



**Republic v Rono (Criminal Case 8 of 2018)  
[2022] KEHC 16467 (KLR) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 16467 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE 8 OF 2018  
AN ONGERI, J  
OCTOBER 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**HILLARY KIPROTICH RONO ..... ACCUSED**

**RULING**

1. The accused person in this case, Hillary Kiprotich Rono (hereafter referred to as the accused person only) was charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. It is alleged that on December 15, 2017 at 2200hrs at Samisbei village, Tabaita sub-location, Kapkatet location in Sigowet Soin sub-location within Kericho county, the accused person murdered Shadrack Kipyegon Langat.
3. The prosecution called a total of six (6) witnesses whose evidence was as follows: -
  - PW1, Dr Langat Ronald, a Medical officer working at Sigowet sub-county Hospital performed a Post Mortem on the body of Shadrack Langat on December 19, 2017. He said the body was pale in the conjunctiva (eye) and the soles of the limbs. There was a bruise on the left lateral costal border measuring 4 by 6 cm. The body also had an old scar on the right tibial side.
4. The doctor also said there was a large ruptured spleen weighing 750 grams and blood in the peritoneum about 3.5. litres. The doctor formed the opinion that the cause of death was cardiac arrest due to ruptured spleen – hemoperitoneum (shock).
5. PW2 – Eric Kiprono Kemboi who lives at Samisbei village said on the December 15, 2017, there was a party at the home of Daudi Too. The accused person was the DJ. After the party, David Too told the accused person to stop playing the music.



6. PW2 said the accused person demanded the balance of his money by David Too. He said the accused person started following Daudi Too demanding his money and Daudi Too said he would not pay.
7. PW2 said the accused person wrestled Daudi Too to the ground and the two wives of Daudi Too started beating the accused person.
8. The deceased Shadrack Kipyegon Langat arrived and told the accused person not to bring a fight to the compound. The deceased hit the accused person and both fell down. PW2 separated them and he took the accused person to his radio. Japheth's wife gave PW2 Kshs 100/= to give to the accused person. Japheth was a brother to the deceased.
9. PW2 said he gave the accused person the money. The deceased came back and started asking the accused person for his phone. The accused person said he did not have it. The deceased had a rungu and the accused had a phone and compact discs (CD's). When the deceased lifted the rungu, the accused person hit him with a stone on the ribs and ran away.
10. PW2 said the deceased was injured and he went away. PW2 said he heard that the deceased's condition worsened and he was taken to Hospital where he died the following day.
11. PW3, Kipkorir Koech who also lives at Samisbei said on December 15, 2017, there was an initiation ceremony at the home of Daudi Too. He said the accused person started demanding payment from Daudi Too. The deceased separated Daudi Too and the accused person.
12. PW3 said he saw the deceased asking the accused for his phone which had dropped down but the accused person said he did not have it. He said he saw the accused person taking 3 steps back and hitting the deceased with a stone on the left ribs and he ran away.
13. PW3 said the stone also hit a child on the leg and the leg was swollen. PW3 took the child to the house of the deceased and found the deceased moaning in pain. PW3 took the deceased to Hospital at Sigowet where he was treated. He became worse and died the following day.
14. PW4 Daudi Too who is also a resident of Samisbet Village said he had a function at his home and he had invited the accused person to avail the PA system.
15. PW4 said at around 10 pm, he told the accused person to stop operating the music. PW4 had paid the accused person Kshs /= and left a balance of Kshs 100/=. He said the accused person started demanding for his money which PW4 did not have at the moment.
16. When PW4 was walking to his house to see if his wife had the money, the accused person wrestled him to the ground.
17. PW4 said the deceased came and separated them. He said the phone of the deceased fell and the accused person picked it and when the deceased demanded for his phone, the accused person became hostile. He hit the deceased with a stone on the left side of the abdomen and he ran away.
18. PW5 Joseph Malakwen Arap Too, the father of the deceased said on the material day, he was at the initiation ceremony at the home of Daudi Too where the accused person was hired to entertain visitors.
19. PW5 said the ceremony proceeded until 9 pm when he heard Daudi Too screaming. PW5 ran to the home of Daudi Too where he was told that the accused person was fighting Daudi Too because of a balance of his money which he had not been paid.
20. PW5 said the deceased came and asked the accused person why he was doing such a thing instead of waiting to be paid the following day.



21. PW5 said he went to his house and then to the place the young men were fighting. He said the accused was given money. The deceased asked the accused to give him his phone and it was at this point that the accused picked a stone and threw it at the deceased and the accused Person fled.
22. PW5 noticed that the deceased was injured. The deceased was crying saying he could hear something pouring in his body. He was taken to Hospital. PW5 went to Hospital the following day and he was told the deceased had died.
23. PW6 is the investigating officer who said he received the report from Joseph Malakwen (PW5) who is the father of the deceased. PW6 investigated the case. He said on March 29, 2018, the accused person surrendered himself at the police station and he was charged with this offence.
24. This court took over this case at this stage and upon complying with section 200, the ruling was delivered and the accused person was placed on his defence.
25. The accused person in his defence said on December 15, 2017, he was at the home of David Too at 8 p.m. He had taken his radio to the home of Daudi Too for entertainment so that he could be paid.
26. The accused person said the owner of the home was drunk and when he went to ask for his money, he started beating him. He said he was supposed to be paid Kshs 500/=. He was only paid Kshs 400/=. He said the deceased started screaming when he went to demand for his money.
27. The accused person said the two wives of David Too started beating him. He said the deceased also started assaulting him and the shirt he was wearing was torn. He said the deceased had a rungu which he used to assault him and one of the wives of David Too had a cooking stick.
28. The accused person said he was rescued by his friends. He said there were stones at that place and they all fell down and the deceased was injured with a stone on the stomach. He said Samisbei village has a lot of big stones.
29. In cross-examination, the accused person said he was assaulted when he went to demand for payment. He said he was only paid Kshs 100/= and not Kshs 400/= as the witnesses said. He said he did not hit the deceased with a stone. He said the deceased fell and was injured by a stone.
30. The accused person called one witness Fredrick Kipkorir Kitur who said the accused person was assaulted by the two wives of Paul Too when he went to demand his money for entertaining guests.
31. DW2 said the deceased came with a rungu and he also assaulted the accused person and the two started fighting. DW2 said the deceased fell down. He said he did not see the accused person hit the deceased by a stone.
32. The parties filed submissions as follows: -
33. The prosecution submitted that the burden of proof lies with the prosecution to prove each and every element of the offence of murder to the standard required under criminal law that is beyond any reasonable doubt, and that in this case they have demonstrated beyond any reasonable doubt that it is the accused person who caused the death of the deceased person as there were eye witnesses who saw the accused pick up a stone and hit the deceased on the left side of the abdomen.
34. It was submitted by the prosecution that they have tendered evidence showing that the accused person deliberately picked up a stone and threw it at the deceased, hitting him on the left side of the abdomen and that he threw it with force that it ruptured the deceased's spleen.



35. The prosecution submitted that the accused person's act of picking a stone and deliberately throwing it at the deceased was done with malice aforethought, and that his real intention was to cause the death of the deceased or cause grievous bodily harm.
36. The accused person did not file his written submissions.
37. I have considered the evidence adduced by the prosecution in this case. It is the duty of the prosecution to prove the guilt of the accused person and the standard of proof required in criminal cases is beyond reasonable doubt.
38. Section 203 of the [Penal Code](#) states as follows: - "Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."
39. The elements the prosecution must prove to establish a charge of murder are as follows: -
  - i. The death of the deceased and the cause of that death;
  - ii. That the accused committed the unlawful act which caused the death of the deceased and;
  - iii. That the accused had malice aforethought.
40. The court of appeal in [Anthony Ndegwa Ngari v Republic](#) (2014) eKLR, stated as follows: - "For the offence of murder, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought."
41. In [John Kirunji M'rimbere v Republic](#) (2015) eKLR, the court of appeal at Nyeri, stated as follows: - "There are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction for the offence of murder. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had malice aforethought."
42. I find that there is evidence that it is the accused person who hit the deceased with a stone and inflicted on him the fatal injuries.
43. The fatal injuries were inflicted the course of a fight between the accused person and PW4 in which the accused person tried to separate the two and in the process he lost his phone.
44. The deceased was trying to get his phone back when the accused person hit him with a stone fatally injuring him.
45. The doctor who did the post mortem confirmed that the cause of death was cardiac arrest due to ruptured spleen hemoperitoneum (shock).
46. On the issue as to whether there was malice aforethought, section 206 of the [Penal Code](#) defines malice aforethought 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.

47. I find that the evidence in this case was that the accused person was fighting with David Too (PW4) when the deceased intervened and in the process of fighting, the accused person hit the deceased with a stone.
48. In the circumstances, it cannot be said that the accused person had premeditated the act. Malice aforethought has not been established.
49. I find that this is a case of manslaughter and I reduce the charge to one of manslaughter for reasons that malice aforethought was not established.
50. The accused person's defence and the evidence of DW2 was that the deceased fell down and he was injured by a stone. I find that there is clear evidence that the accused person hit the deceased with a stone.
51. The defence evidence does not displace the evidence of PW2, PW3, PW4 and PW5 who were all at the scene. Their evidence is corroborative and it was not shaken in cross-examination.
52. I convict the accused person with the lesser charge of manslaughter contrary to section 202 as read with 205 of the [Penal Code](#).

**Delivered, dated and signed at Kericho this 28<sup>th</sup> day of October, 2022.**

**A. N. ONGERI**

**JUDGE**

