



**Republic v Ileh (Criminal Case 12 of 2018)  
[2022] KEHC 11779 (KLR) (18 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 11779 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE 12 OF 2018  
A ALI-ARONI, J  
AUGUST 18, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ABDIGOROT YARROW ILEH ..... ACCUSED**

**JUDGMENT**

1. Abdigorot Yarrow Ileh, the accused person herein was 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 the offence are that Abdirigot Yarrow Ileh; On November 5, 2018 at Danyere market in Balambala Sub-County within Garissa County jointly with others not before Court murdered Abaile Sagar Dagane.
3. The accused pleaded not guilty and the matter went to full trial with the prosecution calling a total of seven (7) witnesses in support of their case.
4. Pw1 Dr Ernest Amos Siwo a general medical practitioner attached to Garissa County referral hospital produced as exhibit the post mortem report. It was his testimony that he examined the deceased 8 hours after his death. The deceased's clothes were blood stained; on the face there was a cut measuring 3 cm long, there was linear fracture of bone below it, bruises on shoulder, the left lower ribs had abnormal movement and three (3) were fractured and the skin around the ribs had changed colour.
5. He further informed the court that he did not conduct an internal examination as they did not have equipment to do so. It was his opinion that the cause of death was blunt fracture to the chest with multiple rib fractures.
6. Pw2 Yawane Hussein Ali, the area chief Danyere location testified that on November 5, 2018 he got information about the murder of the deceased from Ahmed Abaile; son of the deceased. He proceeded



to Balambala police station where he reported the matter. After which he proceeded to the scene with two vehicles attached to the CID department, when they found the bloody body of the deceased at his home. The deceased had cuts on his head and other parts of the body. The police collected the body.

The next day at 1 PM he received the accused from the member of the public. He took him to the centre and informed DCI.

7. Pw3 Ibrahim Bilal Adow an uncle to the accused person and relative to the deceased testified that on the material day he was at home when he heard noise from the members of public. His children Sultan and Amina informed him that the accused had killed the deceased. The following morning he proceeded to the scene where the deceased had been killed. Together with eight other people they accompanied the police to look for the suspect. They had information that he was in a house in Darman. They did not find him in the house but eventually got him in the surroundings and took him to the chief's camp at Danyare. The police thereafter went for the accused.
8. Pw4 Yusuf Abdille testified that he was known to both the deceased and the accused person. That on November 5, 2018 at 9 am he received a call from Daud informing him that the old man was dead. He also met with Pw2 who informed him to look for the accused who had killed the deceased. He went looking from him at his home at a place called Stile. At the time he was in the company of Ibrahim Bilal, Hassan Bilal, Ali Matari alias Ali Hassan and Mohammed Tamane. They found him and took him to the Chief's office.
9. Pw6 PC Juliano Mutuko Muthengi was the investigating officer. He testified that he was briefed by Pw2 of a murder incident in Danyare. On arrival at the scene they found the deceased had been removed from the scene to facilitate first aid and he had passed on in the process.  
  
On investigation Ibrahim Haji informed them that he was walking from the mosque. He heard a commotion ahead, using a torch he saw the accused hitting the deceased with a stick severally when the deceased fell, was unconscious and bleeding. He raised an alarm and members of public came and carried the deceased to his home. The accused noting, he had been spotted fled.
10. Pw6 further testified that they carried the body of the deceased to Garissa County Referral Hospital. He witnessed the postmortem, body had a cut on the head.
11. On November 7, 2018 they received a call from members of the public that they had arrested the assailant. They returned the next day. They informed the DPP of the intention to charge the accused. The accused was brought to court and an order to present him or mental exam was issued. Accused was taken to Mathare and was found fit to stand trial on November 22, 2018.
12. Further he told the court that in the course of the investigation he learnt that the deceased and accused person had met earlier at a miraa den, they quarreled and were separated. It was said the accused was accusing the deceased of having murdered someone in his family many years back.  
  
Further he stated that upon interrogated the accused, he told him that had been threatened by the deceased which led to the alteration. And as they took him to Mathare the accused told them that he is the one who had killed.
13. Pw7 Ibrahim Haji Bare testified that on November 4, 2018 he walked from the mosque he heard screams. Since he had a torch and pointed to the place the noise came from and saw the accused beating the deceased who was on the ground. On seeing him the accused threw the rungu he had and ran away. He raised an alarm attracting people who gathered at the place. The deceased son and wife came and collected the deceased. He told the court that the deceased was hit on the head. He sustained injuries on the head and the chest.



14. In cross-examination he told the court that the incident happened at night after Isha prayers . He was alone when he got to the scene. He pointed his torch. He did not show his torch to the police. they did not ask for the same. He did not surrender it either. He was called to write a statement. The police did not carry out an identification parade.
15. At the close of the prosecution’s case the court found that the prosecution had raised a prima facie case against the accused person and placed him on his defence.
16. Dw1 Abdi Gorot Yarrow gave an unsworn statement. It was his testimony that the stays at Danyere. He told the court that he is 81 years of age and was surprised that he is accused of murder. Seven days prior to the date of the alleged murder he was away herding goats on return while at Danyere town, he accused of having killed a person who lives in Danyere. He told the court that the allegation was a fabrication as he had disagreed with some people on an elections. He did not kill the deceased neither did he have a quarrel with anyone.

### **Analysis and determination**

17. Section 203 provides that:
 

” Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
18. For the prosecution to secure a conviction on the charge of murder, it has to prove three ingredients against an accused person namely; - a) that the death of the deceased occurred (b) that the accused person committed the unlawful act which caused the death of the deceased; and (c) there was malice Aforethought. See *Anthony Ndegwa Ngari v Republic* [2014] eKLR.
19. PW1 Dr Ernest Siwo who conducted a post mortem on the body of the deceased testified that the cause of death of the deceases was blunt trauma on the chest with multiple fractures.
20. On whether the accused committed the unlawful act that caused the death of the deceased. Pw7 testified that the material night as he was walking from the mosque he saw the accused person was holding a rungu hit the deceased severally, who as a result fell down. In *Donald Atemia Sipendi v R* (2019) eKLR the court was of the view that in evaluating the accuracy of testimony on identification, should also consider such factors as: -
  - i. The lighting conditions under which the witness made his/her observation?
  - ii. The distance between the witness and the perpetrator?
  - iii. Whether the witness had an unobstructed view of the perpetrator?
  - iv. Did the witness have an opportunity to see and remember the facial features, body size, hair, skin, color, and clothing of the perpetrator?
  - v. For what period of time did the witness actually observe the perpetrator?
  - vi. During that time, in what direction were the witness and the perpetrator facing, and where was the witness’s attention directed?
  - vii. Did the witness have a particular reason to look at and remember the perpetrator?
  - viii. Did the perpetrator have distinctive features that a witness would likely notice and remember?



- ix. Did the witness have an opportunity to give a description of the perpetrator? If so, to what extent did it match or not match the accused, as the court finds the accused's appearance to have been on the day in question?
  - x. What was the mental, physical, and emotional state of the witness before, during, and after the observation?
  - xi. To what extent, if any, did that condition affect the witness's ability to observe and accurately remember the perpetrator?
21. The key witness for the prosecution was PW7 an elderly gentleman whose age was given as 92 years. At the time of the incident 4 years ago he was 88 years. It was his testimony that he witnessed the incident as he came from the mosque at about 8.30 pm as he walked behind the deceased when he heard a commotion and shone his torch when he saw the accused, who was known to him hit the deceased severally with a rungu, he was able to see and identify the accused.
  21. Further the court takes note that the witness was categorical that the accused hit the deceased with a rungu though the report by the police on the post mortem report states that the accused who was armed with a panga descended on the deceased and caused him a deep cut on his head and three others hit the deceased with runqus.
  22. The post mortem report gave the following injuries; -
    - i. Single cut wound on the left temporal region associated with linear fracture of the skull
    - ii. left shoulder (posterior) bruises
    - iii. fracture of 3 lower ribs.
  23. The above injuries tend to support the evidence of Pw7 that he witnessed the deceased being hit by the accused with a rungu. PW1's evidence of the injuries suggest the deceased was hit with a blunt object as opposed to a sharp object and since Pw7 alluded to the accused having hit the deceased severally this explains the 3 injuries inflicted on the deceased. The identification of the assailant was therefore proper.
  24. The court is equally of the view that the ingredient of malice aforethought was proved as the assailant waylaid the deceased in the dark and hit him severely on his head and his ribs and thereafter disappeared. It is said by the investigating officer that during his investigations he learnt that the two had an altercation earlier in the day. The action of the accused was therefore pre-meditated and aimed at inflicting grievous harm on the deceased which the accused succeed.
  25. The accused attempted to raise an alibi which could not dislodge the evidence against him.
  26. Consequently, the court forms the opinion that the prosecution proved its case beyond all reasonable doubt that the accused was the killer of the deceased and he is hereby convicted of the offence of murder as charged.

DATED SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF AUGUST 2022.

ALI-ARONI

JUDGE

