



**Director of Public Prosecutions v M’Muriki (Criminal Case
E024 of 2021) [2025] KEHC 2010 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2010 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E024 OF 2021
TW CHERERE, J
FEBRUARY 6, 2025**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

CHARLES NGÉNTU M’MURIKI ACCUSED

JUDGMENT

1. Charles Ngéntu M’Muriki, the accused was charged with murder under sections 203 and 204 of the [Penal Code](#) for allegedly killing his brother Stanley Kimani on April 29, 2022, in Tuathama Sub-Location, Igembe South Sub-County, Meru County.
2. The prosecution presented seven witnesses in support of its case. The first and second witnesses arrived at the scene long after Stanley had died. The second witness additionally stated that she saw a large stone in one of the bedrooms in Accused’s house whose window was broken. The third witness learnt about his father’s death a day after the event.
3. The fourth and fifth witnesses who are daughters of the Accused stated that they were sleeping and had raised an alarm after an intruder broke into their bedroom window with a big stone and it was then that their father woke up and fought the attacker who had by then gained entry into the house as a result of which the attacker died.
4. The sixth witness who is the wife of Stanley stated she had run away from her home due to misunderstandings between them. She stated she was sleeping in the same house with Accused’s daughters when an intruder gained entry through the bedroom window and they raised an alarm. It was her evidence that she did not recognize the intruder as her husband until he saw him lying dead outside Accused’s house.
5. After investigations, Accused was arrested and charged. The accused testified that he was awoken by screams from his daughters’ bedroom at about 1:00 am on the material night. He stated that an intruder



he did not identify because it was dark gained entry into the house and in the struggle, he disarmed the intruder of a panga which he used to fight back in self-defense as a result of which the intruder, whom he later identified as his brother died.

Analysis and Determination

6. To secure a conviction for murder under Section 203 of the *Penal Code*, the prosecution must prove beyond reasonable doubt:
 1. The death of the deceased and its cause.
 2. That the accused committed the unlawful act leading to death.
 3. Malice aforethought on the part of the accused.
7. There is undisputed evidence that Stanley died out of injuries inflicted by the Accused.
8. The central issue for determination is whether the accused's actions fall within the legal parameters of self-defense.
9. Under Kenyan law, self-defense is recognized as a complete defense where the force used was necessary and proportionate to the threat faced.
10. Section 17 of the *Penal Code* (Cap. 63, Laws of Kenya) provides that: "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 defense of person or property shall be determined according to the principles of English Common Law."
11. Under common law principles, a person is justified in using reasonable force to repel an unlawful attack, provided that the force used is proportionate to the danger posed.
12. In *Republic v. Gusambizi s/o Wesonga* [1948] 15 EACA 65, the court stated that that self-defense is a lawful defense if the accused believed on reasonable grounds that their life was in danger and that the force used was necessary to avert that danger.
13. In *Republic v. Silas Magongo Onzere alias Fredrick Namema* [2017] eKLR, the court held that the law does not require a person under attack to measure with mathematical exactness the degree of force necessary to repel the attack. A person acting in self-defense is permitted to respond instinctively to an unlawful attack.
14. Similarly, in *Ahmed Mohammed Omar & 5 Others v. Republic* [2014] eKLR, the Court of Appeal emphasized that The Court of Appeal emphasized that where a person is faced with imminent danger, they may use reasonable force to avert it, even if such force results in the death of the aggressor.
15. The principles derived from the above cases reinforce the doctrine that self-defense is a valid legal defense when:
 1. The accused reasonably believed they were in imminent danger.
 2. The force used was necessary to avert the threat.
 3. The force applied was proportionate to the danger posed.
16. In the present case, the evidence establishes that the deceased unlawfully entered the accused's home at night by forcefully breaking a window leading to the bedroom of the accused's daughters. The deceased



was armed with a panga, indicating a predisposition to violence and a potential threat to the lives of the accused and his family.

17. The accused, in response to this imminent danger, used force to neutralize the threat. The key question is whether the force used was proportionate to the threat posed.
18. Applying the foregoing principles, the accused's response to an armed and violent intrusion into his home was both reasonable and lawful under the doctrine of self-defense.
19. From the foregoing analysis, I find Accused NOT GUILTY of the offence of murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#) and hereby acquit him accordingly. He shall be set at liberty unless otherwise lawfully held.

DATED THIS 03rd DAY OF February 2025

WAMAE.T. W. CHERERE

JUDGE

DELIVERED AT MERU THIS 6TH DAY OF FEBRUARY 2025

H.M. NYAGA

JUDGE

This Judgment is delivered under the provisions of Section 200 (1) as read with Section 201 (2) of the [Criminal Procedure Code](#) Cap 75 Law of Kenya

Apology for delay

The Court acknowledges that there has been a delay in the delivery of this Judgment due an unfortunate accident involving the Judge who initially presided over the matter. The Court sincerely regrets the inconvenience this has caused to the parties involved. The Judiciary remains committed to the timely dispensation of justice, and every effort has been made to ensure that this matter is concluded appropriately.

