



**Republic v Kipkoech (Criminal Case 45 of 2016)
[2022] KEHC 12624 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 12624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 45 OF 2016
RB NGETICH, J
JUNE 30, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

ELIJAH KIPLANGAT KIPKOECH ACCUSED

JUDGMENT

1. The accused Elijah Kiplangat Kipkoech was charged with the offence of Murder Contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the charge are that on the night of 16th and 17th July, 2016 at Kapnyangale area in Rongai Sub-county within Nakuru County, jointly with others not before court murdered Francis Sicheti Mahumu.
2. Medical report dated August 11, 2016 confirmed that the accused was fit to stand trial. The charge and its full particulars were read to the accused on August 12, 2016. He denied the charge and plea of not guilty was entered.
3. The prosecution called a total of eight (8) witnesses to prove the the charge. At the close of the prosecution case, the prosecution did not file written submissions but instead relied on the evidence on record while the accused filed submissions.
4. PW1, PW2, PW3, PW4 and PW5 testified before J. Odero. The acused chose to proceed from where the case had reached and PW6, PW7 and PW8 adduced evidence before me.

Prosecution's Evidence

5. Pw1 testified that on the night of July 16, 2016, he was asleep when he was awoken at night by three (3) men who informed him that the deceased was attempting to steal his bicycles. The accused joined in with his employer, identified as Daktari and claimed the deceased was a suspect and wanted to beat him. PW1 asked them to take him to the police. He learned the following day the deceased was dead.



6. PW2 testified stated there was an attempted theft on the night of 16th July 2016. He caught the suspect who was handed to the accused and his employer. He stated that he did not know where the suspect was taken as he was informed by the accused that he had escaped. After 3 days, he heard that a body was retrieved from the Molo River but he was not able to identify the body.
7. PW3 testified she saw the accused and the deceased when two watchmen went to call PW1 from his house. He said he overheard PW1 say there was a suspect trying to steal from his shop. She said she saw the accused and another man. She was not able to identify the suspect. The suspect was to be taken to Mogotio Police Station but she does not know if he was taken there and she later learnt that someone had died and body retrieved from the river.
8. PW4 confirmed the deceased was his son and the body was injured and his hands tied behind his back.
9. PW5 confirmed that he saw the deceased's body with cuts and bruises on his head and the eyes had been plucked out.
10. PW6 stated that he saw a group of people interrogating a suspect who was seated. The next day he was informed that the suspect had escaped and later learned someone had died but he never went to see the body.
11. PW7 the doctor produced a post-mortem report of the deceased. He opined that the cause of death was asphyxia with a head injury, blunt trauma to the head. PW8 said he retrieved the body from the Molo River.
12. In his defence the accused stated that in the year 2016, he closed work at 11.30 pm and while heading home, he heard the watchman known as Siele say a thief was being taken to the Police Station. He never saw the person surrounded by the crowd as it was dark and there was a crowd of about 15 people at the bicycle repair shop. He further stated that he did not join the crowd when taking the thief to the police station as he left for his house to sleep. He later heard the thief escaped.
13. The accused denied beating the deceased with a wire. He said he could not tell if the body retrieved from the river was that of the person surrounded by the mob.
14. On cross-examination, the accused stated that he worked at the butchery and on normal days, they closed at 11.00 pm but on the material day, they closed at 11.30 pm.
15. The state counsel chose to rely on the evidence on record while counsel for the accused filed written submissions.

Accused's Submissions

16. The defence counsel submitted that PW1, PW2, PW3, and PW6 claimed not to have known the deceased and none identified the body of the deceased as that of the person that was apprehended on the night of July 16, 2016; that there was therefore no direct link between the suspect being interrogated and the body retrieved from Molo River.
17. Counsel further submitted that the evidence of PW3 and PW4 is not sufficient to link the accused to the murder of the deceased.
18. In conclusion, the defence counsel submitted that the prosecution has failed to link the accused to the murder of the deceased.



Analysis and Determination

19. I have considered evidence adduced by the prosecution, the accused's defence and submissions filed by the defence counsel and what I wish to consider is whether the prosecution proved beyond reasonable doubt that the accused unlawfully murdered the deceased.
20. Sections 203 and 204 of the [Penal Code](#) provides as follows:
- “Section 203
- Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
- Section 204
- Any person who is convicted of murder shall be sentenced to death.”
21. Section 206 of the Penal Code provides as follows:-
- “Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:-
- “(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 of 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) An intent 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.”
22. The prosecution is required to prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought.
23. Section 203 and 204 of the [Penal Code](#) requires the prosecution to prove the following ingredients:-
- a. Proof of the fact and the cause of death of the deceased.
 - b. That the cause of the deceased's death was a result of the direct consequences of the accused's unlawful act or omission which is the actus reus of the offence.
 - c. Proof that the unlawful act or omission was committed with malice aforethought.
24. The prosecution produced the post mortem form dated 8th August 2016 by Dr. Ngulungu (PW7) to confirm the death of Francis Sinjeti Mahumu. Death of the deceased herein is not therefore disputed, the doctor opined that the deceased died as a result of injuries inflicted to his head. PW1, PW2 and PW3 all said they saw the accused with the deceased and the deceased was suspected of attempting to steal from PW1's shop.
25. On whether there is evidence connecting accused to the death of the deceased, PW2 said he handed the suspect to the accused person and his employer called Daktari. Both PW2 and PW3 said they saw



the accused with the deceased. The Deceased was to be taken to Mogotio Police Station by the accused but later the accused informed PW2 that the accused escaped.

26. From evidence adduced, the accused was the last person seen with the deceased; the deceased was never taken to Mogotio Police Station. Thus from the testimony of PW1, PW2 and PW3, the accused was last seen with the deceased. Evidence adduced places the accused at the scene of the crime, though the accused denied being in the crowd that surrounded the deceased by saying he saw the crowd but did not join them but proceeded home to sleep, he has not adduced evidence to support his defence of alibi.
27. The deceased's body was retrieved from the river Molo. The prosecution has adduced evidence that the accused was with the deceased and expected him to take accused to Mogotio Police Station but instead he said the deceased escaped only for the deceased's body to be found dumped in the river. There is no doubt that evidence adduced clearly link accused to the death of the deceased.
28. From the foregoing, I find that the prosecution have proved that the accused person unlawfully caused the death of the deceased. I proceed to find him guilty of murder and convict him accordingly.
29. Final Orders
 1. The accused is convicted to the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.
 2. Presentence report to be filed by Probation Officer before sentence hearing.
 3. Accused has right to file appeal within 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT NAKURU THIS 30TH DAY OF JUNE, 2022

RACHEL NGETICH

JUDGE

In the Presence of:

Lepikas - Court Assistant

Accused present

Mr. Murunga H/B for Mr.Maragia for Accused

Mr.Kihara for State

