



REPUBLIC OF KENYA



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**Republic v Kibet & 2 others (Criminal Case 55, 65 & 87 of 2016  
(Consolidated)) [2025] KEHC 1832 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1832 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL CASE 55, 65 & 87 OF 2016 (CONSOLIDATED)**

**JRA WANANDA, J  
FEBRUARY 21, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MUSA YEGO KIBET ..... 1<sup>ST</sup> ACCUSED**

**GIDEON KIPRUTO KISANG ..... 2<sup>ND</sup> ACCUSED**

**NICHOLAS CHEBOI CHEMLELA ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. The accused persons were charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on 5/07/2016 at Kapkitany village in Embolot location within Elgeyo Marakwet County, they jointly murdered one Nicholas Chebet Cheburur.
2. Initially, the 1<sup>st</sup> Accused was charged under this Eldoret High Court Criminal Case No. 55 of 2016, the 2<sup>nd</sup> Accused under Eldoret High Court Criminal Case No. 87 of 2016 and the 3<sup>rd</sup> Accused under Eldoret High Court Criminal Case No. 65 of 2016. The 3 cases were however later consolidated on 2/07/2018 before Hon. Lady Justice H. Omondi (as she then was) and the instant file marked as the lead file.
3. Mr. Nyachiro Advocate appears for the 1<sup>st</sup> Accused, Ms. Adongo for the 2<sup>nd</sup> Accused and Mr. Wabomba Masinde for the 3<sup>rd</sup> Accused.
4. The trial commenced on 3/10/2018 before Hon. Lady Justice Olga Sewe who took the evidence of PW1 - PW4. Upon her transfer, Hon Justice E. Ogola J took over the matter and took the evidence of PW5 and PW6. Upon the transfer of the Judge, I then stepped in and took the evidence of PW7 and PW8 after which the prosecution closed its case.



5. Needless to state, upon both instances of transfer of Judges and taking over of the case by new Judges, directions under Section 200(3) of the Criminal Procedure Act were taken, and in both instances, the defence elected not to ask for recall of any witnesses and requested that the matter proceeds from where it stopped. The Prosecution agreed.
6. Regarding the evidence presented, PW1, Wilfred Yego, testified that the deceased was his father. He stated that on the fateful date, 5/07/2016, at about 8.00 pm, he was at his home when he heard screams and when he went out to check, he noticed that his father's house was on fire, that he saw some people setting fire to the house and screaming stating that they had succeeded in killing the Mzee as they had wanted and that they were happy and in jubilation. He stated further that he next saw a sheep fleeing from the fire only for Musa Yego to give chase it and cut it. He stated further that he was also able to recognize Ruto, Ronald Kipruto, Daudi, Alex Kosgei and Kirotych, that they were 6 people and that some were keeping guard to stop neighbours from coming out from their houses to respond to the attack. It was his testimony that he heard Musa Yego state that they were also looking for Petro Chebusos, Joseph Kipchumba, Charles and himself (PW1). According to him, there was a land dispute concerning his family and that Petro, Joseph and Charles are his uncles. He stated further that he proceeded to the scene after the attackers left and raised alarm, that the fire was raging and he feared that his father could have been trapped inside, that neighbours came over and helped to put out the fire upon which they found his father's body inside the house, that the police came in the morning and collected the body and that he later recorded his statement. He then identified Musa Yego and Daudi seated in the dock. In cross-examination, he stated that he was about 2 metres away from the burning house, that the fire was bright enough to illuminate the whole house, that the house was grass-thatched, and that there was a fence from his house made up of shrubs. He also stated that the land dispute was between clans. He stated further that his father was living alone, that it was Musa Yego who was leading the attackers in singing in jubilation. He then conceded that he never saw the attackers setting the house on fire and stated that the attackers left after the roof caved in. He stated further that the body did not have hands and had a cut on the head.
7. PW2, Julius Kibet Kanda, testified that he relocated to Tanzania after his life was threatened and his house burnt. He stated that the County Commissioner had come and instructed their Kapsiran clan to move out of the area, and that when he challenged the directive and asked for an amicable resolution, other clan members opposed him. He stated that several meetings were later held in which a plan to kill some members of the rival clan was hatched on the ground that it is they who were agitating the land dispute case and that one of the people identified to be killed was the deceased (Nicholas Chebet). He stated that when he opposed the plan, one of his clan members, came and told him that he (PW2) would be killed and his house burnt down and that he reported the threat to the police. He then testified that on 5/07/2016, he was at his brother's house when some people raided and attacked him with pangas, that among them were Musa Kibet and Ronald Kipruto, that Musa Yego cut him on the head before he managed to escape into a maize plantation and that on looking back, he saw his house burning. He also testified that while in hospital, he learnt of the death of the deceased (Nicholas Chebet).
8. PW3, Timothy Chelimo, testified that he, too, relocated from Kapcherop and now lives in Mt. Elgon after his life was threatened by the Accused persons. He stated that on 5/07/2016, he heard screams in the evening and on going out to check, he saw the house of the deceased (Nicholas Chebet) on fire, that on the way he met a group of over 10 people amongst whom he recognized Ronald Ruto, Alex Kosgei, Kiprotich and Musa Yego, that they had torches which enabled him to see them before they saw him, that he hid himself by the roadside out of fear and that he followed them to the scene after they had passed. He stated further that he found some neighbours at the scene with whom they put out the fire



- before they then found the body of the deceased and that the police came in the morning. He then identified Musa Yego seated in the dock. In cross-examination, he attributed the killing to inter clan differences and stated that his house is 4 kilometres from that of the deceased.
9. PW4, Solomon Cheboi Kitum, testified that the deceased was his elder brother, that on 14/07/2016, he received a phone call from the Directorate of Criminal Investigation Office (DCIO) and was asked to go to Kapsowar Mission Hospital to identify the body of the deceased, which he did. He stated that the body had the legs and hands amputated and was partly burnt but he was able to identify the deceased because the head was not burnt. He stated that he then witnessed the post-mortem. In cross-examination, he stated that the body was burnt from the neck downwards
  10. PW5, John Maiyo Biwott, testified that the deceased, PW1 and the 3 Accused persons were all his neighbours. He stated that on 5/07/2016, at night, he had gone to the house of the deceased to ask him for a ram and that he spoke with the deceased for about 30 minutes and left at about 9.00 pm to go to his house, that on the way, he met a group of about 8 people, including the 1<sup>st</sup> accused whom he heard stating that “tonight when we reach there we shall do a shocking act” and that the 2<sup>nd</sup> accused also stated that when “we reach there, we will kill the deceased”. According to PW5, he recognized Chemlela, Mluya, Cheptugun, Solomon, Musa, Ruto and Kosgei as there was moonlight and they also had torches, that he met them about 50 metres from the home of the deceased and that he did not speak to them but decided to follow as they went to the home of the deceased. He stated further that they did not know that he was following them as he did not enter the home, that he then heard the deceased shout from inside the house as PW6 hid himself, and that the group then set the house on fire, that he saw the said Cheptubun set the house on fire but that he is not among those charged herein and that during all this time, the deceased was inside the house. He stated he ran to his home in fear, that the police came in the morning and he then returned to the scene, that it is then that he saw the body of the deceased which was burnt, and also a dead lamb, that the house was grass thatched, and that he recorded his statement a year later. He stated that he had to go to the bush as the killers were after him. In cross-examination, he reiterated that the accused persons were known to him, that they were drunk and this is why they did not notice him, that he saw Musa with a panga and Ruto with arrows.
  11. PW6, Dr. Wilfred Kimosop, testified that he is a doctor and worked at the Kapsowar Mission Hospital, and that he conducted the post mortem on the body of the deceased on 14/07/2016. Regarding the body, he testified that he could not determine its sex, race, apparent age, nutritional status or physique and that it had started to decompose. He testified that the body was burnt, the left limb was absent from the knee joint downwards, the left limb from mid fibular was absent, on the same right lower limb, there was a fracture at the femur, the right upper limb was absent from the mid part of the forearm, that the left upper limb was absent from the forearm, and that on the left side, the humerus was missing. He testified further that, internally, there were 4 fractured ribs on the chest, a penetrating chest injury on the chest wall between the 7<sup>th</sup> and 8<sup>th</sup> ribs, the lungs were putrefied, decomposed and charred, the heart and somatic tissues had also started to decompose, the digestive system, gut intestines and that the abdominal organs were also burnt and in decomposition state. He also stated that the genitals were absent, the head was burnt and there was fracture on the left side which was comminuted and depressed, and that the brain had also started decomposing. He stated that he formed the opinion that the cause of the death was multiple injuries, and that the deceased was set on fire after he had already succumbed to the injuries. He then produced the post mortem Report (Exhibit No). 1. In cross-examination, he stated that some parts of the body were burnt beyond recognition and that he could not confirm that the body was that of the deceased.
  12. PW7, Corporal Isaac Nakitare, testified that at the material time, he used to work at the Directorate of Criminal Investigations (DCI) department at Marakwet West and that he is the Investigating Officer in



this case. He testified that on 6/07/2016, at between about 9.00 am – 11.00 am, he received a phone call from his superior who informed him of a murder that had occurred in Imbolot location and directed him to proceed to the scene and carry out investigations thereon. He testified that he went to the scene with other police officers and found the body of the deceased which had been burnt beyond recognition, that both his 2 mud-walled grass thatched houses had also been burnt, that there was also a dead sheep whose throat had been slit and that the body of the deceased was in one of the 2 torched houses. He stated that he took photographs, that there was a big crowd among whom he identified and interviewed witnesses and took their statements. He added that they subsequently removed the body to the Kapsowar Mission Hospital and a post mortem exercise was later undertaken. He stated further that from the investigations, it was established that a group of about 10 people led by Musa Yego had invaded the home of the deceased and killed him, that Musa Yego was arrested by members of the public on 27/07/2016 and handed over the police and that he had been beaten up, that they took him to hospital and upon his discharge on or about 3/08/2016, he charged him in Court. It was also his testimony that he later took the photographs to the Scene of Crime Department where they were printed and authenticated. He stated further that he was then transferred and later learnt that the other accused persons were also subsequently arrested. He then identified the 1<sup>st</sup> Accused, Musa Yego, seated in the dock. The photographs and the accompanying Reports were then marked for identification. In cross-examination, he stated that the deceased used to live alone, that the body was burnt beyond recognition but was identified by his son at the scene, that although the private parts were missing, they established that it was the body of a man and that no DNA test was conducted thereon.

13. PW8, Inspector Denis Imboko, testified that he is attached to the Crime Scene Support Services (CSSS) at Eldoret and that he is a gazetted Scene of Crime officer. He testified that the CSSS is the unit that is mandated with the task of visiting and documenting scenes of crime by photographing, collecting evidence and forwarding it to different departments such as the Government Chemist and also certifying the relevant documents. He then referred to the photographs marked for identification by PW7 and the Exhibit Memo Form, and stated that the photographs were taken by Corporal Isaac Nakitare (PW7). He also referred to the Photographic Admissibility Certificate and testified that in this case, the photographs were certified by one Chief Inspector Nyarara who is however currently based in Murang'a but with whom he served together in Thika for 2 years and that he is therefore acquainted with his writing and signature. He then confirmed that the handwriting and signature on the photographs are Chief Inspector Nakitare's who is also a gazetted Scene of Crime officer but who has however been sick for some time and that it is for this reason that he (PW8) had come to testify on his behalf. Upon laying the above basis, and there being no objection from the Defence Counsel, I allowed him (PW8) to produce the photographs. He then produced 9 photographs (Exhibit 2(a) – (i)) and also the Photographic Admissibility Certificate Report (Exhibit 3). In cross-examination, he stated that the photographs show an image of a burnt human being, that 7 of them were taken from inside the house and 2 from outside, and that he is not the one who visited the scene. In re-examination, he stated that his role as a witness in this case was simply to certify and confirm authenticity of the photographs.
14. Upon the close of the prosecution case, both the prosecution and defence informed the Court that they had no intention of filing Submissions on "case to answer".



## Determination

15. At this stage, the Court is only considering whether the accused persons have a case to answer. A case to answer was described by G. Dulu J in the case of Republic vs Joseph Shitandi & Another (2014) eKLR as follows:

“A case to answer is a case where if the accused keeps quiet, the evidence of the prosecution should be such that a conviction will result.”

16. The procedure in determining whether an accused has a case to answer was discussed in the case of Republic vs Samuel Karanja Kiria (2009) eKLR where J.B Ojwang J (as he then was) stated the following:

“The question at this stage is not whether or not the accused is guilty as charged but whether there is cogent evidence of his connection with the circumstances in which killing of deceased occurred. That the concept of prima facie case dictates as a matter of law that an opportunity created by this court for the accused to state his own case regarding the killing. The governing law on this point is well settled ... The Court of Appeal in Criminal Appeal No. 77/2006 expressed that too detailed analysis of evidence stage at no case to answer stage is undesirable if the court is going to put accused on his defence as too much details in the trial court’s ruling could then compromise the evidentiary quality of the defence to be mounted.”

17. The trial Court is however cautioned that at this stage, it should not make definitive findings should it conclude that the accused has a case to answer. In this regard, in Festo Wandera Mukando vs Republic [1980] KLR 103, E. Trevelyan J stated as follows:

“...we draw attention to the inadvisability of giving reasons for holding that an accused has a case to answer. It can prove embarrassing to the court and, in an extreme case, may require an appellate court to set aside an otherwise sound judgment. Where a submission of “no case” to answer is rejected, the court should say no more than that it is. It is otherwise where the submission is upheld when reasons should be given; for then that is the end to the case or the count or counts concerned.”

18. I have considered the evidence on record and the testimonies of the witnesses as set out above and, without delving into the merits thereof, I only state my finding to be that the prosecution has established that both the accused persons have a case to answer. All I would state for now is that there is testimony placing the accused persons at the scene of crime at the material time and also testimony disclosing a prima motive.

19. The accused persons are therefore informed of their rights under Article 50(2)(i)(j)(k) of *the Constitution* and also under Section 306(2) of the *Criminal Procedure Code* to address the Court. Accordingly, they are informed that they have a right to address the Court either personally or by their Advocate and to give evidence on their own behalf or to give unsworn statements, and to call witnesses in their defences. The Accused persons are therefore placed on their defence.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 21<sup>ST</sup> DAY OF FEBRUARY 2025**

**WANANDA J. R. ANURO**

**JUDGE**



Delivered in the Presence of:

1<sup>st</sup> Accused – Musa Yego Kibet

2<sup>nd</sup> Accused – Gideon Kipruto Kisang

3<sup>rd</sup> Accused – Nicholas Cheboi Chemlela

Mr. Okaka for the State

Mr. Nyachiro for the 2<sup>nd</sup> Accused and also holding brief for Ms. Adongo for 2<sup>nd</sup> and 3<sup>rd</sup> Accused

C/A: Brian Kimathi

