



**Republic v King'ola (Criminal Case E005 of 2023)
[2025] KEHC 11624 (KLR) (1 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E005 OF 2023
TM MATHEKA, J
AUGUST 1, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MICHAEL WAMBUA KING'OLA ACCUSED

JUDGMENT

1. Michael Wambua King'ola was charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. It is alleged that on 31/3/2023 he murdered Annah Ndoti King'ola aged 70 years.
2. The accused took plea on 3/5/2023 and he pleaded not guilty.
3. The matter proceeded on 8/11/2023 with Mr. Judah Kioko Advocate representing him.
4. The prosecution called 7 witnesses to prove their case. The accused testified and did not call any witnesses.
5. The deceased was mother to the accused, and PW1 James Muema King'ola.
6. It was from the prosecution that the accused was one of those children who are troublesome in the family for no apparent reason, and that he had a thing against his mother, always quarrelling her, including physical assault.
7. On 31/3/2023, the accused's mother was in the shamba with PW2 Alex Nzioki Lalya and PW3 Esther Kanyiva Musau. They were cultivating the shamba of the deceased. She then told them she was going to (kwova) literally tie her goats and her donkey, meaning tether the goats to graze.
8. When she left, PW3 saw the accused pass by while carrying a piece of wood to where his mother, whom she referred to a Mwaitu (mother) was. She saw him hit the goat twice near where his mother she heard his mother ask: Michael, why have you hit the goat? She heard Michael reply: even you, I can kill you.



- On hearing this she began screaming while running to call the brother to the accused James Muema King'ola PW1. Upon her return she found Mwaitu's body lying next to the dead goat.
9. PW2 Alex Nzioki Lalya told the court that Anna Ndoti was like his mother. On the material date he was in the shamba cultivating with her and PW3 who was present. He testified that Anna left to tie her goats and donkey. He saw the accused pass carrying a piece of timber, then he heard a thump! – He saw the accused hit the goat with that piece of timber, then he saw the accused hit his mother then, not once but three times. That on the second strike she fell down, and he hit her a third time while she was on the ground. The accused took off. They began to scream. He identified the piece of wood in court stating that it is the one he had seen the accused carrying earlier.
 10. PW1 testified that on that day his mother knocked on his door telling him to prepare so that they would attend the burial of his nephew.
 11. He told the court that he did not wake up immediately and was woken up by screams from PW3 – she had her hands over her head. She told him – that Michael had beaten their mother and she feared that he may have killed her (amempiga mama sana ni kama amemuua). He went to where his mother was only to find that she was dead. There was a dead goat at the scene. He also saw the piece of timber, he described it as 'kimiti kilikuwa kimewekwa misumari hapo mbele'. He identified it in court.
 12. PW3 told the court that the accused person was accused would come home 'amekula vitu zake na madharau yake'. He would bring chaos. That they had never reported him to the chief. That he was the one who had reported them to the police that they had gone to his home. That they had forgiven one another. He said that the accused and his mother did not have a relationship 'uhusiano haikuwa, ilikuwa mbaya'
 13. PW4 Daniel Mutua was village elder at the material time about 11.30am he was rang by a neighbor who was also a relative of the accused person to go to the home of Anna Ndoti. Upon arrival he found a crowd and he was told Michael had killed his mother. He went to where the body was. The body was covered with a blanket but he saw the injury on the head, he also saw the dead goat.
 14. He was shown where the accused was being beaten by members of the public. He went and stopped them. He rang the chief and the police came and collected both the deceased and Michael.
 15. On cross-examination he told the court, that he would hear disagreements in the family and at one time – the accused had raised a fracas forcing his mother, his wife and three children in the home to lock themselves in the house. He testified that on this day he witnessed the accused pull his mother by the legs until she fell down. He testified that the accused was the one who always started the 'vurugu' in the family. That there was a time that accused and his brother fought and he was injured.
 16. PW5 No. 242902 PC Wycliffe Mutua John – was at Kilome Police Station when a report was made through a phone call was made by the Chief Kongwani of a case of serious assault at Kiongwani.
 17. He and his colleagues visited the scene – there was a huge crowd at the home of King'ola. Members of the public took them to the shamba where they saw a dead goat, and the body of Anna Ndoti King'ola. She had injuries on head and there was blood all over the place, and there was a rungu with nails on one side on the side. He identified it in the court room. Beside the body there was the carcass of a white goat.
 18. They went to look for the accused person. They found "akiwa hali mahututi". He was in a serious condition with injuries on his head, blood all over his body as members of the public wanted to lynch him. They learnt that accused had hidden in his house but members of the public broke into the house and took him out and beat him-



The rescued him, took him together with his mother's body and recovered the weapon. He identified the accused in court.

He said that the body was taken to the mortuary as accused was taken to hospital.

19. Dr. Evelyn Kitungo was PW6. She conducted the post-mortem on 3/4/2023.

20. In the post-mortem report in the statement on the circumstances of the offence it states:

On the 31st day of March 2023 at around 11.30hrs at Muuasye village of Kiongwani Village of Kitaingo Location of Mukaa Sub County, the deceased was murdered by her son namely Michael Wambua Kingola.

21. In the report she noted the following: Externally

1. Embalment sites noted
2. Bruises noted on Fore head and Left maxilla region
3. Deep cut wounds associated with open fractures of the skull on the left Occipital region 4cm deep 8 cm length and Right temporal /region (4cm deep 6 cm length) irregular in shape

Internally

Head – fractures noted on the occipital region and right temporal region, massive subdural hematoma noted, extended to from the occipital region to the frontal region.

As a result of the examination, she formed the opinion that the cause of death was – severe head injury secondary to sharp force trauma following physical assault.

22. At the close of the case for the prosecution the accused was put on the defence.

23. In his defence the accused denied the offence. He testified to a dispute with his brother James Muema King'ola. He told the court how on 22/5/2022 his brother went to his home, found him with his son on Vincent Mwendwa Wambua. That his brother attacked him with a jembe stick and broke both his legs at his own home. That his other brother Musembi Kingola came and they took him to their mother's kitchen and locked him there. That despite his cries and those of neighbours that he be taken to hospital, his mother and brother threw out any neighbours who came to assist him. That his mother said that even if the accused died, – he was her child.

24. He spoke about the fact that both his mother and brothers refused him medical treatment and even when some neighbours came and he asked for water his mother told him to fetch the water himself yet he would not walk as his legs were both broken.

25. She testified that it was two neighbours Sammy and Kiteng'e who brought him water, took a wheel barrow took him to his home. That it was his wife who arranged for transport to hospital. That they went and reported at Kiou Police Station OB 06/12/5/2022. That he was treated and issued with P3. That he was taken to Sultan Hamud Hospital where he was treated. That he followed up on the case but found that his mother had interfered with the case and it never took off to court. That they sat at home and he forgave his brothers.

26. That on 31/3/2023 his brother James Muema King'ola went to the his (accused's) home which was different from that of his mother. That prior to that James had sold his (accused's) three goats and disappeared. Now, he wanted to sell the remaining goat . That james told him he was going to sell that goat when the accused was dead. He said that a fight ensued where his brother picked a rungu and threw it at him. He said he ducked, and the rungu hit his goat. That at that time PW2 – Alexander



Nzioki and his mother came also each armed with a rungu- they all attacked him . He said that James hit him on the head and back, and he began to bleed. That he grabbed the rungu from James and threw it and since he was bleeding from the face he did not see who it hit . That he was able to get away and he went and locked himself in his house. However his brother and Alexander broke the window took him out beat him to unconsciousness. That he found himself in a cell at Kilome Police Station where he was told he had killed his mother.

27. On cross-examination he said James, Alexander and his mother beat him. He said he did not know whether anyone came to his aid on 31/3/2023 because he was unconscious. He said Alex and Esther lied. He said that the issue between him and his family was that they wanted him to move from the place he was putting his home so that they can sell.
28. He said that Sammy or Kiteng'e came to his assistance when he was beaten by his brother, they were chased away but he would not call them as witnesses. He stated that it had been decided that they would not testify. He would also not be producing the P3.
29. He told the court that It was decided that none of them would testify for him that after the first beating the family sat down and he was asked to forgive them that he had even reported and had been issued with a P3. He told the court that he would not call the elder who had sat the family down to settle the issue. He confirmed that the deceased was his mother and that when Alex Nzioki was a relative who was always at their home.
30. When the evidence that they gave in court was put to him on what they saw he told the court that they had all lied. He told the court that he had not disagreed with either of them.
31. When cross examined by the court about why his siblings and his mother would do this to him he insisted that the reason was that they wanted to sell the parcel of land where he had put up his house and they were forcing him out.
32. The defence closed its case and the issue for the determination is whether the case against the accused person has been proved beyond a reasonable doubt.
33. The ingredients for murder are now settled. That the prosecution must prove death and cause of death of the deceased, that the death was unlawfully caused by the accused person with malice afore thought. These ingredients are found ta s, 203 of the *Penal Code*, s. 206 of the same Code and an array of case law see Antony NDEGWA NGARI versus Republic [2014]eKLR as cited in R vs Emmanuel Otieno Pamba [2020]eKLR; the issues arise out of the ingredients as set out:
 1. Whether the death of the deceased occurred?
 2. Whether the death of the deceased was caused by an unlawful act or omission.
 3. Whether the accused person committed the unlawful act or omission which caused the death of the deceased.
 4. Whether in doing so, the accused person had malice, a forethought.
34. The fact of death is not in dispute. The cause of death was set out in the post-mortem report produced by the Pathologist and it is evident that it was not a natural death, seeing that deceased had fractures of the skull, massive subdural hematoma amounting to severe head injury arising from sharp blunt trauma/physical assault.
35. What is in contest is how the death was caused and who did it.



36. According to the accused person on the material day, while acting in self defence from an attacked by his mother, his brother and PW2, and while his face was covered with his own blood from bleeding out of a blow from the brother's rungu, he disarmed his brother and threw/ flung the rungu blindly and did not know who it landed on. He learnt from the police, while he was in the cells, that he had killed his mother.
37. His claim is that it was in self-defence.
38. Did the accused kill his mother?
39. The case for the prosecution is that the offence was committed in broad daylight, in the mid morning of 31st March 2023. Farm work starts early in the morning, and goats and other domestic tethered at midmorning after the dew has basically fallen off from the grass. We get a sense of time from this natural rhythm of life in the village. It becomes a bit precise from the testimony of PW4 who stated that he was rang about the incident about 11:30 am, and PW5 the I.O who stated that his call came at 11:53.
40. Hence there is no doubt that it happened in the mid morning hours of 31st March 2023.
41. It is evident from the testimonies of PW2 and 3 that where they were digging and the home stead was not far. Each of them could see where Mwaitu was tethering her goats and her donkey. It was also possible for them to see the accused walking from his house armed with the big piece of timber. PW3 clearly heard the conversation between the accused and his mother. It is evident that the sound of the conversation was scary because when the accused his the goat and issue the threat she rushed to call her other son. The PW2 saw it happen. The strikes on the goat and the mother.
42. On the contrary the accused's defence was that he was acting in self defence, against the attacked by his 70 year old mother, his brother and Alex PW2 attacked him.
43. In *REPUBLIC v ANDREW MUECHE OMWENGA* [2009] KEHC 1573 (KLR) the court discussed the concept of self defence;

Self defence on the other hand, as the term itself suggests, is defence of self. It is the use of force or threat to use force to defend oneself, one's family or one's property from a real or threatened attack. Self defence is therefore a justification in the application of force recognized by the common law.

The law generally abhors the use of force or violence. There are, however, instances where the use of reasonable force is justified. For instance, an accused charged with an offence may seek to plead that he acted as he did to protect himself, or his property or others from attack or to prevent a crime or to effect a lawful arrest. Such pleas when successfully raised provide a justification for the accused's conduct thereby rendering his act lawful. Since the use of lawful force is not an offence, the accused will be acquitted of the offence as the element of *actus reus* (the unlawful act) will be missing.

A person is justified in using a reasonable amount of force in self defence if he or she believes that the danger of bodily harm is imminent and that force is necessary to repel it. This defence therefore turns on two requirements: one, that the force must be necessary and secondly that it must be reasonable.

44. In this case do we see necessary, reasonable force?the court stated further

In *Mokwa Vs Republic*, [1976-80] 1 KLR 1337 the Court of Appeal held that self- defence is an absolute defence even on a charge of murder unless, in the circumstance of the case,



the accused applies excessive force. In *Palmer Vs R.*, [1971] 55 Cr. App. R. 223 at p. 243 the English House of Lords held:-

“The defence of self defence either succeeds so as to result in an acquittal or it is disproved in which case as a defence it is rejected. In a homicide case the circumstances may be such that it will become an issue as to whether there was provocation so that the verdict may be one of manslaughter.”

What is reasonable force is a matter of fact to be determined from evidence and the circumstances of each case. In the words of Lord Morris of Borth-y-Gest in the said English case of *Palmer Vs R.*, [1971] 55 Cr. App. R. 223 at p. 242 quoted with approval by the Court of Appeal in *John Njoroge Vs Republic*, Cr. App. No. 186 of 1987:-

“It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but may only do, what is reasonably necessary. But everything will depend upon the particular facts and circumstances... It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some action of retaliation which was wholly out of proportion to the necessities of the situation....If the moment is one of a crisis for someone in imminent danger, he may have to avert the danger by some instant reaction.”

45. The key words here are that it depends on the circumstances of each case.
46. The accused’s statement is that he disarmed his brother and flung the rungu away and this is the one that may have hit his mother.
47. The accused statement of defence draws a picture of palpable hatred by his own mother. He testified on oath that she wanted him dead ,and that even if he died it did not matter. The evidence on record is that at the time he went to confront his mother , his brother was in his house. He was called to the scene by PW3. His defence does not add It sounded unbelievable that his mother , sibling and neighbours who had no grudge with him would lie about such a matter
48. His mother had injuries on her head. She had been struck severally and there were fractures and blood all over the place as described by the police officer. This is not consistent with an accidental blow. The injuries are consistent with multiple blows to the head. The conversation that the accused had with the mother according to evidence did not amount to any act of provocation that could have called for the use of such violent force. There is no evidence that his mother struck him or threatened to strike him. Even if she had, the force used here was neither necessary nor reasonable . it was far from accidental.
49. The accused’s comes up for rejection as I am not persuaded that there were circumstances in which he would act in self -defence.
50. In the circumstances I find that the prosecution established that it is the accused who struck his mother inflicting the injuries that led to her death. I also find that it was not in self defence as she was not armed, and was busy doing her chores.
51. Did the accused have malice aforethought?

The court in *Andrew Mueche Omwega* above had this to say

What is “malice aforethought? Malice aforethought describes the mens rea or the mental element required for a conviction of murder. The term imports a notion of culpability or



moral blameworthiness on the part of the offender. If ‘malice aforethought’ is lacking the unlawful homicide will be manslaughter.

Citing Section 206 of the Penal Code gives the instances when malice aforethought is established. In *Nzuki – vs- Republic*, (1993) KLR 171, the Court of Appeal stated that malice aforethought was a term of art and emphasized 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 accused:-

- (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.”

52. In *Isaak Kimanthi Kanuachobi – vs- Republic -(Nyeri) Criminal Appeal No. 96 of 2007 (ur)*, the Court of appeal expressed itself on the issue of malice aforethought in terms of Section 206 of the Penal Code stating

“There is express, implied and constructive malice. Express malice is proved when it is shown that an accused person intended to kill while implied malice is established when it is shown that he intended to cause grievous bodily harm. When it is proved that an accused person killed in furtherance of a felony (for example, rape, or robbery) or when resisting or preventing lawful arrest, even though there was no intention to kill or cause grievous bodily harm, he is said to have had constructive malice aforethought (See *Republic –v –Stephen Kiprotich Leting & 3 Others* (2009) e KLR HCCC No. 34 of 2008). In the circumstances of this case, where there was a fight involving the appellant and others in a place of worship leading to another fight where the appellant stabbed the deceased with fatal consequences, we do not think there was malice aforethought at all. The appellant should not have been convicted of murder but should have been convicted of manslaughter. (See *Juma Onyango Ibrahim – vs- R*, Criminal Appeal No. 312 of 2009 Court of Appeal (Kisumu).)”

53. In this case the sort of injuries that were inflicted on the deceased were intended to cause death. The weapon was a piece of timber with nails at the end. The point of impact was the head and the force was violent enough to cause fractures on the skull.

54. In the circumstances, I reject the defence of the accused person. I find that the prosecution has proved each of the ingredients of murder c/s 203 as read with s. 204 of the Penal Code. I find the accused guilty as charged and convict him accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 1ST AUGUST 2025

MUMBUA T MATHEKA



JUDGE

Accused present at Makueni Main Prison

Mr. Kioko for accused

Mr. Kazungu for state

CA Chrispol

Mr. Kioko: We can have a date for mitigation.

Court: I order for a Pre-Sentence Report from PACS.

Mention before the DR on 27th August 2025 for the PACS report.

Mitigation and Sentence hearing on 25th September 2025

