



**Republic v Khanira & another (Criminal Case 36 of 2019)
[2023] KEHC 3780 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3780 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 36 OF 2019
WM MUSYOKA, J
APRIL 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHNSON ANYIKA KHANIRA 1ST ACCUSED

ABDI KHANIRA 2ND ACCUSED

RULING

1. 6 witnesses testified in this matter. None of them witnessed the killing of the deceased. PW1 was at his home when he got the news, and went to the scene. PW2 was in Nairobi when it happened. PW3 was told about it by a pupil that he met on the road. PW4 was telephoned by someone, and told about it. PW5 was at a meeting, when someone telephoned with the news. PW5 was the pathologist.
2. None of these witnesses were present at the scene, when the deceased sustained his fatal injuries, and what they told the court was hearsay, based on what other persons informed them. None of them were able to place the accused persons at the scene, nor to link them to the death.
3. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, he did it with malice aforethought.
4. The deceased in fact died, the body was seen by the witnesses. PW6 conducted a post-mortem on it, after it was identified by relatives, and a post-mortem report is on record. On the cause of death, the post-mortem report states that the deceased died of loss of blood, caused by a stab wound. None of the witnesses directly linked the accused to the death, and the issue as to malice aforethought does not arise. There is also no circumstantial evidence linking them to the death.
5. It is my finding and holding that no prima facie case has been made out against the accused persons herein, to warrant their being put on their defence. I accordingly find them not guilty, and acquit them,



under section 306(1) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, of the murder of Benson Achanga, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya.

6. The accused shall be set free, if they are still in remand custody, unless they are otherwise lawfully held.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28TH DAY OF APRIL 2023

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Shivega, Advocate for the accused persons.

