



REPUBLIC OF KENYA



**Republic v Kenga & 2 others (Criminal Case E005 of 2020)
[2023] KEHC 21564 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL CASE E005 OF 2020
SM GITHINJI, J
JULY 27, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

GRACE KENGA 1ST ACCUSED

CHARLES KENGA 2ND ACCUSED

LINET SALAMA 3RD ACCUSED

RULING

1. GRace Kenga, Charles Kenga, Linet Salama and Alfred Mramba Robert alias Ali Robert, are charged with the offence of Murder, contrary to section 203 as read with section 204 of the [Penal Code](#), Chapter 63 Laws of Kenya.
2. The particulars of this offence are that on the 3rd day of September, 2020 at Magolani Village in Kilifi, within Kilifi County, the accused persons jointly with others not before court murdered Charo Karisa Mueni.
3. Initially there was a 5th accused person one Faraj Hamisi to whom the prosecution entered a Nolle Prosequi on October 5, 2021 and his case was accordingly discontinued.
4. The prosecution case is that on 29/8/2020 the son of Pw-1 was involved in an accident while riding on a motor bike. He died of head injuries. On 3/9/2020 the grave was prepared. A step-father to Pw-1 told him that they needed consult a wizard as they were losing members of their family. Some boda boda operators at the time were raising money for the funeral. They then went hooting to the home of Pw-1. They attacked and assaulted Charo Karisa Mweni who is a younger brother to Pw-1. Pw-1 said he only recognized Charles, who is the one who initiated the attack.



5. PW-2 at the time was at home. She heard noises and people running to the main road. There was allegation that her uncle Charo Karisa Mweni had been attacked and killed. She rushed to the scene. The place was crowded. Boda boda operators were assaulting the deceased. A person called Charo slapped the deceased. Salama had a stick and hit the deceased on the hands. The deceased fought back using two slashers but the assailants were many. They attacked him with stones, killing him. The mother of Salama, called Grace was present. She had called more boda boda operators to attack the deceased. She also allegedly saw 2nd accused at the scene.
5. PW-4 the village elder went to the scene after the deceased had been killed. He called the OCS Ngerenya Police Station and informed him of the incident. The police got to the scene. Pw-5 investigated the case. At the scene he collected a stone which was blood stained. There were also two slashers. The body was taken to Kilifi County Referral Hospital. Postmortem was conducted on 10/9/2020 and the cause of death was opined as Intracranial hemorrhage, secondary to trauma on the head. A postmortem report was thus filled and was produced as P-Exh-3. The witness statements were recorded by Pw-5 who stated that Grace Kenga, Charles Kenga, Alfred Muraba alias Ali and Linet Salama were disclosed as suspects.
6. At this juncture the court need determine as to whether the evidence establishes a prima facie case against the accused persons, so as to warrant them be placed on their defence. The court would consider a prima facie case established where the evidence adduced by the prosecution on it's own, without an input from the defence, is sufficient to warrant a conviction.
7. In this case, the witnesses who disclosed some suspects are Pw-1 and Pw-2. Pw-1 disclosed only one, by the name of Charles as the one who started the assault. However, he never described the suspect otherwise, save for the one name given. He did not even state whether or not he was the 2nd accused in this case. From the proceedings it's not clear of the Charles he referred to.
8. PW-2's evidence is confusing as she stated she was attracted to the scene when she saw people running towards the road saying her uncle had been killed. The statement suggests by the time she went to the scene the deceased had been killed. She however continued to narrate how he was assaulted. The source of this information is therefore not clear. She disclosed that Salama hit the deceased on the hands with a stick. Grace the mother to Salama called more boda boda operators who appeared and attacked the deceased (Grace is the first accused person). She saw 3rd accused at the rear of her house. She was trying to defend the deceased from the mob. She also saw 2nd accused. He was among the gang that attacked the deceased.
9. The evidence by this witness as to those allegedly involved and what they did is not corroborated by any other evidence. If 3rd accused was trying to defend the deceased and was charged, it would appear the evidence was not well analyzed by the Investigating Officer and the prosecution. She does not also disclose what exactly the 2nd accused did in the attack of the deceased. Her evidence is not clear on how she identified the alleged suspects in presence of the involved crowd. The investigating officer acknowledged on cross-examination that there is possibility that the suspects were not properly identified given the crowd and the circumstances under which the offence was committed. The burden of proof in criminal cases belongs to the prosecution and they must discharge it beyond reasonable doubt. If at the closure of their case reasonable doubt subsists as to involvement of the suspect in commission of the alleged offence, the said doubt should be resolved in favour of the accused.
10. In this case there are doubts as to involvement of the accused in the murder of Charo Karisa Mweni. I do resolve the said doubts in their favour and are accordingly acquitted of the offence under section 210 of the *Criminal Procedure Code*.

RULING DATED, SIGNED AND DELIVERED AT GARSEN THIS 27TH DAY OF JULY, 2023



S.M. GITHINJI

JUDGE

In the Presence of; -

Ms Mona for the Accused Persons

COURT;

-Cash bail and surety deposited be discharged.

S.M. GITHINJI

JUDGE

