



**Republic v Ramadhani (Criminal Case E017 of 2023)
[2025] KEHC 11956 (KLR) (15 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11956 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E017 OF 2023
RN NYAKUNDI, J
AUGUST 15, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MBERWA KHAMIS RAMADHANI ACCUSED

JUDGMENT

1. Before this court is an accused person charged with the offence of murder contrary to section 203 as read with 204 of the penal code. The particulars are that on the 8th day of April 2023 at Kakuma Refugee camp in Turkana West sub county within Turkana county murdered Fatuma Abdikadir.
2. The accused pleaded not guilty to the offence calling upon the prosecution under Article 50(2) (a) of *the constitution* to adduce evidence in consonant with the right on presumption of innocence bestowed upon the accused until the contrary is proven by the state. Section 107(1) and 108 of the *Evidence Act* provides inter alia that a party to any proceedings has the burden to directly or indirectly prove the facts in issue and in the case of the criminal cases all those elements of the offence must be proved beyond reasonable doubt. This burden in criminal cases is the responsibility of the state or as its commonly referred to the prosecution under Article 157 (6) (7) of *the constitution* to sufficiently tender evidence to prove the contrary on the right of the presumption of innocence accorded to the accused until the case is concluded.
3. Thus it is encumbered upon the prosecution to prove the essential ingredients of the offence of murder beyond reasonable doubt. To prove its case the prosecution brought his evidence from four witnesses whose summary is stated herein below:
4. PW1 Hassan Abdalla aged 18 years old and a student at Greenlight secondary school told the court that on 4th September 2023 he was at home and woke up at 8am to prepare for school. He heard a voice of a girl crying from the neighborhood. However, despite the high fence he was able to see the accused



holding a girl while harmed with a knife and used to inflict the bodily injuries. The witness was shown the knife allegedly in possession of the accused and used to cut the neck of the deceased. It was the evidence of PW1 that he reported the matter to the father of the deceased but the accused person had already taken flight. According to PW1 the accused was known to him prior to the material day.

5. PW2 Ayan Olad Ahmed testified that on 4th September 2023 while she was at her house she saw the child playing outside but in a short while he received information from the members of the public screaming about the death of a child. The witness on further inquiry was informed that the accused had slaughtered the child. She had to visit the scene only to confirm that her only child had been killed by the accused by sustaining a cut across the neck and was bleeding profusely.
6. PW3 Alain Kanaume testified that on 4th September 2023 he was nominated by the community and peace protection team to investigate a murder evidence which had happened in block 5 within the refugee camp. The investigations led them to arrest the accused person who was later to be charged with offence of murder.
7. PW4 PC Joel Kimaiyo testified that following the murder report which occurred on 4th September 2023 he was given the assignment of recording witnesses statements. PW4 told the court that he visited the scene where he saw the deceased body of a young girl with fatal injuries around the neck. Therefore, as a police officer he processed the scene which included pursuing the suspect was arrested being in possession of a kitchen knife. It was the evidence of PW4 that the evidence collected both physical and oral evidence pointed positively to the accused person as the perpetrator of the crime. In the course of investigations PW4 made arrangements to have the body escorted to Lodwar County Referral hospital for the postmortem report. The postmortem report was admitted in evidence as exhibit 3 of the following observations by the pathologist:

Head: blood on the mouth and nostrils, large cut wound (6*15cm) on the right side Spinal Column: Fracture C5 otherwise unremarkable As a result of the examination the doctor formed the opinion that the cause of death was: Hemorrhage due to large cut wound on the right neck region with fracture of C5 vertebra and severed the right vertebral artery

8. In a nutshell that was the case of the prosecution at close of it which I found the accused with a case to answer under section 306 of the Criminal Procedure Code. When called upon to defend himself, the accused opted to give evidence on oath. According to PW1 Mberwa Khamisi he denied the offence of killing the deceased stating that all the facts and evidence produced by the prosecution witnesses is false and he has nothing to do with such allegations.

Analysis and determination

9. Having considered the evidence as adduced by the prosecution's witnesses and the defendant's account, it is now upon this court to determine whether the offence of murder has been proved beyond reasonable doubt.
10. The prosecution's evidence is appraised as against the provisions of Section 107(1), 108 and 109 of the [Evidence Act](#), which provides as follows:

“ 107:

- (1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108: The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.

109: The burden of proof as to any particular facts lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

11. The Kenyan Constitution, particularly Article 26, establishes that no individual may be intentionally killed except where permitted by constitutional or statutory provisions. In this case, the accused is charged with murder under Sections 203 and 204 of the Penal Code. The burden rests on the prosecution to demonstrate beyond reasonable doubt that the accused committed the murder of the victim. The relevant sections of the Penal Code outline the required elements that must be proven for this offense:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

204. Any person who is convicted of murder shall be sentenced to death.”

12. Under Art. 50 (2) (a) of *the Constitution* of Kenya 2010, the accused is presumed innocent until the contrary is proved either by direct or circumstantial evidence. Two primary classifications are used for evidence: circumstantial evidence or direct evidence. Circumstantial evidence indirectly proves a fact whereas direct evidence directly establishes a fact.

13. In *People v Bretagna* (298 NY 323, 325-326 [1949]) the court addressed itself in the following language:

“Evidence is direct and positive when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses. * * * Circumstantial evidence . . . never proves directly the fact in question. In other words, direct . . . evidence, as the term is commonly used, means statements by witnesses, directly probative of one or more of the principal . . . facts of the case, while circumstantial evidence puts before the tribunal facts which, alone or with others, are in some degree but indirectly, probative of one or more of those principal . . . facts, and from which one or more of those principal facts may properly be inferred” see *People v Hardy*, 26 NY3d 245, 251 [2015) By contrast . . . direct evidence . . . requires no inference to establish (a particular fact)”; *Schneider v Kings Hwy. Hosp. Ctr.*, 67 NY2d 743, 744 [1986]”

14. A reading of the witness testimonies, it is evident that the instant case is based on direct evidence.

15. Even as I proceed to consider the guilt of the accused person, the trial court is under duty to ensure that before any conviction is entered both actus reus and mens rea have been proved to the required standard of beyond reasonable doubt. See *Joseph Kimani v R* 2014 eKLR). In this case, the following ingredients of the offence of murder must be proved beyond reasonable doubt without any conjecture or suspicion:

“a. The fact of death of the deceased

b. The death was unlawfully caused



- c. The death was caused with malice aforethought.
 - d. The accused persons participated in or caused the death of the deceased.”
16. The first issue for consideration is proof of death. In the instant case, there is no dispute of the deceased's death. This was confirmed by all the prosecution witnesses, more so by the evidence of PW4 PC Joel Kimaiyo who processed the scene and arranged for the postmortem examination, and the postmortem report admitted as exhibit 3. The postmortem report revealed that the deceased had blood on the mouth and nostrils, a large cut wound measuring 6 by 15 centimeters on the right side of the neck, and a fracture of the C5 vertebra. The pathologist concluded that the cause of death was hemorrhage due to large cut wound on the right neck region with fracture of C5 vertebra and severed the right vertebral artery. Accordingly, this court is satisfied that the prosecution has established this element beyond reasonable doubt.
 17. The next ingredient is to determine whether the death of Fatuma Abdikadir was through an unlawful act or omission. Put differently, it must be presented in evidence that the victim of the murder suffered either physical or bodily harm as a result of the unlawful act of omission or commission. That the evidence demonstrates beyond reasonable doubt that the injuries inflicted leading to the loss of survival of a human being as known in law were unlawfully executed. It is therefore necessary to appreciate the scale of evidence on this ingredient as submitted before this court by the prosecution. In the present case, directly, the flow of evidence by the prosecution witnesses point out to the accused person as the perpetrator.
 18. In murder cases, or manslaughter for that matter, causation is a central issue. The prosecution must adduce evidence connecting the acts or omissions which contributed or caused the death of the deceased. The prosecution establishing the cause of death is non-negotiable in so far as section 203 of the Penal Code is concerned.
 19. The allegedly causative acts or omissions need not be the sole cause of death but must be a substantial or significant cause of death or have substantially contributed to the death. The maxim here is that of acts or omission which occasion the acceleration of death.
 20. In this respect, any potential defenses to the unlawful acts which causes death have been excluded in respect of all of that range of acts which caused the fatal injuries leading to the victim succumbing to death. That those acts or omissions done by the offender were in the prosecution of an unlawful purpose to endanger human life.
 21. Article 26(1) of *the Constitution* guarantees every person the right to life. Therefore, no person is permitted to kill or cause the death of another person unless otherwise as provided for in our constitution or any other enabling statute. The law in Kenya presumes every homicide to be unlawful unless it is accidental or excusable or authorized by law. On this ground the court has to take into account the guidelines in *Juma Lubanga v R (1972) HCD* in which the court made the following observations:

“Grievous harm as defined in the Penal Code involves a consideration whether the harm is such as seriously to interfere with the health or comfort, and the answer to the question may depend on the nature of the injury and the circumstances of the case.”
 22. The postmortem report prepared by the pathologist revealed that the deceased's cause of death was hemorrhage due to large cut wound on the right neck region with fracture of C5 vertebra and severed the right vertebral artery. This was not opposed by the defence. The nature and extent of these injuries



could not have been caused accidentally or through natural causes. The deliberate infliction of a large cut wound measuring 6 by 15 centimeters to the neck region, targeting a vital area of the human anatomy known to be life-threatening, demonstrates a clear unlawful act. No lawful justification has been advanced for causing such grievous injuries to the deceased. The severity of the wound which severed the vertebral artery and fractured the spinal column at C5 level shows that this was not an act of self-defence, accident, or any other lawful excuse recognized under our law. In the circumstances, I am persuaded beyond reasonable doubt that the deceased, Fatuma Abdikadir, died as a result of an unlawful act deliberately perpetrated against her.

23. The other question is whether it was the accused who unlawfully caused the deceased's death. The prosecution case was based on direct evidence from the eyewitness PW1 Hassan Abdalla. In this case, PW1 testified that on 4th September 2023 he was at home and woke up at 8am to prepare for school. He heard a voice of a girl crying from the neighborhood. However, despite the high fence he was able to see the accused holding a girl while armed with a knife and used it to inflict the bodily injuries. The witness was shown the knife allegedly in possession of the accused and used to cut the neck of the deceased. It was the evidence of PW1 that he reported the matter to the father of the deceased but the accused person had already taken flight. According to PW1 the accused was known to him prior to the material day.
24. PW3 Alain Kanaume testified that on 4th September 2023 he was nominated by the community and peace protection team to investigate a murder which had happened in block 5 within the refugee camp. The investigations led them to arrest the accused person who was later to be charged with the offence of murder.
25. PW4 PC Joel Kimaiyo testified that following the murder report which occurred on 4th September 2023 he was given the assignment of recording witnesses statements. PW4 told the court that he visited the scene where he saw the deceased body of a young girl with fatal injuries around the neck. Therefore, as a police officer he processed the scene which included pursuing the suspect who was arrested being in possession of a kitchen knife. It was the evidence of PW4 that the evidence collected both physical and oral evidence pointed positively to the accused person as the perpetrator of the crime.
26. In his defence, the accused denied the offence of killing the deceased stating that all the facts and evidence produced by the prosecution witnesses are false and he has nothing to do with such allegations. However, this defence amounts to mere denial and does not controvert the clear and cogent evidence presented by the prosecution witnesses, particularly the direct eyewitness testimony of PW1.
27. Finally, on the question of whether there was malice aforethought on the part of the accused person, one has to first get the definition under Section 206 of the Penal Code which defines malice aforethought as being established by evidence proving any one or more of the following circumstances: 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; knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person; an intent to commit a felony; or 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.
28. The Court of Appeal in the case of *Joseph Kimani Njau v R* (2014) eKLR held that:

“ Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

 - i) The intention to cause death;



- ii) The intention to cause grievous bodily harm;
- iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts. It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed.....”

29. In the instant case, malice aforethought can be inferred from the evidence of PW1 who witnessed the accused armed with a knife deliberately attacking the deceased by cutting her neck, and from the postmortem report which shows the accused inflicted serious bodily injuries to the deceased, specifically a large cut wound measuring 6 by 15 centimeters on the right neck region which severed the vertebral artery and fractured the C5 vertebra. The deliberate use of a knife to cut the neck area demonstrates that the accused was extremely reckless to a point of disregarding the value of human life and intended to cause grievous bodily harm or death. This was an unlawful act committed against the deceased with malice aforethought.
30. Having considered all the evidence adduced by the prosecution and the defence put forward by the accused, I am satisfied that the prosecution has proved beyond reasonable doubt all the essential ingredients of the offence of murder contrary to sections 203 and 204 of the Penal Code. The accused person Mberwa Khamis Ramadhani is hereby found guilty of the offence of murder contrary to sections 203 and 204 of the Penal Code and is convicted accordingly.

Sentencingdivision -

31. This matter comes before me for sentencing following conviction, wherein I found the accused person, Mberwa Khamis Ramadhani, guilty of murder contrary to Section 203 as read with Section 204 of the Penal Code and convicted him accordingly. The accused was found guilty of murdering Fatuma Abdikadir, on 4th September 2023 at Kakuma Refugee camp in Turkana County. The evidence established that the accused caused the death of Fatuma Abdikadir through hemorrhage due to large cut wound on the right neck region with fracture of C5 vertebra and severed the right vertebral artery.
32. In mitigation, counsel for the accused submitted that the accused is a first offender with no previous criminal record.
33. The prosecution, through Mr. Kakoi, submitted that murder is one of the most serious offenses known to law and attracts severe penalties to reflect society's condemnation of such conduct.
34. Section 204 of the Penal Code provides that any person convicted of murder shall be sentenced to death. However, following the Supreme Court decision in *Muruatetu & Another v. Republic* [2017] eKLR, the mandatory death sentence was declared unconstitutional. The Court of Appeal in *Francis Karioko Muruatetu & Another v. Republic* [2021] KECA 206 provided guidance that courts must now exercise discretion in sentencing murder convicts, considering both aggravating and mitigating factors.
35. *The Constitution* of Kenya 2010, under Article 26(3), protects the right to life while Article 28 prohibits cruel, inhuman, or degrading treatment or punishment. These constitutional provisions must guide the court in determining an appropriate sentence that balances punishment, deterrence, rehabilitation, and protection of society.



36. In *Godfrey Ngotho Mutiso v. Republic* [2010] eKLR, the Court of Appeal established that in murder cases, courts should consider: the degree of moral culpability, the level of participation in the offense, aggravating and mitigating circumstances, the possibility of reformation, and the need for deterrence.
37. Aggravating factors in this case include: the vulnerable position of the deceased as the victim and the severe nature of injuries inflicted showing sustained and brutal assault.
38. Considering the totality of circumstances, the need for deterrence, the gravity of the offense, and the mitigating factors present, I find that a lengthy custodial sentence is warranted but not necessarily life imprisonment.
39. Therefore, I sentence the accused person, Mberwa Khamis Ramadhani, to thirty (30) years imprisonment. This sentence reflects the seriousness of the offense.
40. 14 days right to appeal explained.
41. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 15TH AUGUST 2025

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Otieno for ODPP

Mr. Karanja Adv. h/b for Mr. Muyesu

The Accused

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