to stress that domestic violence will not be tolerated in our society. The sentence must reflect society's abhorrence of intimate partner violence while serving the objectives of retribution, deterrence,



rehabilitation, and community protection. The sentence must also provide closure to the deceased's family and serve as a deterrent to others who might contemplate similar acts of violence.

45. Taking into account all the circumstances of this case, including both the aggravating and mitigating factors, and guided by the principles established in Francis Muruatetu and the 2023 Judiciary of Kenya Sentencing Policy Guidelines, I find that a sentence of twenty-five (25) years imprisonment is appropriate and proportionate to the gravity of the offense committed.
46. Accordingly, I sentence the accused person Erii Ekitela to twenty-six (26) years imprisonment. The sentence shall commence from the date of arrest pursuant to the provisions of section 333(2) of the Criminal Procedure Code.
47. 14 days right of Appeal explained.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 15<sup>TH</sup> AUGUST 2025**

.....

**R. NYAKUNDI**

**JUDGE**

In the presence of:

Mr. Otieno for ODPP

Mr. Karanja Advocate

The Accused

