



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Echom (Criminal Case 3 of 2020)
[2023] KEHC 2819 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2819 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE 3 OF 2020**

**JK SERGON, J
MARCH 30, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

NGAWOSA TEDE ECHOM ACCUSED

JUDGMENT

1. The Accused is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars of the offence are that, the accused on 16th March, 2020, at Karebur Village in Turkana North Sub-County within Turkana County murdered Tede Echom Akidonginyang.
2. The accused pleaded not guilty to the charge and the prosecution called Six (6) witnesses to prove its case.
3. Dr. Edward Karani (PW1) stated that he was testifying on behalf of Dr. Hawa Manganga who was away in Uganda at Kampala University for her post graduate studies and that he had worked with her for five years. He stated that the body of the deceased herein was identified by the relatives and a postmortem was done at Lodwar Referral Hospital on 19th March, 2020. He reiterated the contents of the post mortem report and produced the same as exhibit 1. On cross examination, he stated that he did not have a letter from Dr. Hawa to produce the report or a letter from the Hospital Director to act on her behalf.
4. Akaale Tede Echom (PW2) stated that she lives in Karebur Area and that she knew the deceased, he was her husband. On 16th March, 2020 at 8:00 pm she was asleep when she heard the sound of a stick hitting someone, she left her manyatta to where her husband was and found him lying outside his manyatta crying out in pain and found her son the accused, standing by her husband holding a walking stick and the deceased was about to die. PW2 wanted to intervene but the accused threatened to beat her up



- with the walking stick. On cross examination, she confirmed that although the incident happened at night, she was able to recognize the accused because there was moonlight.
5. Amos Ekure Tede (PW3) stated that he knew the deceased in the case and witnessed the post mortem of the deceased on 19th March, 2020 at Lodwar County Referral Hospital.
 6. Ekuom Esinyen (PW4) stated that she lived at Karebur and that she was at home on 16th March, 2020 when she heard her neighbour PW 2 crying saying that her husband had been killed, she went to the home of the deceased and found the deceased (her brother) lying down with blood oozing from his mouth and groaning in great pain. She testified that she found someone standing next to her brother called Ngawosa holding a walking stick (MFI 2) which was in court, who threatened to assault her. She stated that she went to report the incident to the Chief's office and accompanied National Police Reserve (NPR) personnel to the scene and they found that her brother the deceased herein had died. She confirmed that she had known Ngawosa the accused person for a long time and further that she was aware that there was a dispute between the accused and deceased over the deceased sheep and goats. On cross examination, she confirmed that the incident happened at night, that the accused was in possession of a walking stick that night and that she did not see the accused assault the deceased. She however, could not confirm who had assaulted the deceased, where the walking stick was recovered from and whether or not the walking stick was the produced in court was the one the accused had on the material night.
 7. Lochaan Lokora Pelekech (PW 5) force number 18 in the NPR and stated that he lives in Karebur, he stated that he was called and informed that Ngawosa had killed Mzee, he was later called by the Chief to visit the scene and he found the accused outside the house, arrested him and dragged the accused into the house of the deceased, the deceased was already dead. He stated upon observing the deceased person's body and saw blood oozing from his mouth as per contents of MFI 3A. He stated that he was accompanied to the crime scene by PW3 and PW4 and that Ngawosa had a walking stick (MFI 2) which was in court. PW 5 confirmed that he knew the accused person. On cross examination, he stated that he was not the scene when the incident happened. He further confirmed that the accused did not resist arrest. He further confirmed that he was the one who took custody of the walking stick (MFI 2) which was in possession of the accused at the time of arrest, he did not put any mark on the walking stick before handing it over to the investigating officer and that he could not see blood stains on the walking stick.
 8. PC Edwin Omondi No. 110871 (PW6) the investigation officer in the case testified that on 17th March, 2020 visited the crime scene, interviewed PW 1 who was able to identify the accused and the weapon used to assault the deceased. As he was doing the interview PW5 came in with the accused person. He further stated that they took the deceased's body to Lodwar Referral Hospital for the post mortem and the post mortem indicated that cause of death was a blunt object. PW6 produced the walking stick that was in possession of the accused person as exhibit 2, the walking stick was recovered by the NPR officer. PW6 stated that they took photographs of the scene and he produced the photographs as exhibit 3 (a) – (f), produced a certificate as to photographic print or enlargement as required by the amendment in section 78 of the *Evidence Act* as exhibit 4, produced two sketch maps of the crime scene as exhibit 5 (a) and 5 (b). On cross examination, he confirmed that he prepared the two sketch maps on 17th March, 2020 as the sketch maps did not have the date they were drawn and that the certificate of print filed not have a date not the details of the machine used to develop the photographs in question. He further testified that the he produced the walking stick collected at the crime scene and the he could see the stick in court and it had blood stains. He confirmed that the incident took place at night and he arrived at the crime scene in the morning. He confirmed that he was present during the post mortem.



9. When the accused was placed on his defence, he elected to give a sworn testimony with no witnesses to call. In his defence, the Accused stated that he knew the deceased who was his father and further that his relationship with his father was cordial.
10. At the close of the case, neither the prosecution nor the defence counsel wished to put in any submissions.
11. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.
12. The offence of murder is provided for in section 203 of the Penal Code that provides as follows; “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
13. The Court in *Republic v Andrew Mueche Omwenga* [2009] eKLR outlined the ingredients of the offence of murder and stated that; “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 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.”

a. Death of the accused

14. On the issue as to the death of the accused, exhibit 1, the post mortem report, as produced by PW1 indicated that the cause of death was internal abdominal hemorrhage due to the splenic rupture and hepatic rupture with broken ribs. The finding on the cause of death, the injuries sustained by the deceased as per exhibits 3 (a) – (f) are consistent with circumstances of death to wit the fact that deceased was assaulted with a wooden rod.

(b) A Unlawful act which caused the death of the deceased

15. On the issue as to whether the accused committed an unlawful act which occasioned death of the deceased, I find that there are eye witness accounts placing the accused at the crime scene, however, none of the prosecution witnesses saw the accused person assaulting the deceased. I find the prosecution’s case is founded on circumstantial evidence, the lack of direct evidence notwithstanding, I find that there is sufficient circumstantial evidence that points towards culpability of the accused person. PW2 in response to the commotion outside at night, found her husband lying outside his manyatta writhing in pain with the accused person standing by holding a walking stick exhibit 2, this was further corroborated by PW4. In *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR, the Court of Appeal stated as follows on reliance on circumstantial evidence: “However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”

(c) Malice aforethought

16. On the issue of malice aforethought it can be inferred from the nature of the injuries suffered by the deceased that the assault was intended to cause death or grievous harm and therefore malice aforethought can be inferred under section 206 (b) of the Penal Code.



17. The Court of Appeal in the case of *Joseph Kimani Njau v R* (2014) eKLR, observed as follows: “Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

- i. The intention to cause death;
- ii. The intention to cause grievous bodily harm;
- iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed...”

16. The defence put forward by the Accused namely: Ngawosa Tede Echom did not displace the prosecution’s case. The prosecution has therefore proved its case against the accused beyond reasonable doubt and in the premise the accused found guilty for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He is hereby convicted.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF MARCH, 2023.

J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Chepkoech

Maryann Kariuki holding brief for Lele for the Accused

Kakoi for the State

Accused – Present in Prison.

