



**Republic v Kiptisia (Criminal Case E011 of 2021)
[2024] KEHC 11436 (KLR) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11436 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E011 OF 2021
RB NGETICH, J
SEPTEMBER 27, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

EVERLINE KABON KIPTISIA ACCUSED

JUDGMENT

1. The accused Everline Kabon Kiptisia has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the 23rd day of February, 2021 at Torokwonin village in Baringo North Sub- County within Baringo County, the accused murdered Solomon Kipkorir Cherogony.
2. The accused denied the charge and the matter was set down for full trial with the prosecution availing a total of 6 witnesses in support of the charge preferred against the accused. Upon being placed on her defence, the accused adduced sworn evidence and did not call any witness.

Prosecution Evidence

3. PW1 Wilson Sirikwo Kokwon who is an uncle to the deceased testified that on the 2nd January, 2021, he went to Kabarnet mortuary to identify and witness postmortem on the body of the deceased Solomon Kipkorir Cherogony testified that he saw a cut on his neck and learnt from the doctor the doctor that he had lost a lot of blood.
4. PW2 Julia Teriki Chelagat testified that on 23rd February, 2021 at around 3:30/4 P.M her child who had gone to fetch firewood informed her she heard people screaming from a neighbor Mama Chemeli saying her father had been cut by mama Chemeli whose homestead is about 200metres from their home. She said she went towards the home and on the way, she met a woman who had a sword. She passed through the thicket as the woman passed through the road and hid when she saw her. She stated that she thought of her children and decided to go back home to check on them. She confirmed that the



- sword produced in court is the one she saw her with the women mama Chemeli whom she confirmed is the accused herein. Pw1 confirmed that the deceased was her husband and that she did not go to the scene but she went to the mortuary.
5. PW3 Isaiah Chebiegon testified that on the 23rd February 2021, he then went to the house of the accused Evaline Kiptisia's to ask for a debt which was slightly above Kshs.100 and on arrival, the accused promised to give him his money and then he joined others in drinking. He said the deceased Kipkorir who used to do casual work was among the people drinking.
 6. Pw3 further stated that while he was under a shed, he heard accused asking the deceased where her money was and a quarrel ensued between accused and the deceased; and shortly thereafter, he saw the deceased with a panga and then he heard the accused ask the deceased if he had brought a panga that day. He the deceased continued dancing while holding a panga with his left hand. He said the accused went for a panga from her house and pointed at the deceased's face and then cut the deceased on the neck with the maasai sword making the deceased to fall. He said she then got the deceased's panga and cut him on the leg. He identified the sword the accused had and the panga the deceased had before court. He said the run away due to fear and no one helped the deceased. The next day they learnt that the deceased had died and accused's house had been burnt down. He said accused surrendered Administration police officers (Aps) at Kasparian.
 7. PW4 Doctor Wangare Wambugu conducted postmortem on the body of Solomon Kipkurui on 2nd March,2021 at Baringo County Referral Hospital mortuary upon being requested by the DCI officers Baringo North and the body was identified by Abraham Cheburett and Wilson Sirikwo. She formed opinion that the cause of death was acute blood loss due to deep cut wounds on the neck due to sharp force trauma following assault. She produced the Postmortem report as exhibit before court.
 8. PW 5 Polycap Lutta Kweyu a Principal Government Chemist at Kisumu testified that on the 4th March,2021, two samples were received from corporal Weldon Koech of DCI Baringo North. The blood sample of Solomon Kipkorir indicated as deceased and marked "A", and a panga with black rubber handle marked "B". He said that it was it requested on them to carry out DNA analysis on the two items.
 9. Upon analysis, he found that the panga item "B" was heavily stained with blood of a human being. He proceeded to generate DNA profiles and made conclusion and opinion that the DNA profiles generated from the blood stains on the panga item 'B' matched the DNA profiles of Solomon Cherogony the deceased. He prepared the report on 3rd March,2022 and produced the report as exhibit 4.
 10. PW6 No. 58171 CPL Weldon Koech based at DCI Baringo North testified that on 3rd February,2021, he was in the office when he was detailed to investigate a murder case reported at Kabartonjo police station through telephone. He visited the scene in the company of PC Rotich of Kipsaraman police post and at the scene being Kipkata Location the home of the accused, they found a lifeless body lying on the ground in a pool of blood while the accused had surrendered at Kipsaraman police post. At the scene they recovered a blood-stained panga which he later took to the Government chemist Kisumu for analysis. He said the accused had in her possession a somali sword. He later charged accused with the offence herein. He filled the exhibits memo form dated 4th March,2021 which he produced in court as exhibit 5, the panga recovered as exhibit 2 and a maasai sword as exhibit 1.
 11. He further testified that the accused surrendered herself to the police post the same day while armed with a somali sword and the incident was reported by the chief of Kabartonjo police station. He said that the mental assessment on the accused was done before she was charged and was found fit to stand trial.



12. Upon the close of the prosecution case, the court delivered a ruling on the 4th day of April, 2024, finding that the prosecution had established prima facie case to warrant accused be placed on her defence in accordance with Section 306(2) of the criminal procedure code.

Defence Case

13. The accused in her sworn statement said that she was married to Joseph Kiptisia who was an army man and who died in 2014 and after his death she remained in her matrimonial home but she had conflict with her brother in law called Zakayo Kiptisia who stole her late husband's documents when he died. She said the deceased was her neighbor and she had no issues with him. She said on the 23rd February, 2021, her grandchildren had gone to play while her daughter Celestine Chemeli had gone to fetch water and no one else was at home; and her neighbors live a bit far.
14. The accused further stated that at 4p.m, she was sleeping outside when she suddenly saw the deceased a distant neighbor standing in front of her. She said the deceased said "leo ni leo msema kesho ni uongo" meaning "today is today whoever says tomorrow is a liar" and she thought he had disagreed with somebody and he was informing her. She said that the deceased never used to go to her place before. She added that after the deceased uttering the words, he tried to cut her but she used her hand to shield herself and she sustained a cut on her left hand and bled. Then she moved close to the deceased and pushed him making him to fall down and the panga dropped out of his hand. She said she then took the panga and cut him though she cannot recall which part of the deceased's body he cut as he was confused. She said while she the deceased bleeding profusely, she entered the house and took her late husband's sword and went to the police station through the forest to avoid seeing people. She said while on the way, she met an old man one Isaiah who testified in court as PW 3. She confirmed that the sword she had is the one which was produced in court.
15. The accused testified that Pw3 greeted her but she did not respond but he saw her with the sword. She confirmed that she went to Kipsaraman police station to report to police that someone attacked her using a panga and she had injured him. She added that she went to the police because she feared for her life. She denied that people were drinking alcohol in her house and added that if there were people in her house drinking, they would have killed her. She said that she is a church person and worships at New Apostolic Church.
16. The accused further denied using the sword to cut the deceased but said she removed the sword and left. She confirmed that she used the deceased's panga and denied that the sword had blood. She said she was informed while in the cells that her house had been burnt. She denied cutting someone's ear and said she did not intend to kill the deceased but she was defending herself and did not know the deceased would die. She said if cutting the deceased was intentional, she would not have gone to the police station. She sought the court's forgiveness for killing the deceased unintentionally.

Analysis And Determination

17. Under Section 203 of the penal code the ingredients for the offence of murder are as follows: -
- a. The death of the deceased.
 - b. That the accused committed the act or omission which caused the death of the deceased
 - c. That in the causing death of the deceased the Accused had malice aforethought.
18. The above elements for the offence of murder were listed in the case of Anthony Ndegwa Ngari vs Republic [2014] eKLR, as follows:-



- i. The death of the deceased occurred;
 - ii. That the Accused committed the unlawful act which caused the death of the deceased; and
 - iii. That the Accused had malice aforethought.
19. Similarly, in the case of Republic Versus Andrew Omwenga (2009) eKLR the court stated as follows:-
- “It is clear from this definition that for an Accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission - there are therefore three ingredients of murder 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 the 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”.
20. It is trite law that the burden of proof in criminal cases rests on the prosecution and the burden never shifts. The Accused has no burden to prove her innocence. In the case of Joseph Kimani Njau V Republic [2014] eKLR the Court of Appeal stated as follows:-
- “In all criminal trials, both the actus reus and the mens rea are required for the offence charged; they must be proved by the prosecution beyond reasonable doubt. The trial court is under a duty to ensure that before any conviction is entered, both the actus reus and mens rea have been proved to the required standard. In the instant case, the trial court erred in failing to evaluate the evidence on record and to determine if the specific mens rea required for murder had been proved by the prosecution”
21. In view of the above, the prosecution had the burden of proving the three ingredients of murder beyond reasonable doubt and will analyze each as hereunder.

(a) The death of the deceased

22. There is no doubt that the deceased herein died. The death was confirmed by Wangare Wambugu who performed postmortem on 2nd March, 2021 at Baringo County Referral Hospital mortuary and concluded that the deceased died as a result of acute blood loss due to deep cut wounds on the neck due to sharp force trauma following assault.

(b) Whether unlawfully caused the death of the deceased

23. PW3 was at the accused's house at the time of the incident testified that he saw the accused go for a somali sword from her house and saw her cut the deceased on the neck and after he had fallen down, she continued cutting him severally. The accused did not deny cutting the deceased though she said she used deceased's panga and she did not intend to kill him. Upon inflicting the said injuries on the deceased, the accused went to surrender herself to police. She took the somali sword to police. Analysis by the Government chemist confirmed that it was stained with deceased's blood. From the foregoing, there is no doubt that the accused committed that unlawful act of inflicting injuries on the deceased which led to his death. The second ingredient for the offence of murder was therefore proved beyond reasonable doubt.



(c) That the Accused had malice aforethought.

24. Section 206 of the Penal Code on Malice aforethought states that:

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances 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. From evidence adduced, upon demand for debt owing from accused by the deceased, the accused went for a somali sword and cut the deceased severally inflicting serious injuries. She continued cutting him even after he had fallen down. There is no evidence of fight back by the deceased. Her repeated merciless act of assault clearly show she was the aggressor. There is no doubt that in her mind the accused knew that her acts of assault on the deceased would cause death and this in my view demonstrate intention to kill in the mind of the deceased. From the foregoing, I find that the 3 ingredients for the offence of murder contrary to section 204 as read with section 203 of the penal code and convict him accordingly.

26. Final Order: -

- i. The Accused person is convicted for the offence of murder.
- ii. Right of appeal 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET

This 27th Day of September 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis.

Ms. Ratemo for state.

Mr. Gemenet counsel for the Accused.

Accused present.

