



**Republic v Kiura (Criminal Case E023 of 2021)  
[2024] KEHC 9635 (KLR) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9635 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E023 OF 2021**

**LM NJUGUNA, J**

**JULY 31, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**VICTOR MURIUKI MURIUNGI KIURA ..... 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 09<sup>th</sup> June 2021, at Mutira area Makengi location in Embu East sub-county, within Embu county, the accused murdered Justin Muchangi Ileri. The accused person pleaded not guilty and a plea of not guilty was duly entered before the matter proceeded to full hearing.
2. PW1, Martin Muriithi a bar/club owner, stated that on the day of the incident, he was at his place of business when he sent one of his employees to collect money from the sales of the previous day and then he went to the urinal located behind the club. That while he was there, he heard the deceased calling him and he rushed back into the club to find the accused and the deceased holding each other. That when the accused let go of the deceased, the deceased fell down and he saw the accused holding a screw driver which he had used to stab the deceased on the head. That he called one Silvano and they arranged for a motor vehicle to take the deceased to hospital and they took the screw driver with them. That they passed through Makengi Police Station before heading to Embu Level 5 Hospital where the deceased was pronounced dead on arrival. He stated that when the incident occurred, there was nobody else in the club since everyone had already left. That the murder weapon was collected by the police and it was produced as evidence. Upon cross-examination, he stated that he had hired the accused to do some electrical repairs at his premises and he had carried pliers and a screw driver identified as the murder weapon. That when he returned from the urinal, he found the accused holding the deceased by the collar of his shirt, threatening to kill him. In cross-examination, he stated that he was not aware that



- the deceased was facing theft charges and that the accused had testified against him leading to enmity between them. That when he returned from the urinal, he saw the accused letting go of the deceased but he did not see the accused stabbing the deceased.
3. PW2 was Misheck Mugambi Kinyua, uncle of the deceased. He stated that on the material day at around 6:30 p.m, he received a call from Silvano Njeru informing him that the deceased had been stabbed. That he took a vehicle and went to Kutira shopping center where he found the deceased lying in the field and many people had gathered. That the deceased was bleeding from the nose and head. He stated that the father of the deceased arrived after him and together they went to Makengi Police Station where they were given a P3 form and then proceeded to Embu Level 5 Hospital but on arrival they were informed that the deceased had already died. That they were given a letter stating as much and they took it to Itabua police station after which they returned to Embu Level 5 Hospital and took the body to Gakwegori mortuary. On cross-examination, he stated that he does not know the accused person. That he was present when the deceased was sentenced for stealing goats but he did not know that the accused was a witness in that case. That the deceased used to drink alcohol, was quarrelsome and had the habit of picking fights with people. That when he went to the scene, the deceased was still alive.
  4. PW3 was Salesio Ireri Kinyua, the deceased's father. He stated that his son Peter Gitonga telephoned to inform him that his other son, the deceased herein, had been stabbed. That he went to the shopping center and found the deceased in PW2's motor vehicle and the accused was surrounded by people. That on the way to the hospital, they met the assistant chief who told them to pass by the chief's camp where they were given a letter to take to hospital. That upon arrival at the hospital, the deceased was pronounced dead and they took his body to Gakwegori mortuary. On cross-examination, he stated that when he first saw the deceased it was around 6.00 p.m and he was in bad shape and was bleeding from the head. That they reached the hospital at around 7.00 p.m. From the place of the incident to the chief's camp was about 1 hour and they spent some time there before driving to the hospital. He admitted that the deceased was charged with theft of goats at Nembure where the accused comes from.
  5. PW4, Kinyua Kigamba, the assistant chief in the area, stated that he was at Maguru shopping center when PW3 alighted from a salon vehicle and told him about the incident. That he advised him to go and report the incident at Makengi Police Post and then take the deceased to hospital. That later that evening, he went to the scene being accompanied by Sgt. Ratemo and Cpl. Samuel Maina of Makengi Police Post and they found the accused being surrounded by members of the public and they took him to Makengi Police Post. That they called the OCS Itabua Police Station and he took the accused person away. On cross-examination, he stated that he knows the deceased who was once charged with theft of goats in Nembure but besides that, he was a law-abiding citizen.
  6. PW5 was Dr. Ruth Wangari Kahiu, a government analyst. She stated that her office received a screw driver in a brown envelope and a blood sample in a syringe marked with the name of the deceased from DCI Embu with a request for analysis. The findings of the analysis are that the DNA profile generated from blood sample from the screw driver matched the one generated from the blood of the deceased. She produced the DNA report as evidence. On cross-examination, she stated that she is well aware of Section 60(F) of the [Evidence Act](#) and that blood samples are not returned after analysis.
  7. PW6 was Dr. Godfrey Njuki Njiru who stated that he conducted postmortem on the body of the deceased. He observed that there was a stab wound on the left side of the head and it had penetrated the scalp muscle, the skull bone and into the brain tissue on the left side. That the brain tissue had been damaged and there was blood in it as a result of the stab wound. He formed the opinion that the cause of death was brain injury as a result of penetrating injury caused by a sharp object. He produced the postmortem report as evidence. On cross-examination, he stated that he studied medicine and surgery and he holds valid credentials for current practice but he has specialized in pathology. He stated that



- upto 8 days after death, the body usually has blood circulating as well as clots. That he is the one who extracted the blood sample from the body of the deceased and the blood was clotted.
8. PW7 was Sgt. John Ratemo of Makengi Police Post who stated that on the day of the incident, he saw a small car being driven to the station and in it were PW1, PW2, PW3 and the deceased. That the incident was reported and an OB number given then they were given a letter to take to hospital with the deceased. That at around 7.00 p.m he went to Mutira where the incident happened and he was in the company of another officer and PW4 where they found people surrounding the accused. That they rescued him and took him to the police post before asking him what had happened. That at around 8.00 p.m., a lady called Murugi called to inform him that the deceased had died and a report of death was booked. The accused person was taken to Itabua Police Station and a 9 inch screw driver with a yellow handle was handed over to P.C. Regina Thuo. On cross-examination, he stated that the screw driver was given to him by the crowd that had accosted the accused person and it was wrapped in a piece of cloth. That by the time they reached the scene, the accused had been badly injured and the mob was getting ready to set him on fire but they rescued him and took him to hospital.
  9. PW8 was Cpl. Samuel Maina of Makengi Police Post who recounted his testimony as narrated by PW7. On cross-examination, he stated that the murder weapon was given to him by PW7. That when they rescued the accused, it was his intention to take him to hospital but members of the public threatened to burn the police vehicle. That the accused stayed at Makengi Police Post for about 1 hour within which time he tried to interrogate him but the accused constantly fell in and out of consciousness. That he explained to him his rights before he was taken to Itabua Police Station.
  10. PW9 was Dr. Erik Mbundi, a clinical psychiatrist at Chuka Referral Hospital. He stated that he conducted mental assessment on the accused and found that he was fit to stand trial. He produced the mental assessment report as an exhibit. Counsel for the accused challenged his qualification as a valid witness but the objection was overruled.
  11. PW10 was Rtd. Sgt. Joseph Ringinei, formerly of DCI Embu West. He stated that he was instructed by the DCIO to investigate a murder reported at Itabua Police Station. That he interrogated PW1, and the accused person who had been admitted at Embu Level 5 Hospital and statements were recorded. That he also attended the postmortem which revealed that the deceased suffered injuries to his head. That he prepared an exhibit memo and forwarded the samples to government chemist for analysis. On cross-examination, he stated that he did not take finger-prints of the accused to find out if they were also on the murder weapon.
  12. After the close of the prosecution's case, the accused was placed on his defense.
  13. DW1, the accused person, stated that on the day of the incident, he went to attend the burial of his friend and he stayed there from 2-2:30 p.m. That PW1 called him to his establishment to check if the electricity meter was working since it was old. That he discovered that he did not have the right tools and so PW1 offered to take him to his house to get the tools. On arriving at his house, he did not have the keys and so PW1 told him that he would lend him some tools that were at this bar. That he checked the meter and found the problem which he reported. That the deceased was at the bar in the company of 2 other people and they insisted that the accused should buy them some beer. That a certain lady called Muthoni bought him a drink and PW1 and the deceased zoned him in and PW1 hit him with a stick on the head and when he turned, he told him "leo nimekupata" ("today I have found you"). That he held the deceased and from there he could not remember what happened and only regained his consciousness at Embu Level 5 Hospital. That he had known the deceased for 10 years and at some point, the deceased had stolen a neighbour's goats and he was a witness in the case. That he did not have any tools on that day and so it is not possible that he killed the deceased using a screw driver. On



- cross-examination, he stated that it is true that him and the deceased were in the bar at the same time but he did not assault him. That he did not know that the deceased still harboured a grudge against him as he was a witness in the case against him.
14. After the close of the defense case, the accused opted not to file any written submissions but the prosecution filed theirs.
  15. In its submissions, the prosecution relied on the case of Anthony Ndegwa Ngari v. Republic (2014) eKLR and the provisions of section 203 of the Penal Code. It stated that the death of the deceased was proven and PW6 stated the cause of death. That from the evidence and the circumstances of the case, it had proved that the accused murdered the deceased using a screw driver since PW1 saw him holding it in his hands after the deceased had slipped out of the accused's grip. Reliance was placed on the case of Republic v. Stephen Sila Wambua (2017) eKLR. It also argued that the accused had malice aforethought to kill the deceased. It relied on section 206 of the Penal Code and the case of Joseph Kimani Njau v. Republic (2014) eKLR. That the manner in which the injuries were inflicted speaks to the intention to commit the offence.
  16. The issue for determination herein is whether or not the offence of murder has been proved beyond reasonable doubt.
  17. 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 sections 203 as read together with 204 of the Penal Code. It is upon the prosecution to prove beyond reasonable doubt, that the accused murdered the deceased. Section 203 of the Penal Code provides:

“ 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
  18. 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 vs 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.”
  19. The first element is death and cause of death. The testimony of PW6 spoke to the cause of death and he observed that the deceased died as a result of brain injury caused by penetrating injury caused by a sharp object. He noted that the rest of the organs in the body did not have any injuries.
  20. The second element is to prove that the accused is responsible for inflicting the fatal injuries upon the deceased. PW1 seems to be the only eye witness to the incident and his testimony places the accused person at the scene. He stated that he had hired the accused person at his bar to do some electrical repairs and that he came in with pliers and a screw driver. That PW1 had gone to the urinals at the back of the bar when he heard the deceased calling him. That he rushed back into the bar and he found the accused and the deceased holding each other but when the accused let go of the deceased, he fell down and the accused was standing with the screw driver in his hand. PW2 and PW3 were called to the scene much later and they did not witness what had happened.



21. In his defense, the accused person stated that he was hired by PW1 to go and repair for him electricity meters at his bar. That he did not have his tools but PW1 offered to drive him to his house but the door was locked and he did not have the key. That PW1 offered some of his own tools to him and he used them to check the electricity meters. That while he was in the bar, a lady called Muthoni bought for him a drink and then the deceased and PW1 stood in front of him and behind him and then PW1 hit him with a small stick on the head and told him “leo nimekupata” (“today I have found you”). He said that he does not remember any other thing that happened until he came to, at Embu Level 5 Hospital.
22. The evidence of both the prosecution and the defence definitely places the accused person at the scene. On cross-examination, PW10 stated that he did not carry out fingerprint analysis on the screw driver to establish that the accused person handled it. However, the screw driver as described by the prosecution witnesses is consistent with the one that was examined by PW5. PW5 stated that the blood on the screw driver had the same DNA profile as the blood sample collected from the deceased. In my view, the accused person was at the scene and in possession of the murder weapon. PW1 testified that he saw the accused holding the deceased, and when the deceased slipped from the accused, he fell down and he was bleeding from the left side of the head. The accused was holding a screw driver and it was blood stained. There was no bad blood between PW1 and the accused person. He would have had no reason to give false testimony against the accused person.
23. The prosecution also has to prove that the accused person bore malice aforethought or that he intended to murder the deceased. In its submissions, it urged the court to infer malice aforethought from the nature of injuries inflicted upon the deceased and the weapon used. 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.”

24. 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 Vs 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 Vs 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.....”

25. From the testimony of PW4, the accused suffered an injury to the brain caused by a sharp object. From the evidence, the injury was calculated at killing the deceased. However, I have also considered the testimonies of PW7 and PW8 who stated that they rescued the accused from the irate mob that had beaten him and were preparing to set him ablaze. They stated that the accused was in and out of consciousness while at the police post. In his testimony, the accused person stated that the last thing he could remember was him holding the deceased.
26. In the end, having considered the evidence before the court and the relevant laws, it is my finding that the prosecution has proved the case of murder against the accused person.
27. I therefore find him guilty as charged and I hereby convict him accordingly.
28. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 31<sup>ST</sup> DAY OF JULY, 2024.**

**L. NJUGUNA**

**JUDGE**

..... for the State

.....for the Accused Person

