



**Republic v Yegon alias Kipsang (Criminal Case 52 of 2017)
[2024] KEHC 13079 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13079 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 52 OF 2017
HI ONG'UDI, J
OCTOBER 30, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

HILLARY YEGON ALIAS KIPSANG ACCUSED

RULING

1. Hillary Yegon alias Kipsang the accused is charged with the offence of Murder contrary to section 203 as read with section 204 of the penal code. The particulars being that the accused and another (convicted) on the 1st day of December, 2017, at Nyota location in Kuresoi sub-county within Nakuru County jointly with other not before court, murdered Dennis Kipkoech Chepkwony.
2. He denied the charge and the matter proceeded to full hearing with the prosecution calling five (5) witnesses. PW1 Dr. George Baketi who conducted the post mortem found the deceased's body to have been bruised on the ribs, forehead, jaw, left knee and the lungs had collapsed. He found the cause of death to be shock of hemorrhage and lung collapse because of abdominal trauma. The post-mortem was produced as EXB1.
3. PW2 Samuel Yebei testified that on 1st December, 2017 at 7.30pm he was going home when he came across a crowd where a person had been injured. All he stated was about one Collins who was the 1st accused herein. He denied seeing the accused at the scene.
4. PW3 Raphael Tuwei the assistant chief testified that on 1st December, 2017 he was called by one Njoroge who wanted help for his Loto business. He got seven (7) persons namely Wesley, Kibet, Kipsang, Maelo, Kanguru, Malel, Kiprono and they met at 4pm at a bar known as "The Place". The young people were bought beer and they got drunk. Kibet even urinated on the table and he removed all of them outside as they were drunk. He left the place at 8pm. The next day he heard that one of



- the young people had been injured. He never witnessed the fight. He only heard that the accused had been involved in the fight.
5. PW4 Michael Kipkurui Yegon a boda boda rider stated that on 1st December, 2017 at 3pm he met PW3 at Sebuton Centre who was looking for youth who could manage the gambling machine. He got some four (4) youth who included the accused. They went to PW3's bar known as "Savanah" where they were taken to a private room from where they were served with alcohol. The gambler arrived and added them one bottle of alcohol plus Ksh 2,000/= which they were to share.
 6. The witness further stated that the 1st accused (now deceased) and his brother (deceased) got into a fight because of the money (Ksh 2,000/=) they were to share. He saw the accused slap the deceased who fell down but rose again. After rising up the 1st accused held him up on the neck and the fight continued and he stepped on the deceased's stomach. PW3 came and placed the deceased on his motorbike and they left with the 1st accused.
 7. PW5 Wesley Kipkemoi Sang is the father of the deceased. He identified the body for post mortem and also attended the post mortem. The Investigating Officer did not testify.
 8. The above is the entire evidence that was adduced by the prosecution. This court has to determine whether the prosecution adduced sufficient evidence that would make the court place the accused person on his defence. Whether or not there is a case to answer depends only on whether there is "some evidence, irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. See
 - i. Ramanlal Trambaklal Bhat V Republic (1957) E.A 332
 - ii. Ronal Nyaga Kiura V Republic [2018] eKLR
 - iii. Republic V Abdi Ibrahim Owl [2013] eKLR
 9. My understanding of what a prima facie case is, goes to weighing the evidence adduced by the prosecution. Is it evidence that would sustain a conviction were the accused to elect to remain silent, which is his right? It is not lost to my mind that the burden of proof in criminal cases lies with the prosecution.
 10. From the evidence adduced there is no dispute that the deceased's death was not a natural one. This is confirmed by the evidence of PW1 Dr. Baketi who conducted the post mortem (EXB1).
 11. PW2 and PW3 who were at the scene did not make mention of the accused. Infact PW2 denied seeing the accused at the scene. PW3 (assistant chief) who had invited some of these young people to assist in Njoroge's Lotto business said he never witnessed any fight. He however confirmed that the young people had taken a good amount of alcohol.
 12. The only other witness is PW4 a boda boda rider who had taken the young people including the accused to the scene. He stated that the cause of the fight between the deceased and one Collins Kibet Chepkwony, (now deceased) was the money given out by Njoroge. He added that the deceased was an intruder and had no share in the money given. He further stated that in the course of the fight he saw the late Collins K. Chepkwony hold the deceased by the neck and the next thing he saw was him stepping on the deceased's stomach. The only thing he saw the accused do was slapping the deceased.
 13. A slap alone could not have caused the fatal injuries outlined in the post mortem report (EXB 1). It was the duty of the prosecution to clearly lay out before the court evidence showing what the accused did to contribute to the deceased's death. That was not done.



14. My finding is that the prosecution evidence fell below the required standard of a prima facie case. Placing the accused on his defence would amount to a pure academic exercise. I therefore find the accused not guilty and acquit him under section 306(1) of the Criminal Procedure Code. He shall be released unless lawfully held under a separate warrant.

15. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF OCTOBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

