



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Rono (Criminal Case E034 of 2023)  
[2025] KEHC 11828 (KLR) (4 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11828 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE E034 OF 2023  
SM MOHOCHI, J  
AUGUST 4, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**CYRUS KIPNGENO RONO ..... ACCUSED**

**JUDGMENT**

**Introduction**

1. The accused, Cyrus Kipngeno Rono was arrested on the 29<sup>th</sup> August 2023 and charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The Particulars are that on the on the 29<sup>th</sup> August of 2023 at Runda Lanet in Nakuru North Sub-County, Nakuru County murdered Moody Awori Makutsa.
2. The Accused encountered the deceased in his matrimonial bed thereby occasioning upon the deceased the fatal injuries.
3. The prosecution established a *prima facie* case and the accused was placed to his defence opting to give sworn evidence without calling any witnesses.

**Prosecution's Case**

4. PW1 Snr. Private Miyao Nelson a brother of the deceased testified how he was called while in Athi River on the 1<sup>st</sup> September 2023 with the sad news of his demise; he traveled and went to the Nakuru PG Hospital where he viewed the body and the multiple injuries thereon. That on Monday the 4<sup>th</sup> September 2023 he witnessed together with his sister, the post-mortem being conducted upon the body of the deceased.



5. The witness knew the accused well and they never had bad blood. That the witness was born in New Gakoe 250 meters from where the accused lived.
6. PW2 Titus Ngulungu testified how on the 4<sup>th</sup> September 2023 at 8.30 am he performed a post-mortem examination on the body of the deceased which was identified by his brother PW1 and sister Edith Makutsa.
7. It was a body of an adult in good nutritional features, the general observation revealed that the body had features of blood loss and lack of oxygenation of tissues.
8. On closer look the body had “slash and stab” wounds and most of the body had bruises.
9. There were thirty (30) stab wounds distributed as follows;
  - a. Five (5) Stab wounds to the back
  - b. Four (4) Stab wounds to the Right lower hip
  - c. Four (4) Stab wounds to the Left lower hip
  - d. Four (4) Stab wounds to the left upper limbs
  - e. Five (5) Stab wounds to the upper Right limb
10. There were bruises as follows;
  - a. Face and head Seven (7) in number
  - b. Neck and Shoulders two (2) in number
11. The respiratory system was severed at the 8<sup>th</sup> Rib, there was extensive scalp hematoma and the brain had lacerations and intracranial hemorrhage.
12. As a result, the pathologist formed the opinion that the deceased died as a result of severe head injury due to blunt and sharp force trauma in a body
13. PW3 Corporal Julius Rop testified how while serving as a duty officer on the 29<sup>th</sup> August 2023 at 11.45pm the accused walked in as a reportee and reported the killing of the deceased. He was in the company of Crime Aid Police Constable Sarah Maina and Driver Corporal David Kinyanjui.
14. That they were led by the accused back to the house where the accused opened the padlock into a three-roomed mabati house where the body of the deceased was. He noted the visible injuries, arrested the accused, secured the scene and reported to his superiors OCS and DCI.
15. PW4: Corporal Joseph Ngure Kabure, the Investigating officer, recalled in testimony that, on 29<sup>th</sup> August, 2023 the accused went to the Lanet police station and reported stabbing to death of the deceased in his house who he found in a compromising situation with his wife.
16. The officers receiving the report went with the accused to the scene confirmed and placed him under arrest, he was then called by the OCS together with Corporal Rop and proceeded to the scene.
17. At the scene he saw a bloodied body, upper torso was naked and the lower body was in a khaki long trouser partly under the bed in the bedroom.
18. The body had several injuries all over the body, hands, head, and other parts. He called a scene of Crime personnel Inspector Mariti who came and processed the scene.



19. He took the body to the Nakuru Municipal mortuary, (Kwa Jack) and recovered the white khaki long-trouser as an exhibit which he produced as Exhibit 2.
20. That further in investigations he obtained the official security guard uniform from the accused which contained blood stains and accordingly submitted the same for forensic examination. He produced the uniform as Exhibit 3.
21. That during the post-mortem examinations on the 11<sup>th</sup> August 2023 he collected stomach content, liver and kidney samples, prepared an exhibit memo and forwarded the same to the government chemist laboratories in Kisumu and he received the government analyst report dated 2<sup>nd</sup> October 2023.
22. That the murder weapon was recovered following interrogation from the home of Chege and handed over to the government chemists for forensic analysis. He prepared two exhibits memos which he sent on the 11<sup>th</sup> September 2023 and received a report on the 20<sup>th</sup> may 2024.
23. The witness also produced the Slasher as Exhibit 6.
24. In the course of his investigations he had called the scenes of crime personnel who photographed the scene and produced a total of eight (8) photographs depicting various features of the scene and produced as Exhibits 7(a-h).
25. The Witness equally produced an accompanying report to the Scene of Crime Photographs signed by Inspector Maliti dated 22<sup>nd</sup> January 2024 as Exhibit No 8.
26. That he identified the deceased and contacted his relatives by taking the simcard of the deceased and inserting the same into his phone
27. PW5 Daniel Ochieng Odhiambo, a gazzeted government Analyst, testified how on the 12<sup>th</sup> September, 2023 he received Exhibits from Cpl Ngure as per the exhibit memo and following his forensic analysis found no chemically poisonous substance therein, he prepared his report which he produced as exhibit 4(a and b) respectively.
28. PW6: David Kiara Muthoni, a government chemical analyst working as such in the DNA Section of the government Chemist laboratories in Kisumu. Testified how on the 12<sup>th</sup> September 2023 he received an exhibit memo together with sample material for DNA examination and it was his evidence that the DNA of the accused did not match the profile generated and he produced the exhibit memo and the Report as Exhibits 5(a and b).

### **Defence Case and Submissions**

29. The Accused submits that, PW1 (the brother to the deceased) informed the Court that he had met the accused person severally prior to the incident giving rise to the charge before this Honourable Court since they resided within the same neighbourhood.
30. He narrated about an encounter with the wife to the accused person while passing next to the place where the accused and his wife lived. During the incident, the wife to the accused had stopped PW1 and enquired from him what he wanted around their place of residence and at that point in time the wife called out the accused person by the name Rono, when surprisingly, PW1 for the first time learnt that the accused person was called Rono.
31. He confirmed that there was no bad blood between the accused person and the deceased. He stated that he had been about his brother's death and that the body was found in the accused person's house. PW2 testified mostly in respect to the postmortem report. He informed the Court that he observed



- stab wounds on the body of the deceased in the course of the postmortem. According to PW2, the stab wounds were caused by fury. PW3 testified that he had while at Lanet Police Station, at about 11.45 pm, he received information from the accused person who had personally gone to the police station and made a report, that while at his place of work at Kiamunyeki area, the accused person who was a night guard had made several telephone calls to his wife, none of which was received by the wife, when he became suspicious went back to the house to find out the reason why his wife was not responding to his calls.
32. That, upon arriving at his house according to PW3, the accused person found the wife having love affair with a stranger inside their matrimonial house. That, the accused person, attacked the stranger, who is the deceased in this case. PW3 narrated how upon arriving at the scene, the accused person opened the door to his house which had been locked, and inside the three roomed house, he found the body of the deceased lying in a pool of blood next to the accused person's bed with multiple cuts on the body and immediately arrested the accused person.
  33. He informed the Court that they never recovered any weapon at the scene and that the wife to the accused person was not found at the scene. PW4 testified that when he visited the scene, he found the body of the deceased lying next to the accused person's bed with the legs under the bed and the body outside the bed. According to PW3 the house had two rooms namely, a sitting room and a bedroom. He stated that the accused person had informed that he had used a slasher tool which occasioned the deceased injuries and that the accused left the slasher with one Chege to guard the deceased against escape while the accused person went to report the matter to the Police station and thus PW3 later visited Chege's house and recovered the slasher (P Exhibit 6). Apparently Chege was not called as a witness to corroborate the evidence by PW3, He did not find the wife to the accused person at the scene.
  34. He further stated that the wife to the accused person was not willing to testify. He confirmed that the accused person had not accompanied him to Chege's house where he had allegedly recovered a slasher and that even though it was necessary to dust the slasher for fingerprint, the same was not done. That, the wife to the accused person, who was present at the scene during the charge incident had told PW4 that the deceased had a knife. He went to state that the wife to the accused person confirmed to him that the accused person had found her with the deceased. PW6 informed the Court that if dry blood is integrated with water, the water would become contaminated with blood.
  35. In his defence the accused person stated that, on the material date he had reported for his night security duties at 6.10 pm when he called his wife on the phone about some money he had forgotten in his trouser at the house but the wife never responded forcing him to go back to the house to establish what could be the problem. He arrived at the house knocked and wife opened when he discovered a man's shoes on the floor that never belonged to him. The wife did not respond when the accused person enquired about the shoes, before a man merged from under their bed took a knife and pushed him causing the accused person's phone to drop to the ground then he in the heat of the moment took a slasher and stabbed the person once in self defence. The accused person had narrated that while the deceased was bear chested, his wife only had a t-shirt on her body.
  36. The accused submit that, having failed to call the wife to the accused person who was the only eye witness, then evidence presented by the prosecution is entirely circumstantial as none of the prosecution witnesses saw the accused person committing the alleged crime.
  37. That apparently the wife to the accused person in whose company the deceased was in their matrimonial house at night with the door locked from inside when the accused person who had unsuccessfully severally called the wife's phone, returned to the house to find out why his wife was not receiving the calls, and who had recorded a statement was never called as a witness by the prosecution.



38. The accused person stated in his testimony that he found the deceased half-naked with his wife which actions provoked him and led him to defend himself against the deceased who had charged towards him with a lethal weapon, before a struggle ensued which resulted in the death of the deceased. In the case of Nanyuki HCCRA 24 of 2018; *Michael Kimondo-s Republic* [2019] eKLR where the Court observed that;
- “It is only a very foolish man who would enter another man's house and bed with that other man's wife, and such man would ordinarily be deserving of whatever might come to him, including grievous harm of even death, because such foolish action would amount to a very grave provocation to the man cuckolded!”
39. The accused submits that he was provoked by the deceased's actions and acted in the heat of passion. Provocation is defined under Section 208 of the *Penal Code* Chapter 63 Laws of Kenya as follows,
- 1) “The term “provocation” means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial or fraternal relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.”
40. Reference is made to the case of *Republic v Ambrose Kimanthi Itumo* (2020) eKLR while quoting *Republic-vs- Hussein S/o Mohamed* [1942] EACA where the Court of Appeal of Eastern Africa held;
- “When once legal provocation as defined in our Court has been established and death is caused in the heat of passion whilst the accused is deprived of self-control by that provocation the offence is manslaughter and not murder, and that irrespective of whether a lethal weapon is used or whether it is used several times or whether the retaliation is disproportionate to the provocation. The presence of one or more of these factors is of course a matter to be taken most carefully into account when considering the question of sentence but will not of itself necessarily rule out the defence of provocation.”
41. In the case of *Elphas Fwambatok-vs- Republic* (2009) eKLR the Court of Appeal held;
- “In our view, once a person is provoked and starts to act in anger, he will do so until he cools down and starts seeing reason. This is because he will be suffering under diminished responsibility and the duration of that state may very well depend on Individuals. In any case, several injuries can be inflicted within particularly if one has a panga-we cannot agree that whether a person is acting on provocation or not would depend on the number of injuries inflicted on the victims...” very short time
42. The Accused submit that, the evidence before this Honourable Court does not prove malice aforethought on the part of the accused person. The prosecution has failed to prove the charge of murder brought against the accused person and we humbly urge this Honourable Court to acquit him at law.
43. That the accused person acted in self defence upon sudden provocation by the deceased whom the deceased had found in his house with the wife at night with the door locked from inside while he had been away on a night duty as a security guard. He even personally reported the matter to the Police



station following the unfortunate incident. I submit that that could have not been the conduct of a guilty person and the inculpable facts cannot be consistent with his guilt in the circumstances.

44. That his submissions are supported by the Court of Appeal decision in the case of *Abamad Abolfathi Mohammed and Another Vs Republic* Criminal Appeal No. 135 of 2016 (2018) KECA 743 (KLR) in which while referring to the case of *Abanga alias Onyango v Republic* Cr Appeal No 32 of 1990, the Court held that:

“it is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and non-else,” Why did the wife fail to receive calls by the accused person? Why did the wife decline to give evidence as the only eye witness? I humbly urge this Honourable Court that in the event, it is, however, constrained to sentence the accused person, may it, based on the circumstances of this case, be pleased to grant the accused person non-custodial sentence

45. The accused submit that, the prosecution has not made out a case beyond reasonable doubt against him and that if the Court finds guilt on his part then it should consider a non-custodial sentence.

### **Analysis and Determination**

46. I have carefully considered all the evidence availed before Court the filed submissions and the only issue in question in this case is whether the prosecution have proved whether the accused persons caused the death of the deceased persons and was there actual malice?

47. The offence and punishment for murder is provided for under Section 203 and 204 of the *Penal Code*. The said provisions provide that;

“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.”

48. To establish the offence of murder, the prosecution is required to prove beyond reasonable doubt, proof of death, proof that the death was caused by the accused, by an unlawful act or omission and that, the unlawful act or omission was through malice aforethought.

49. Section 206 of the *Penal Code* defines Malice aforethought as follows:

“206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or



grievous bodily harm is caused or not, or by a wish that it may not be caused

- (c) an intent to commit a felony;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

### **Proof of Death**

- 50. PW1, PW2 and PW4 and PW5 identified the body of the deceased at the Nakuru PG Hospital on the 04/9/2023.
- 51. The post mortem report by Dr. Titus Ngulungu was produced as P-Exh 1. The post mortem report revealed that the cause of death was severe head injury due to blunt and sharp force trauma in a body.

### **Whether the death was caused by an unlawful act or omission**

- 52. It is my considered view that, the prosecution has established that the accused person caused the death of the deceased by an unlawful act or omission.
- 53. The Evidence of PW1 is corroborated sufficiently by the evidence of PW2 and PW3 of the encounter between the accused and the deceased on the fateful evening resulting to the injuries that the deceased succumbed to and PW2 confirmed the cause of death to have been massive hemorrhage due to penetrating chest injury.
- 54. The offence of murder is complete when, “malice aforethought” is established if, pursuant to Section 206 of the [Penal Code](#) evidence proves any one or more of the following circumstances:
  - “(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
  - (b) Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
  - (c) An intent to commit a felony;
  - (d) An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”
- 55. While the Evidence points to the direct implication on the accused in the multiple stabbing resulting to the death of the deceased the intention to cause the death of or to do grievous harm to the deceased is foggy with doubt with the accused alleging to have been acting in self defence;
- 56. In the case of [Bonaya Tutut Ipu and Another vs R](#), [2015] eKLR the Court cited with approval the persuasive authority of the Ugandan Court of Appeal case of [Chesakit vs UG](#), Criminal Appeal 95 of 2004 where the Court held:

“In determining a charge of murder whether malice aforethought has been proved, the Court must take into account factors such as the part of the body injured, the type of weapon used



if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person.”

57. And in its decision in the Case of *Rex vs Tuper S/O Ocher* [1945] 12 EACA 63 the predecessor of this Court held:

“It (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 now more readily from the case, say of a spear or knife than from the use of a stick...”

58. Furthermore in the cases of *Katana vs Republic* (Criminal Appeal 48 of 2021 ) [2024] KECA 463 (KLR); and *Ali Salim Babat & another vs Republic* [2019] eKLR this Court observed that:

“...their vicious attack on the deceased was also a clear indication that they intended the consequences of their actions, that is, the death of the deceased equally, it established malice aforethought on the part of the appellants”

59. The vicious nature of the attack and the resultant injuries as exhibited by PW2 in exhibit number 1 indicated that the deceased suffered the following injuries;

- i. There were thirty (30) stab wounds distributed as follows;
  - a. Five (5) Stab wounds to the back
  - b. Four (4) Stab wounds to the Right lower hip
  - c. Four (4) Stab wounds to the Left lower hip
  - d. Four (4) Stab wounds to the left upper limbs
  - e. Five (5) Stab wounds to the upper Right limb
- ii. There were bruises as follows;
  - a. Face and head Seven (7) in number
  - b. Neck and Shoulders two (2) in number

60. The magnitude and seriousness of the injuries inflicted establishes the malice aforethought and that the manner in which the body of the deceased was found is indicative of the depth of violence the deceased suffered at the hands of the assailant.

61. In *Morris Aluoch v Republic* [1997] KECA 29 (KLR) the Court of stated as follows:

“If repeated blows inflicted the injury then malice aforethought could well be presumed but in this case we have to contend with one single blow which caused perforation of the intestine which led to internal bleeding which did not become apparent until after the death of the deceased some four days later. In the case of EX VS TUBERE S/O OCHEN R (supra) the assault was of a serious nature causing severe injuries from which the victim died shortly afterwards. In that sense, the case of TUBERE is distinguishable. It was correctly pointed out in TUBERE case as follows;-

“With regard to the use of stick(s) in cases of homicide, this Court has not attempted to lay down any hard and fast rule. It 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; that is not to say that the Court takes a lenient view where a stick is used. Every case has, of course, to be judged on its own facts. The same remarks applies as regards the view that which this Court takes were a ruptured spleen is the cause of death.”

62. In the case of *Roba Galma Wario vs Republic* [2015] KECA 521 (KLR), the Court of Appeal held that:-

“(26) For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”

63. The principles guiding the finding of guilt on circumstantial evidence as espoused in the cases of *R v Kipkering Arap Koskei* [1949] EACA 135; *Sawe v R* [2003] KLR 304; and *R v Taylor Weaver & Donovan* [1928] 21 Cr Appr 205, were satisfied and that:

“There existed inculpatory facts that were incompatible with the innocence of the appellant and incapable of any explanation upon other reasonable hypothesis other than that of guilt”.

64. This Court finds the Appellant’s defence as uncorroborated, weak and a belated attempt to try divert the Courts the provocation and self defence invoked is not fortified and that the same is inconsistent with the principal of reasonable response following provocation if any.

65. In totality, having considered the evidence adduced in this case it is my finding that the prosecution has proved its case against the accused beyond reasonable doubt. I find the accused Cyrus Kipngeno Rono, guilty of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code and is hereby convicted accordingly.

66. A pre-Sentence report and a victim impact report shall be prepared and served to enable mitigation and sentencing.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 4<sup>TH</sup> DAY OF AUGUST 2025**

**MOHOCHI S.M.**

**JUDGE**

