



**Republic v Cheponin (Criminal Case 86 of 2017)  
[2023] KEHC 2597 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2597 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE 86 OF 2017  
HK CHEMITEI, J  
MARCH 30, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**WILSON CHELELGON CHEPONIN ..... ACCUSED**

**JUDGMENT**

1. The accused herein was charged with the offence of Murder contrary to Section 203 as read with 204 of the *Penal Code*. The particulars of the charge were that on the June 24, 2017 at Moinonin area of Loruk in Baringo north sub county within Baringo county murdered Richard Cheptirim Konga.
2. The accused when the matter came up for plea denied the charge and the matter proceeded to full trial where the prosecution called a total of 11 witnesses to establish its case. The accused was found to have a case to answer and he gave sworn evidence but did not call any witnesses. Before looking at the merits or otherwise of the case it is necessary to summarise the evidence presented to court.
3. PW1 Vincent Kiprok Korimkoy testified that on the material day at around 9pm he was at home preparing to sleep when he heard some gunshots. He was then called by a neighbour who told him to rush to the scene which he did and he found the deceased writhing in pain and bleeding.
4. They then with others carried him to the shop and attempted first aid. He said that the deceased whispered to him that he had been shot by Chepsegao who was a neighbour. The deceased was taken to the hospital by a Red Cross vehicle. He identified Chepsagao as the accused who was in court.
5. When cross examined he said that he spoke with the deceased who was talking in low tones. He said he conversed with him three times before he went silent.
6. PW2 Samuel Kemei testified also that he was home when he was called by a neighbour concerning the shooting near the Moinonin trading centre. He called for a boda boda rider who came and took him



- to the scene where they found a person who had been shot and injured on the leg. They then assisted him in placing him in the Red Cross vehicle which took him to the hospital.
7. When cross examined he said that he had been a police reservist for the last 4 years. He said that he did not hear the gunshots as his house was in a valley.
  8. PW3 Kibet Limo, a minor, testified that on that particular night they had run away from home and were in a makeshift structure when the accused who was having a powerful torch came and inquired from them if they had seen one Loreta. Prior to this they had heard some sound and thereafter a silence.
  9. He went on to testify that apart from the torch the accused was also carrying a gun. When cross examined he said that he recognised him as they had been staying together.
  10. PW4 Miriam Kiprop testified that she was a business lady at Moinonin trading centre and on that night she was at home and almost heading to bed. They heard some gunshot and after a while the person who had been shot called her husband Joel Kibowen and asked for help. They then went outside and discovered that he was their neighbour.
  11. She said that he was bleeding from the leg and they tied his leg with a lesa and gave him milk. He was then taken to the hospital thereafter by a Red Cross vehicle.
  12. When cross examined she said that they gave him milk when he asked for water and was not sure if it suffocated him. She said that the deceased had called with a loud voice when he sought for help.
  13. PW5 Bartuos Bett a relative of the deceased witness the post mortem exercise at Kabarnet county hospital on June 30, 2017.
  14. PW6 Kemboi Naitai, a minor gave unsworn evidence and said that they were preparing to go into a tent when they heard some loud noise and were told that it was a gunshot. They lied down and they saw some light coming from the direction of the shooting. He said that it was Wilson who had the torch and they identified him and he asked for one Lotebwa. He said that he was alone and was carrying a gun.
  15. After that they went to the scene where there were many people and someone had been shot on the leg. He was thereafter taken by a Red Cross vehicle.
  16. When cross examined he said that there was moonlight and one could still walk. That they identified him by the voice and by the light he was carrying.
  17. PW7 Catherine Chelanga testified that the accused on June 23, 2017 at 4pm came with three goats and carrying a gun and he told her that he wanted to kill 10 people. She went on to state that the deceased and the accused were talking outside though she did not hear what they were saying. Shortly thereafter she heard some gunshots from where they were talking and she hid under the bed. She then heard Richard calling for help but she did not go out because she was afraid.
  18. She thereafter went outside after hearing many people and he found the deceased bleeding from the leg and they tied it. Thereafter a Red Cross vehicle took him to the hospital.
  19. When cross examined she said that she saw the accused with a gun and that he had a torch which was powerful from M-kopa.
  20. PW8 Dr Kennedy Sargo performed post-mortem on the deceased body and concluded that the cause of death was haemorrhagic shock secondary to gunshot wounds.



21. PW6 was later called to identify the gun which he had allegedly seen the accused carrying that night. He did confirm that it was the same gun he had seen. He also said in re-examination that he recognised the accused voice.
22. PW7 was also recalled to identify the same gun which she had seen the accused carrying around 4pm that day.
23. PW9 Corporal Ben Chesang testified that he received information on June 24, 2017 from his OCS and they went searching for the accused whom they managed to arrest in a grass thatched house and took him to Loruk police station. He confirmed that he knew the accused whom he occasionally rode in his boda boda.
24. PW10 Chief Inspector James Onyango a firearm examiner produced the report he had prepared concerning the gun, the ammunition and spend cartridge which he had been given to examine. He confirmed that the rifle fired the bullet which cartridge he had been given by the investigating officer to examine.
25. PW11 Sgt Charles Ayage by then at Loruk police station testified that he was informed by the area assistant chief Samuel Kamuren on June 25, 2017 about the gun which the members of the public had discovered hidden in the accused house. They went therein and broke the house and managed to retrieve the gun in the bedroom. He went ahead and produced the same as evidence. He said that they handed over the gun to the DCI personnel after the recovery.
26. As indicated above when placed in his defence the accused gave sworn evidence. He denied the offence and specifically that his name was Wilson Chebole Cherogony and not Wilson Chelelgo Cheponin. He said that the names in the charge sheet were not his.
27. He denied shooting the deceased nor even use of a gun. He said that Moinonin at that time was very insecure as they had been raided by cattle rustlers. He said that the deceased was a friend as well as a relative. He said that he had differed with the deceased over land.
28. The court directed the parties to file written submissions. The defence did but the prosecution as at the date of writing this judgement did not offer any.
29. The substantive issues raised by the defence is whether there was any malice aforethought on the part of the accused with the sole intention of killing the deceased. According to the accused there was no known disagreement between the two neither did any of the witnesses demonstrate such.
30. Further that there was no eye witness to the incident. That some of the witnesses arrived at the scene after the shooting. He submitted that since the matter hinges on identification, the same was not proved by the prosecution. He relied among others in the case of *State v Lucas Onyango Walo* [2022] eKLR. He prayed that the suit against the accused be dismissed as it was not proved and the accused be set free.

### **Analysis and determination**

31. Section 203 as read with section 204 of the *Penal Code* provides the ingredients of the offence herein. In other words, what the prosecution ought to prove so as to convict an accused person. These include the fact that the deceased died, the death was unlawful, there was malice aforethought and that the accused person directly or indirectly participated in the commission of the alleged offence.



32. Having perused the evidence as tendered, the deceased death was caused by a gunshot as proved by the production of the post-mortem report. The gun used was clearly identified by the report of the firearm examiner.
33. Was there sufficient evidence that it was the accused who fatally shot the accused.? There was no direct eye witness to the shooting. The case is therefore based on circumstantial evidence.
34. The evidence of PW1 in particular is almost in the nature of a dying declaration. When cross examined he said that the deceased spoke to him thrice although in the last time he could not be heard.
35. Taking into consideration the evidence of pw4, where she told the court during cross examination that they heard the deceased calling for help and her husband went out to assist and that she gave her milk to drink which he finished a packet, this court is inclined to believe that the deceased was at least able to talk to pw1. This position is buttressed by the fact that the deceased at least was able to call for assistance after being shot at and he indeed received it.
36. Secondly, the fact that he was able to drink a packet of milk was a testimony that he was still in his mental capacity and at least able to tell his handlers who shot him. It is imperative to note that the incident happened at a trading centre where the houses were close to each other.
37. On identification, I find and believe the testimony of the minors pw3 and 6. They managed to see the accused that night with a gun although not able to tell its make. The light from the m-kopa torch was powerful enough to enable them identify the accused whom they knew very well.
38. As a matter of fact, it was not long after they heard the gun shot that the accused went searching for one Letebwa within the makeshift structures the families were living in.
39. The murder weapon was found in the accused house. The police and the villagers discovered therein and handed it over to the DCI officers. The examination of the same together with the spend cartridge pointed to the same gun which was found in the accused house. The accused did not deny that the gun was not found in his house though absent at that moment.
40. The defence argument on the names of the accused does not hold any water. This was an afterthought and nowhere did he raise it during the substantive hearing and at cross examination. He did not rebut the same by production of his identity card or any other official document. The witnesses were not mistaken at all on whom they were dealing with. This was their neighbour for over thirty years a fact not disputed by the accused.
41. His defence did not oust the prosecution's case or at all. He went into hiding immediately after the incident. Although there was no motive proved why he murdered the deceased, it is evident that he was the one who pulled the trigger.
42. PW7 evidence placed the accused at the scene of the accident. She said that she heard the accused and the deceased talking outside although she did not get to know what they were discussing and immediately after that she heard a gunshot and the deceased calling for help.
43. Based on the above overwhelming evidence I find that the prosecution has established its case against the accused beyond any shadow of doubt and I therefore convict the accused under the provisions of Section 203 of the [Penal Code](#) as read with Section 322 of the [Criminal Procedure](#).

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 30<sup>TH</sup> DAY OF MARCH 2023.**

**H. K. CHEMITEI**



**JUDGE**

