



**Republic v Bedan (Criminal Case E008 of 2021)  
[2024] KEHC 4181 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4181 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E008 OF 2021  
LM NJUGUNA, J  
APRIL 24, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**BENJAMIN NJERU BEDAN ..... ACCUSED**

**JUDGMENT**

1. The accused was charged with murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the offence are that on 14<sup>th</sup> February 2010 at Kambevo village, Gikuuri Sublocation, Runyenjes location in Embu East sub-county, within Embu County, the accused murdered Alexander Munene Njiru. Upon arraignment, he pleaded not guilty and a plea of not guilty was duly entered before the matter proceeded to full hearing.
2. PW1, Beatrice Mutitu stated that on the day of the incident, she was with the deceased as she had asked him to help her pluck miraa. That after a while, the deceased left her and said that he was going back home to milk the cows and he later left the house to go for a shave. That on his way, he found his father, the accused, beating his mother and he asked him why he was beating his mother. That she and her 2 children accompanied the deceased to the home of the accused and when they knocked the door, it was the accused who opened. That the accused came out with a panga which had a white handle and cut the deceased 3 times on the head and then he returned to the house, picked his jacket and went away. That they screamed and the neighbours gathered and one of them called the Chief to the scene. She identified the panga in court. It was her evidence that the deceased and the accused used to fight a lot.
3. PW2, Emily Njeru Benjamin, wife of the accused stated that the incident happened on a Sunday and that she had left the accused at home washing his clothes. That when she returned at around 5PM, the accused asked her why she had not unhung his clothes for him and yet it was raining. That she raised her hand and told him that God had answered that question long ago. That around the same time, the deceased had gone to a neighbour's house to work and he had returned home to milk the



- cow. That the deceased went to their house to ask the accused why he was beating her and he said it is because she did not remove his washed clothes from the rain. That the accused threatened that he would kill someone that day or he himself would be killed. That she used not to remove the accused's clothes even the other times.
4. She stated that she went to sleep early and she fell into a deep sleep because the accused had beaten her badly. That she did not hear when the deceased returned with his people since she was deep asleep. That she did not hear what was happening but she was awakened by the sound of the panga when the accused was using it to cut the deceased. That she woke up and found the deceased lying down bleeding profusely from the neck. That the accused had already left by the time the wife of the deceased arrived at the scene and started screaming. That she did not find the panga by the time she woke up to find the deceased lying in a pool of blood. She stated that her marriage with the accused was strained but he did not have any problem with his children.
  5. PW3, Patrick Muriithi Njiru, the area chief, stated that he received a call from his colleague about a body of a person identified as the deceased in this case. That he went to the scene and found the body which had many cuts on it and there were many neighbours there. That the person who called him about the body did not tell him about any murder weapon.
  6. PW4 was Ruth Wangari Kahiu, an analyst from the Government chemist. She stated that her office received 2 items; a panga and a blood sample from Sgt. Onyamatsi of DCI Embu East, together with a request letter seeking that they determine the presence and origin of any biological evidential material. She stated that the panga was moderately stained with blood of human origin whose DNA profile matched that of the deceased. She produced the report and memo as exhibits. She stated on cross-examination, that the blood was found on the cutting edge of the panga.
  7. PW5 was Ndunge Simba, daughter-in-law of the deceased. It was her evidence that on the day of the incident, the accused went to her house and told her that he had assaulted his wife because she had refused to remove his clothes from the rain. That he told her that if any of his children asked him about it, he would cut them into pieces. That she shared this information with her brother-in-law's wife and later that evening, she heard distress calls coming from the home of the accused, which is not far from her house. That when she went to find out what had happened, she found the deceased lying outside the accused's house with 2 cuts on his head and there was a panga there with blood stains on it. That when she went to the scene, the accused was not there but later she learned that the accused had gone to report himself at Runyenjes Police Station for cutting the deceased.
  8. PW6 was Caroline Mukami Munene, granddaughter of the deceased. She stated that when the incident occurred, she was living with her parents but on that particular day, she was at her aunty's house which is about 50 meters from their home. That while there, she heard her sister screaming and saying that her grandfather had killed her father and she ran to the scene where she found the accused putting the panga down and he wore a sweater then left. That the accused told her that he had killed her father and she saw that the deceased had 3 deep cuts on his head. That later, the police took the body away from the scene to Tenri Hospital. She identified the panga in court as the one used by the accused.
  9. PW7, Sylvia Wakuthi, another daughter of the deceased stated that on the day of the incident, she was in the company of her mother and younger sister when the deceased said that he was going to ask the accused why he was beating his (the deceased's) mother. That she went with him and when the deceased knocked on the door, the accused opened and said that he had been waiting for him then he cut him with a panga 3 times. That she started screaming and neighbours gathered. That she later learned that the deceased had died. She identified the panga in court as the one the accused had used. On cross-examination, she stated that the deceased was not armed with any weapon.



10. PW8, Dr. Ndirangu Karomo stated that he conducted postmortem on the body of the deceased at Tenri Ena Hospital Morgue. He stated that the body was identified to him by Justin Mwaniki and Duncan Njeru who were accompanied by PC Wamaitha. That the deceased had sustained a deep 7cm cut between the thyroid and hyoid exposing the vocal cords and epiglottis. That there was a deep cut on the occipital parietal junction that was 10 cm long, exposing the occipital and parietal bones. That the cardiovascular system, carotid artery and jugular vein were cut and the food pipe was also cut at the same level. He formed the opinion that the cause of death was external bleeding following assault with a sharp object and he produced the death certificate as evidence.
11. PW9 was PC Agnes Wambui of Runyenjes Police Station who stated that on the day of the incident, she was on duty when the accused went to the station and reported the incident and he was arrested and detained.
12. PW10 was PC Rose Wamaitha, formerly of DCI Runyenjes who stated that she was assigned the case and when she went to the scene in the company of the OCS, they found the body of the deceased and a panga. That she recorded the statements of the witnesses, took the suspect for mental assessment and took the panga to government chemist for analysis. She stated that she was also present when the postmortem was conducted. That the accused was charged with the offence of murder. She produced a sketch map of the crime scene as well as the mental assessment report as exhibits.
13. After the close of the prosecution's case, the accused was placed on his defense.
14. DW1, the accused person stated that on the day of the incident, he returned from church at around noon and left again to go to the market. That when he returned from the market, he found his wife was at home but she had not removed his clothes from the rain and when he asked her about it, she answered him rudely and he slapped her. That when he beat her, the deceased went to find out what was happening and he insulted him and told him that he was going to drink alcohol and return. That the deceased returned at around 8:30PM in the company of his wife and that he was carrying a panga. That the door was not locked and he stormed in, intending to cut him with the panga but he took it from him and cut him with it. He stated that he did not intend to kill the deceased. On cross-examination, he stated that he was in good terms with the deceased and that after he cut him, he did not bother to take him to hospital.
15. After the close of the defense case, the court directed the parties to file their written submissions and they complied.
16. The prosecution filed its written submissions in which they urged the court to consider the case of *Anthony Ndegwa Ngari v Republic* [2014] eKLR where the elements of the offence of murder were outlined as stated under section 203 of the *Penal Code*. It submitted that on the death and cause of death, the same were proven by PW8 who produced the postmortem report. It relied on the cases of *Republic v Stephen Sila Wambua* (2017) eKLR for the argument that Article 26(1) and (3) of the *Constitution* accords everyone the right to life and that there was no justifiable cause for the deceased's life to be taken away.
17. On the issue of whether the accused person caused the death of the deceased, it was its submission that the testimonies of PW1, PW7 and PW8 placed the accused person at the scene of the crime. That the testimony of PW8 shows that malice aforethought as provided for under section 206 of the *Penal Code*, can be inferred from the nature of injuries inflicted on the deceased. That the defense of the accused person does not create reasonable doubt and that in any event, it helps to build the prosecution's case. It urged the court to follow the evidence and find the accused person guilty.



18. The accused person submitted that he did not intend to kill the deceased and that he acted in self-defense. He relied on the case of *Guzambizi Wesonga v Republic* (1948) 15 EACA 63 as applied in the case of *Republic v Ann Karimi* (2020) eKLR where it was held that self-defense is a justifiable defense in a homicide. On this, he also relied on the case of *Abmed Mohamed Omar & 5 others v Republic* (2014) eKLR where the court held that once the accused person raises self-defense as a defense, it is upon the prosecution to disapprove him. He urged the court to convict him of the lesser offence of manslaughter.
19. The issue for determination is whether or not the offence of murder has been proved beyond reasonable doubt.
20. Article 26 of the *Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by the *Constitution* or written law. The accused person herein faces the charge of murder contrary to section 203 as read together with 204 of the *Penal Code*. The burden of proof lay on prosecution to prove beyond reasonable doubt, that the accused murdered the deceased. Section 203 of the *Penal Code* provides the elements of the offence as follows:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
21. In the case of *Republic v W.O.O.* [2020] eKLR (Migori High Court Criminal Appeal No 26 of 2017) the elements of murder were explained, as guided by the Court of Appeal in the case of *Anthony Ndegwa Ngari v Republic* [2014] eKLR, as follows:

“For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the Accused had the malice aforethought.”
22. On the first element of death and cause of death, PW8 testified that he examined the body of the deceased and formed the opinion that the cause of death was external bleeding following assault with a sharp object. He observed that the deceased had sustained a deep 7cm cut between the thyroid and hyoid exposing the vocal cords and epiglottis. That there was a deep cut on the occipital parietal junction that was 10 cm long, exposing the occipital and parietal bones. That the cardiovascular system, carotid artery and jugular vein were cut and the food pipe was also cut at the same level. This testimony of PW8 corroborates the testimonies of PW1 and PW7 who stated that they were present and saw the accused cutting the deceased with a panga 3 times.
23. It follows that these 2 witnesses, through the same evidence, placed the accused at the scene of crime. PW6 stated that after she had heard her sister screaming, she headed to the scene where she found the accused putting the panga down next to the deceased and that he wore a sweater and went away. PW9 stated that the accused presented himself at Runyenjes Police Station and reported the incident and he was arrested. DW1 himself stated that he indeed was involved in an argument with the deceased and that he killed the deceased but he submitted that he did it in self-defense and that he did not intend to kill him.
24. On the element of malice aforethought, the prosecution must prove beyond reasonable doubt that the accused intended to cause the death of the deceased. The accused person stated in his defense and submissions that he did not intend to kill the deceased and he urged the court to convict him of



the lesser charge of manslaughter. He pleaded self-defense. Malice aforethought is defined and well explained under section 206 of the [Penal Code](#) as follows:

“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.”

25. Further, the court in [Republic v Njeru & 3 others](#) (Criminal Case 2 of 2019) [2023] KEHC 19141 (KLR) stated as follows:

“The Court of Appeal in *Bonaya Tutu Ipu & another v Republic* [2015] eKLR stated as follows on the prove of malice aforethought; -“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of *Chesakit v Uganda*, CR. APP. No 95 OF 2004, the Court of Appeal of Uganda stated that 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. Earlier in *Rex v Tubere s/o Ochen* [1945] 12 EACA 63, the former Court of Appeal for Eastern Africa stated thus on the issue: 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 flow more readily from the case, say, of a spear or knife than from the use of a stick.....”

26. DW1 stated that the deceased had confronted him earlier, threatened him and then after he went drinking, he returned with a panga intending to cut him with it. He stated that he snatched the panga from the deceased and cut him with it but he did not intend to kill him. Where an accused person states that he acted in self-defense, it is indeed upon the prosecution to prove otherwise. Section 17 of the [Penal Code](#) states as follows: -

“17. Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.”



27. In the case of *Palmer v Regina* (1971) All ER 1077, the Court stated that:

“Where the evidence is sufficient to raise the issue of self-defence, that defence will only fail if the prosecution shows beyond doubt that what the accused did was not by way of self-defence.”

28. PW5 stated that on the day of the incident, the accused went to her house and told her that he had assaulted his wife and that he would kill any of his children who would ask him about it. PW2, the accused person’s wife stated that the accused indeed pronounced a threat to the life of any of his children who would ask him about him beating his wife. For context, DW1 stated that the deceased went to his home the first time and insulted him but he kept mum. That the deceased went away and allegedly returned with a panga seeking to cut him. This testimony by the accused person adds context to the testimonies of PW2 and PW6.

29. In addition, PW1 stated that when they accompanied the deceased to the accused person’s house he cut the deceased with a panga and then said “wacha ukufe huko kama mbwa” meaning “go and die like a dog”. PW7 stated that when the accused opened the door for the deceased, he said “wewe ndiye nilikuwa nangojea” meaning “you are the one I was waiting for”. In my view, there is plenty of evidence to show that the accused intended to kill the deceased and so I do not think that he acted in self-defense.

30. That being said, from the foregoing, malice aforethought can be strongly inferred from the evidence. There is also the fact that the murder weapon was recovered and when analyzed by the government chemist, PW4 testified that the blood found on the cutting edge of the panga matches the DNA profile of the deceased. The nature of injuries inflicted on the deceased show that the accused intended to inflict fatal injuries, which he did.

31. There is no doubt in my mind that the prosecution has proved its case against the accused beyond reasonable doubt. Therefore, having considered the evidence before me and the relevant laws, I find that the accused is guilty of the offence of murder contrary to section 203 of the *Penal Code* and is hereby convicted accordingly.

32. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 24<sup>TH</sup> DAY OF APRIL, 2024.**

**L. NJUGUNA  
JUDGE**

.....for the State

.....for the Accused Person

