



**Republic v Kimulwa (Criminal Case 30 of 2019)
[2022] KEHC 15452 (KLR) (24 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 15452 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 30 OF 2019**

SM GITHINJI, J

MAY 24, 2022

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMMY KIPKOECH KIMULWA ACCUSED

JUDGMENT

1. Sammy Kipkoech Kimulwa is charged with the offence of Murder, contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of this offence are that on April 13, 2019 at Kulwani village, Chepkorio sub-location in Keiyo South sub-county within Elgeyo Marakwet county, the accused herein murdered Albert Kibet Koech.
3. The prosecution case is that the accused in this case is a father-in-law to Viola Jeruto Kimaiyo, the Pw-1 in this case. The deceased in this case is their relative. On April 13, 2019 at about 5.00Pm, Pw-1 was in her home at Kulwani village, Chepkario Sub-location. She was in illegal business of selling changaa and was selling it from her house. On this particular day and time she was with Abraham (Pw-2) in her house. Her neighbours namely Loise Cherop Kadie (Pw-3), Kenneth Kosgei Kimuntai (Pw-5) and Sharon Jepchirchir Kibet (Pw-8) joined her. Sammy Kipkoech Kimulwa (the accused) and Albert Kibet Koech (deceased) joined them later. When the latter two arrived they did not get into the house. The two had gone for chang'aa. As they were taking chang'aa outside the house, they started quarreling and abusing each other. The deceased told the accused that he was not like him, who had stolen ugali of a neighbor. The two were inclined to engage in a physical quarrel and Pw- 1 told them not to fight there. They chased each other within the compound. The deceased left and the accused followed him. A hundred metres away, Pw-2 saw the accused holding on the deceased. The deceased soon thereafter fell down. The accused escaped. Pw-8 saw the accused as he was escaping. When she got to the scene she saw the deceased fallen, bleeding profusely. She screamed. Pw-5 and Pw-6 got to the scene. The



- deceased's body was lying facing downward. Pw-5 turned it and noted the front was full of blood. Pw-6 went for a motor bike. They took the deceased to Chepkorio dispensary. He was however pronounced dead on arrival.
4. The matter was reported to the police at Kapsagat police station. Pw-10 led the investigations. The assistant chief informed the police that the body was at Chepkorio dispensary. The police went there and saw the body. It had two stab wounds on the left side of the chest. They were then led to the scene. The scene had a freshly deposited saw dust and soil. It was along a foot path. They followed it to a homestead where Pw-1, Pw-2 and Pw-8 told them what had happened. While there, they heard the suspect was in his home. They headed there but found that he had escaped into the forest. Villagers had pursued him in Kapsagat forest. Some had gotten into his house, inclusive of the village elder. The village elder had recovered from therein a foldable pen - knife. He handed it to Pw-10 who kept it as an exhibit. They went back to the dispensary and got the deceased's blood stained, brown leather jacket of which they as well kept as an exhibit. The body was taken to Moi Teaching and Referral Hospital Mortuary for a postmortem. On April 14, 2019 the witness statements were recorded.
 5. On April 15, 2019, the accused was arrested by villagers from his house. He was assaulted and his house torched. However, some of them rescued him and rushed him to the police station. He had an open wound above one of the eyes. He was re-arrested and rushed to Flax dispensary for treatment.
 6. On April 23, 2019 Pw-7, a brother to the deceased, identified his body to Pw-4 for postmortem. Postmortem was conducted and the pathologist noted that it had two stab wounds on the chest. One was over 3rd left rib and the other between 4th and 6th ribs. The 3rd rib was fractured. There was massive haemothorax on the left and right side. There was a stab wound in the wall of the left side of the heart. Pw-4 made an opinion that the cause of death was due to sudden cardiac arrest, due to stab wounds.
 7. A sample of deceased's blood was extracted. Together with the jacket and knife were forwarded to Government chemist in Kisumu for analysis of blood stains on the jacket and knife. Pw-9 did the analysis. He concluded that the DNA profile from blood stains on the knife and jacket, matched the DNA profile of Albert Kibet Koech (the deceased). He thus made a report.
 8. Pw-10 interrogated the accused who said that he stabbed the deceased after he called him a thief. He also said that the deceased owed him Kshs 1,500/= of which they quarreled about while drinking beer. He was asked to describe the murder weapon and said it was a foldable knife. After conclusion of the investigations he was charged with the offence.
 9. At the close of the prosecution case this court found that the accused had a case to answer and accordingly placed him on his defence.
 10. The accused gave a sworn statement and called no witness. In his defence he stated that he is a farmer who takes care of his cattle. On April 13, 2019 he woke up and went to the forest to graze cattle. He left at 4.00Pm and went to the house of Esther Kimulwa to drink Busaa.
 11. He took beer after which he went home at 6.00Pm. At 7.00Pm a man called Chesimir called him at 7.00Pm to go to the forest to get posts. They went and arrived at 8.00Pm. When they returned home they heard someone had been killed. They were not told who had been killed. They proceeded to take the posts to Kalionga where they delivered posts to a man called Talaban. He returned home at 9.00Pm and slept. On April 14, 2019 he went to graze animals in the forest. He was there till 2.00Pm. He went home and then to the shopping Centre at 4.00Pm. He got into a bar and took two bottles of beer. He went home at 7.00Pm. On Monday he was arrested. He was taken to the police station to sign for something as somebody had died. He was re-arrested at the police station and charged.



12. At this juncture, the court need to determine whether the offence against the accused person is proved by the prosecution beyond reasonable doubt.
13. Section 203 of the [penal code](#) defines murder as follows; -

"Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder."
14. The ingredients for the offence are therefore; -
 1. Death of the Victim;
 2. By unlawful act or omission on the part of the accused;
 3. Malice aforethought on the part of the accused.
15. Under section 206 of the [Penal code](#), malice aforethought is established by; -
 - a. An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not,
 - b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.
 - c. Intentions to commit a felony.
 - d. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.
16. The first question that need be answered is whether the accused person is the one who caused the death of the deceased.
17. The evidence of Pw-1 and Pw-2 is explicit that the accused and the deceased quarreled while they were taking chang'aa at the homestead of Pw-1. Pw-1 told them not to fight at the place when the oral quarrel turned physical. The two chased each other within the compound before the deceased left, and was pursued by the accused.
18. A hundred metres away, Pw-2 saw the accused holding on the deceased and soon thereafter the deceased fell down as the accused escaped. Pw-8 saw the accused as he escaped. The deceased had two chest stab wounds which caused his death. The weapon used to stab him, a foldable knife (pen knife) was recovered later from his house. These set of facts shows clearly that it is the accused person who caused the death of the deceased. In his defence he was only evasive. The defence is a sham and greatly craves for facets of truth.
19. When the accused and the deceased quarreled in the compound of Pw-1, the deceased left and the accused followed him. The accused was therefore the aggressor. He used a weapon (pen knife) to stab him twice at a dangerous place, the chest. If he had no intention to kill him in doing so of which I doubt, he definitely intended to cause him grievous harm and was therefore of malice aforethought. The ingredients for the offence are therefore all well established by the prosecution beyond reasonable doubt. As such, the accused is guilty of the offence of murder and is hereby convicted of the same. Judgment for Eldoret read and signed at Malindi in the Open Court to parties who appears Virtually, who are; - M/s Ayugi for the Accused person and M/s Limo for the State this May 24, 2022.



S.M. GITHINJI

JUDGE

Pros;- I have no records. He is a first offender.

Mr Oyugi; -Mitigation

He is a first offender. I pray for leniency.

Court; - I have considered the period spent in remand; that the accused is a first offender and pray for leniency.
I do sentence him to serve 10 years' imprisonment.

Right of Appeal 14 days.

S.M. GITHINJI

JUDGE

24/5/2022

