



REPUBLIC OF KENYA



**Republic v Langat (Criminal Case 8 of 2018)
[2022] KEHC 13623 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 8 OF 2018
RL KORIR, J
SEPTEMBER 28, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

WELDON KIPYEGON LANGAT ACCUSED

JUDGMENT

The Charge

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge were that on the June 9, 2018 at Emitiot sub-location, Cheboin location within Bomet County murdered one Wesley Kiprono Langat.
2. The accused was arraigned before Muya J, on June 21, 2018. He denied the charge and the case went to full trial in which the prosecution called 8 witnesses and produced 5 exhibits. I took over the case at its tail end and heard only one prosecution witness. The prosecution established a prima facie case and the accused was consequently put on his defence.

The Prosecution Case

3. The deceased and the accused were said to be brothers. Caren Langat (PW1) was present at their home when the Accused approached the deceased brandishing a knife. She ran away and on turning back found her husband already stabbed on the neck and stomach. Their mother Christine Mursoi (PW2) told the court she heard screams in the homestead and on responding, saw the Accused proceeding to the deceased's house with a knife. She followed while screaming and found the deceased already killed and bearing stab wounds on the neck and stomach.
4. Jonathan Mursoi (PW3) is the father of both the deceased and the accused. He told the court that the accused quarreled with his (accused's) mother over timber and when the deceased intervened, the



accused hit him with a piece of wood. That the accused later followed the deceased to his house where the deceased got stabbed on the neck and waist. Robert Kipkemoi (PW4) was the deceased's brother. He told the court that he heard screams within the homestead and on responding, saw his brother Weldon who emerged from the deceased's house wielding a blood-stained knife while the deceased lay on the ground with stab wounds.

5. Dr. Stanley Kipkemoi (PW5) conducted the post-mortem on June 12, 2018 at Longisa Hospital and produced the Post-Mortem Report (P Exh 2) No 61187 Cpl Henry Kibimo (PW6) documented the murder scene showing the deceased's body, the Accused tied with ropes and a blood-stained knife near the deceased's body. The Government Analyst Richard Kimutai Lang'at (PW7) analysed DNA extracted from the blood samples in the deceased's clothing and the knife and concluded that they both matched the DNA of the Accused.
6. The investigating officer, PC Jamleck Mwangi (PW8) testified that he attended the scene and found the deceased lying on the ground with stab wounds and the accused tied with ropes under citizen arrest. He also recovered exhibits including the murder weapon and the blood-stained clothing of the deceased.

The Defence Case

7. The Accused gave a sworn statement in his defence. He testified that he was at home assisting his parents and when he went to cut some trees, his brother (the deceased), followed him armed with a knife and a stick and attacked him. That they started fighting and as they struggled, they both fell and the knife cut the deceased on the chest. That as they continued fighting, they rolled and the knife cut the deceased on the neck and as he tried to remove the knife, the deceased died. The accused further stated that he fought with his brother but had no intention to kill him. He denied having said that he was going to kill somebody. In re-examination, he stated that he did not kill his brother and that he was drunk but not too drunk.
8. The accused closed his case without calling any witness.

The Law

9. Section 203 of the [Penal Code](#) sets out the ingredients of murder. The prosecution is required to prove beyond reasonable doubt that the accused person by an unlawful act or omission caused the death of another person and that in so doing acted with malice aforethought. (See [Anthony Ndegwa Ngari v Republic](#) [2014] eKLR).
10. In the case of [Roba Galma Wario v Republic](#) [2015] eKLR, the Court of Appeal held that:-

“For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”
11. The standard of proof in a case of this nature is one beyond reasonable doubt. Lord Denning in [Miller v Ministry of Pensions](#), (1947) 2 ALL ER 372 held thus:-

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible,



but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

See in *Dickson Mwangi Munene & another v Republic* [2014] eKLR.

Analysis

Death and Cause of death

12. The death of the deceased in this case was proved by the Prosecution. According to the civilian witnesses PW1, PW2, PW3 and PW4 who were family members, the deceased was stabbed by the accused within the homestead. His body was collected by the police and taken to Longisa Hospital Mortuary where Dr Stanley Kipkemoi (PW5) conducted an autopsy on June 12, 2018. He observed a cut wound on the head and left chest. He found bleeding in the chest cavity and observed that the lungs had collapsed. PW5 opined that the cause of death was a result of stab wounds on the thorax which severed the lungs. He produced the post-mortem report as prosecution exhibit No 2.
13. I accepted the expert opinion above on the cause of death. The same accorded with the evidence given by the family members (PW1, PW2, PW3 and PW4) that the deceased had been stabbed. It is my firm finding therefore that death was proved beyond reasonable doubt and that such death was clearly unlawful.

Whether The Accused Was Linked To The Unlawful Death Of The Deceased

14. The prosecution is required in law to prove beyond reasonable doubt that it was the accused and no one else that caused the unlawful death of the deceased. The actus reus must be proven as the actual cause of death that was committed or omitted by the accused person.
15. In this case, the evidence linking the accused to the death of the deceased was given by PW1, PW2, PW3 and PW4. The deceased’s wife (PW1) told the court that she was at home with her husband Wesley Kiprono on June 9, 2018 and at around 1 p.m., they heard screams from their parents’ home. The deceased rushed there and shortly appeared having been wounded. He asked her to wash his head and as she proceeded to do so, she heard screams to the effect that somebody was approaching them, armed with a knife. Immediately, she saw her brother-in-law Weldon approaching armed with a knife. She ran away screaming and on returning, she found her husband having been killed and the accused leaving the scene. She saw a stab wound on the neck and stomach. She screamed as she ran towards their parents’ homestead.
16. The deceased’s mother (PW2) testified that she saw the accused enter his house, come out with a knife and proceed to the deceased’s house. That she went to the deceased’s house screaming and found the son (deceased) already killed and the accused running away. On cross-examination, PW2 said that she saw the accused armed with a knife and heard him say that he would kill somebody.
17. Jonathan Mursoi (PW3) told the court that both the deceased and the Accused were his sons. That on June 9, 2018, at around 1p.m. Weldon (accused) started a quarrel with his mother (PW3’s wife) over timber. That the deceased went to the rescue of the mother and the Accused hit him (deceased) with a piece of wood and the deceased retreated to his house. That the accused also went to his house but soon thereafter, there were screams from the deceased’s house and upon responding, PW3 found the deceased stabbed on the neck and waist. PW3 further stated that he neither saw the accused stabbing the deceased nor the murder weapon.
18. Robert Kipkemoi Langat (PW4) told the court that he was at his sister’s house some 500 metres away from the deceased’s house when he heard, from their parents’ house screams to the effect that



- Wesley had been killed. On responding, he saw Weldon with a blood-stained knife and on checking on Wesley, found him dead. They subsequently found Weldon (accused) hiding in the sugar plantation and arrested him and tied him with ropes.
19. The Scenes of Crime Officer, No 61187 Cpl Henry Kibimo (PW6) took 4 photographs showing the body of the deceased lying near a grass thatched house, a blood stained knife near the body and a close-up view of the deceased showing deep cut on the left neck. He also took a photo of the Accused lying on the ground tied with ropes with visible injuries. He produced the photographs as Prosecution Exhibits 3(a)-(e).
 20. No 99994 PC Jamleck Mwangi (PW8) was the Investigating officer. He visited the scene and found the deceased's body lying outside the house with visible stab injuries on the left side of neck, stomach and head. Members of the public handed him the murder weapon (exhibit 1). He re-arrested the Accused who had been arrested by members of the public. He took statements from the witnesses and attended the Post-Mortem conducted by Dr Stanley Kipkemoi PW5 on June 12, 2018. From the witnesses, he learnt that the deceased and accused who were brothers had quarreled over trees in the family homestead.
 21. I have carefully considered the evidence of both the prosecution and the defense. A number of issues are uncontested in this case. It is clear from the evidence of the prosecution witnesses and the accused himself that there was a quarrel between the deceased and the accused at their home. The evidence shows that they lived within the same land and their homesteads were close by. It is also clear that the quarrel arose out of trees which according to the family members, the accused wanted to cut down and when their mother protested, the deceased went to support the mother.
 22. It was then that the Accused hit the deceased with a stick injuring him on the head and according to the family members PW1, PW2, PW3 and PW4, the deceased retreated to his house and asked his wife to clean the injury. It was while at the task that the Accused was seen by the deceased's wife PW1 rushing towards their house brandishing a knife.
 23. The accused suggested in his defence that it was the deceased who was armed with a knife. However, the fact that the accused was armed with a knife was proven through the testimony of PW2. She testified that she saw the accused go to his house and come out with a knife and immediately proceed to the house of the deceased. PW2's evidence is corroborated by the evidence of PW1 the deceased's wife, who testified that she saw her brother-in-law (the accused) approach their house brandishing a knife. She ran away only to turn back and find her husband already stabbed. PW4, PW2's evidence is further corroborated by testified that he saw the accused holding a bloodied knife.
 24. From the evidence of PW1 and PW2, I find it proven that the accused was armed with a knife. The 2 witnesses did not see him stab the deceased. However, it is clear that he was the one who stabbed the deceased because he was seen going to the house of the deceased armed with a knife and shortly thereafter, the deceased had fallen with stab wounds. The incident also happened shortly after the accused had hit the deceased when he intervened in a quarrel between the Accused and their mother over the accused's desire to cut trees said to belong to the mother. The testimony of PW4 corroborated that of PW1 and PW2. PW4 testified that he left his sister's house when he heard screams and he found the accused leaving the deceased's house with a blood stained knife in his hand. Their father PW3, though guarded in his testimony, stated that the stabbing of the deceased came soon after the accused had hit the deceased. This testimony is corroborative in situating the accused and deceased within the homestead.
 25. The circumstances of the accused's arrest also corroborate the evidence linking him to the killing of the deceased. Immediately after the incident, he escaped into the sugarcane plantation from where he



was arrested by the family members including PW4. It is my conclusion that the family members were sure that he was the one who had stabbed the brother.

26. I have already set out the accused's defence. He denied that he killed his brother. He however, admitted that there was a fight between him and the deceased during which the deceased fell on the knife.
27. The accused's defence was incoherent. He admitted that there was a fight between him and the deceased but that it was the deceased who was armed. He suggested to the court that while they struggled, the deceased found himself against the knife and that it was that knife that stabbed the deceased without him (the Accused) playing any role. I dismiss this defence as belonging only in the realm of fantasy. It is not practical that a knife, an inanimate object, can of its own motion inflict fatal injury.
28. It is my finding therefore, after a careful consideration of all the evidence on record, that the prosecution proved beyond reasonable doubt that the Accused stabbed the deceased causing his unlawful death.

Whether the Accused had malice aforethought

29. The final issue in this case is to determine whether or not the Accused in stabbing the deceased had malicious intent to end his life.
30. Section 206 of the [Penal Code](#) sets out the circumstances under which malice aforethought may be construed. It provides:-
 - 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.”
31. Malice aforethought does not connote ill-will or bad blood or any related negative feelings. Neither does it refer to motive as is commonly construed. The law does not require that there must be proof of motive or a desire to kill for the ingredient of mens rea to stand proven (See the Court of Appeal case of [John Mutuma Gatobu v Republic](#) [2015] eKLR).
32. In the case of [Joseph Kimani Njau v Republic](#) [2014] eKLR, the Court of Appeal stated:-

“In all criminal trials, both the actus reus and the mens rea are required for the offence charged; they must be proved by the prosecution beyond reasonable doubt. The trial court is under a duty to ensure that before any conviction is entered, both the actus reus and mens rea have been proven to the required standard. In the instant case, the trial court erred in failing to evaluate the evidence on record and to determine if the specific mens rea required for murder had been proved by the prosecution.....”
33. It follows then from the above authorities that mens rea in murder refers to the existence of culpability or moral blameworthy in an Accused person who faces trial for murder. It means that the Prosecution must demonstrate and prove to the court that, at the time of committing the offence, the Accused



person had formed the necessary intention to cause the death of the victim or to cause him harm that would likely lead to death. This is the prerequisite for malice aforethought.

34. In the case of *Republic v Tumbere S/O Ochen* [1945] 12 EACA 63, the Eastern Africa Court of Appeal outlined the elements to be considered in determining whether malice aforethought has been established. They were:-

- i. The nature of the weapon used.
- ii. The manner in which it was used.
- iii. The part of the body targeted.
- iv. The nature of the injuries inflicted either a single stab/wound or multiple injuries.
- v. The conduct of the Accused before, during and after the incident.

35. In this case I have reviewed the entire evidence. The evidence shows that there was a quarrel over the Accused's desire to cut down some trees in the homestead. That he hit the deceased and thereafter armed himself with a knife and followed him to his house and stabbed him.

36. The prosecution witnesses however testified that the deceased and the Accused were drunk at the time of the incident which could have impaired their judgment. The family members (PW2 and PW4) testified that there was no prior disagreement or hostility between the deceased and the Accused. Under these circumstances, I find it as likely as it was unlikely that the Accused may have had malicious intent to kill his brother. The prosecution evidence does not prove beyond reasonable doubt that the Accused possessed the requisite mens rea when he caused the death of his brother. As the law demands, the benefit of doubt only on the aspect of the mensrea must go to the Accused. Without mensrea, the Accused can only be guilty of the unlawful killing of the deceased.

37. Section 179 of the *Criminal Procedure Code* provides that: -

179. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.
- (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

38. The Court of Appeal in *Robert Mutungi Muumbi v Republic* [2015] eKLR interpreted the law thus:-

“As is apparently clear, section 179 of the *Criminal Procedure Code* empowers a court, in some particular special circumstances, to convict an Accused person of an offence, even though he was not charged with that offence. The court contemplated by section 179 can be either the trial court or the appellate court.....The question is whether the special circumstances contemplated by section 179 were in existence to enable the court convict the appellant of an offence with which he was not charged. An Accused person charged with a major offence may be convicted of a minor offence if the main offence and the minor offence are cognate;

.....‘Subsection (1) envisages a process of subtraction: the court considers all the essential ingredients of the offence charged, finds one or more not to have been proved, finds that the remaining ingredients include all the essential ingredients of a minor, cognate, offence (proved) and may then, in its discretion, convict of that offence.’



That conclusion is reached at the stage of judgment when it is not practical to require the Accused person to plead afresh to the minor offence. It is a decision premised on the discretion of the court based on the evidence adduced at the end of the trial.....The second consideration arises, of necessity, precisely because the Accused person is not charged with, and has not pleaded to, the minor cognate offence.....”

39. I apply the provisions of section 179 (2) of the *Criminal Procedure Code*, and substitute the charge of murder on which the accused was tried with one of manslaughter. The accused is accordingly convicted of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF SEPTEMBER 2022.

.....

R LAGAT-KORIR

JUDGE

Judgment delivered in the presence of Mr Wainaina for the State, Mr Kipngetich for the Accused, the Accused and Kiprotich (Court Assistant).

