



REPUBLIC OF KENYA



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**Republic v Langat & another (Criminal Case E026 of 2020)
[2025] KEHC 1971 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1971 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E026 OF 2020
HI ONG'UDI, J
FEBRUARY 13, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ROBERT KIPROTICH LANGAT 1ST ACCUSED

DAUDI KIPLANGAT KOECH 2ND ACCUSED

JUDGMENT

1. Robert Kiprotich Langat and Daudi Kiplangat Koech hereinafter referred to as the 1st and 2nd accused respectively stand jointly charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars being that the 1st and 2nd accused on the 3rd day of October, 2020 in Sururu location within Njoro sub-county of Nakuru county jointly with others not before court, murdered Collins Kiptoo.
2. Both accused denied the charge and the case proceeded to full hearing with the prosecution calling a total of eight (8) witnesses. Each accused gave a sworn statement of defence and they called one common witness.
3. PW1 – Richard Kibet the deceased’s father testified that on 3rd October, 2020 at around 4 pm he was from work when he called the 1st accused who is a neighbor. The 1st accused asked him to go to his house. It was there that he learnt that his son (the deceased) had stolen a phone belonging to the 1st accused’s mother, and that the phone was with one Aaron (Harun) Ngeno. On the road they met the said Aaron whom the 1st accused slapped. They then went to look for Kichirchir whom they did not find. The 1st accused turned on Aaron whom he caned with a cyprus stick as he lay on the ground. They went to the 1st accused’s house where he said accused continued beating Aaron. The 1st accused’s mother later came and told them the person she wanted was Collins (deceased). The 2nd accused though present never beat Aaron.



4. Thereafter the 1st accused, his brother and worker left for Finance Centre to look for PW1's son (Collins). PW1 said he saw the 2nd accused and one Erick Kipkoech beating the deceased. The 2nd accused kicked the deceased on the chest. By the time they reached the 1st accused's house the deceased was already in a bad state. The 1st accused ordered Aaron to hug the deceased but when he tried to do so the latter fell to the ground. The mother of the 1st accused went to the house, and bought some milk but the deceased couldn't drink.
5. At that point, PW1 took the deceased home and gave him water which he couldn't drink because the 1st accused had given him stinging nettle to eat. These were the deceased's last words, he told the father (PW1). He was taken to Kaptich a private hospital which transferred him to Njoro sub county hospital but he never made it.
6. In cross examination the witness said Mary the 1st accused's mother had accused the deceased of stealing her maize but she forgave him. He admitted that the deceased was a thief but he never brought home the stolen phone. He confirmed that he never saw the 1st accused beating the deceased, but he saw the 2nd accused and one Evans Kipkoech and three others who assaulted the deceased. He denied that the deceased was beaten by mob justice in the village. He confirmed that the houses of the 1st accused and his father were burnt the following day.
7. PW2 – Harun (Aaron) Ngeno then aged 17 years testified that on 3rd October, 2020 he was at Kalukiyet centre when the deceased who is his cousin brought him a small phone which he identified as EXB 1. The deceased asked him to keep the phone as he would come for it in the evening he went to the shops when Evans called him and took him to the 1st accused who started slapping him. He was beaten by the 1st accused using a cyprus stick. He was then taken to the 1st accused's house and the beating continued. The deceased was brought by the 1st accused and others, while naked and bloodied. The beating on him and the deceased continued. At 7pm he was released to go home. He denied seeing anyone beating the deceased.
8. PW3 – Paul Kipngeno Siegei is the father to PW2. He said he came home on 3rd October, 2020 after work and found PW2 crying. He informed him of his having been beaten by the 1st accused because of a phone the deceased had given him. He took the boy who was badly injured to hospital and reported the matter at Mau Narok Police station.
9. In cross examination he said the 1st accused had not been charged with assaulting PW3 inspite of the report made. He denied knowledge of the fact that PW2 was a thief.
10. PW4 – Joseph Kipyegon Sigei stated that the deceased was his brother's son. He identified the deceased's body and also witnessed the post-mortem. He saw bruises all over the body from the head to the abdomen with a lot of stinging nettle inside the body.
11. PW5 – Dr. Titus Ngulungu a pathologist conducted the post mortem at Egergon University Funeral Home on 9th October, 2020. He found several injuries on the body of the 15 year old boy namely brain injury, muscular and fat trauma with haematoma, collapsed lungs food material in the trachea, congested liver among others. He found the cause of death to be pulmonary fat emboli where the fat is traumatized and blocks the lung blood vessels. Air was not transported to the rest of the body. That there was food material in the trachea. There was also stinging venom like the one from bees. He produced the post mortem report (EXB 1)
12. PW6 – No. 92231 P. C Evans Macharia arrested the 1st accused at DCI's office Njoro after he surrendered himself after learning that he was required over a murder case in Narok area. He arrested him on 16th October, 2020 at 8.00am. He co-investigated the case with Sgt Nyamondo who led the



team. He stated that in the course of the investigations two officers one being P. C. Simon from Mau Narok police station brought to the office two red carrier bags containing nettle venom (EXB 2a & b) alleged to have been tied on the deceased. They also brought a bunch of sticks EXB 3a-c & a mobile phone ETIG (EXB 4) which belongs to the 1st accused. He confirmed the burning down of 1st accused's homestead, his rentals at the market centre and plantations by villagers. The 2nd accused was taken to the police station by his father.

13. In cross examination he said he was not aware that PW2 denied his witness statement. He denied any knowledge of the deceased being a serial thief and his having been lynched, by the mob. He said EXB 2a & b is a weed but he had no analysis report of it.
14. PW7 - No. 92837 P. C. Simon Mulogor of Mau Narok police station testified that on 3rd October, 2020 at 8pm while on patrol on Mwisho wa Lami road, Cpl Tanui received a call from the O.C.S, C. I Muli. They were together and with two others. They were instructed to visit a scene. The road leading there was very bad and it forced them to stop and walk. They were led to the home of Samuel Langat of KDF but were informed he had not been seen since 6.00pm. They then went to his father's home but missed him even the father. He denied recording any statement or arresting anyone. He denied knowing one David Kiplangat nor recording a statement from him.
15. PW8 – No. 112160 P. C Henry Musembi of Mau Narok Police station stated that on 5th October, 2020 he was instructed by the OCS to escort exhibits from the station to Njoro DCI's office. These were EXB 2a & b, EXB 3a – c and EXB 4. He took them as instructed and was taken there by the driver. He did not take any suspect to Njoro.
16. In his sworn defence the 1st accused stated that he works for the Kenya Defence Forces and denied killing the deceased. He stated that he was given leave on 26th September, 2020 to go home for purposes of dowry payment. The visitors came to his home in Mau Narok on 30th September, 2020 and left after the function. On 3rd October, 2020 he was involved in registration of land in Mau. The exercise involved several people and it ended at 3pm. At 11.00am Evans Kiptoo their worker had come there as the exercise went on. He heard him say the deceased had stolen his mother's phone. Evans followed the deceased to his home. PW1 came to confirm what he had done during the land exercise and he gave him all the documents needed as he too had bought land in Mau Narok.
17. While still there his mother reported to them that the deceased had stolen her phone and money. Since PW1 was present he told him they go for the phone to avoid many things. They left and on the way, they met PW2, who had his mother's phone. He caned PW2 as he interrogated him. They got a tip of where the deceased was and they followed him. Reaching there they found a crowd with the deceased who was naked and had things like leaves in his mouth which he was chewing. The deceased was shivering and was taken to hospital on a motorbike with his father and another. Shortly thereafter he heard he had died.
18. He denied seeing Evans beat the deceased. He stated that the deceased was a thief and his father had at one point sent him away. He explained that he never slapped the deceased nor gave him stinging leaves. That the deceased was slapped by PW2. He said its him who organized for him to go to hospital and even following him there with his brother, but never found him. They later learnt of his death.
19. In cross examination he said the deceased was said to have stolen his mother's phone but had stolen from him severally. He beat PW2 for lying to him about the phone. He denied giving the deceased any leaves to chew.
20. In cross examination he said he was not charged for beating Aaron.



21. The 2nd accused in his sworn defence stated that he is a student at Sotik Technical Institute. He denied killing the deceased. He stated that there was no witness who mentioned his name in respect of the deceased's death. That it was just the DCI who mentioned his name.
22. DW1 – Sheila Kipkemoi Kirui was the accused persons' common witness. She stated that on 3rd October, 2020 at 4pm she went to the shops and returned home. On her way home, she met a young man and also saw a crowd about 60m away. She asked the young man what was happening and he told her it was a person who had stolen a phone. She then went home and met Robert (1st accused) her neighbor on the road. When he approached the crowd, people took off. She did not see the 1st accused beat anyone that day.
23. In cross examination she said she did not know how many times the accused used to come home. She never saw the person who had stolen the phone and she never spoke to the 1st accused then and she never saw him do anything to the crowd.
24. Both parties filed written submissions which they later highlighted.

Prosecution's submissions

25. These were filed by Emma Okok and are dated 26th November, 2024. Counsel did a summary of the evidence of both the prosecution and defence. She contended that the prosecution met all the three (3) ingredients required under section 203 of the [Penal Code](#) in establishing the offence of murder. Counsel submitted that death and its cause was proved by PW1, PW4 and PW5.
26. On whether the accused committed the unlawful act which caused the death of the deceased, she referred to the evidence of PW1 and PW2. That there was evidence of beatings by the 2nd accused, while the one against the 1st accused was circumstantial. He was one of those who brought the deceased to his home while he was naked and bloodied. It was thus her submission that both accused had a common intention of causing the deceased harm. On this, reference was made to the case of Republic V Francis Muturi Munene & another [2021] eKLR where the court stated as follows:

“It is now settled that an unlawful common intention does not imply a pre-arranged plan. Common intention may be inferred from the presence of the accused persons, their actions, and the omissions of any of them to disassociate himself from the assault. It can develop in the course of events, though it might not have been present from the start. It is immaterial whether the original common intention was lawful so long as an unlawful purpose develops in the course of events. It is also irrelevant whether the two participated in the commission of the offence where the doctrine of common intention applies, it is not necessary to make a finding as to who actually caused the death”
27. Counsel referred to the deceased's last statement to his father (PW1) that the 1st accused had given him stinging nettle to eat. PW4 also noted that the deceased had a lot of stinging nettle inside his body. That the doctor (PW5) had also confirmed that the deceased did not die a natural death.
28. On whether the accused had malice aforethought. Counsel referred to section 206 of the [Penal Code](#). She thus, submitted that the accused persons actions and those of their accomplices confirmed they had an intention of causing the deceased grievous harm on allegations of theft. The deceased succumbed to the said injuries.

Accused person's submissions



29. These were filed by M/s Gordon Ogola, Kipkoech & Co advocates and are dated 8th November, 2024. Counsel Kipkoech gave a summary of the evidence of the prosecution witnesses and the defence witness Sheila Chepkemoi Kirui. He submitted that the issue for determination was whether the prosecution proved their case to the required standard. He referred to the case of Republic V Silas Magongo Onzeere alias Fredrick Namema [2017] eKLR where the court stated:

“In our criminal justice system there is no duty on the accused to prove anything on the allegations of a criminal nature filed by the state in a court of law. That burden of proof of an accused (sic) guilt rests solely on the prosecution throughout the trial”

30. On the ingredients in a charge of murder he referred to section 203 of the *Penal Code* and the case of Anthony Ndegwa Ngari V Republic [2014] eKLR. The defence had no issue with the fact of death. They however had issue with the cause of death. Counsel argued that an examination of PW5’s evidence left them with three different probable causes of death and a general overview of the state of the deceased’s body post mortem.

31. On the commission of the unlawful act counsel submitted that none of the witnesses saw the accused administering stinging nettle to the deceased nor beating him. Further that when the 1st accused met with the deceased on the road, the latter had already been beaten and stripped naked. The witnesses further agreed that the 1st accused led the deceased to his home. Counsel further referred to the evidence of DW1 – Sheila Kipkemoi Kirui who was initially a prosecution witness but was never called by the prosecution. Her evidence was not challenged.

32. On the issue of malice aforethought, counsel referred to section 206 of the Penal code, and the case of Hyam V DPP 1974 AC where the court state:

“Malice aforethought in the crime of murder is established by proof beyond reasonable doubt when during the act which led to the death of another, the accused knew that it was highly probable that that act would result in death or serious bodily harm”

He further referred to the case of Ernest Asami Bwire Abanja alias Onyango V Republic (CACRA No. 32 of 1990) where the court held:

“The question of intention can be inferred from the true consequences of the unlawful acts or omission of the brutal – killing, which was well planned and calculated to kill or to do grievous harm upon the deceased”.

33. Its counsel’s contention that an examination of the above and the evidence on record clearly reveals that the accused persons did not exhibit any intention to kill the deceased. He also referred to the 1st accused’s testimony where he stated that he asked for the deceased to be given clothes and milk in order to mitigate the effects of the harm the mob had caused. He thus submitted that the prosecution failed to prove its case to the required standard.

Analysis and determination

34. I have carefully considered the charge, the evidence on record, both parties submissions, cited authorities and the law. The issue standing out for determination is whether a case of murder against



both accused was proved, by the prosecution. The charge of murder facing the accused persons is grounded on section 203 of the penal code which provides:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”

The penalty for murder is grounded on section 204 of the penal code which provides

“Any person convicted of murder shall be sentenced to death”

35. For the offence of murder to be proved as has been established from the law and decided cases (see *Anthony Ndegwa V Republic* [2014] eKLR, *Nyambura and Others V Republic* [2001] KLR 355) are:

- 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 (actus reus)
- iii. That the accused had malice aforethought/intention to commit the murder (mens rea)

36. On the issue of death there is no dispute about the fact of death. Dr. Titus Ngulungu (PW5) conducted the post mortem. From the report (EXB 1) the cause of death was:

- i. Pulmonary fat emboli – diffuse blunt fatty tissue trauma
- ii. Aspiratory Asphyxia – fatal assault.
- iii. Shock anaphylachi: exposure to stinging nettle venom.

A number of samples/specimens were taken for DNA profiling and Toxicology. No reports on this were produced, before this court. The post-mortem report shows that the upper back (left side), upper limbs mid-thigh had tramlines associated with swelling among other injuries. There was also food material in the trachea. It thus follows that the deceased aged 15 years did not die a natural death

37. The next question is who killed him? What unlawful act led to his death and who committed this act? PW1 who is the deceased’s father stated that on 3rd October, 2020 at around 4pm he went to the 1st accused’s house on invitation. It was then that he learnt from the accused that his son the deceased had stolen the phone of Mary (1st accused’s mother) and the phone was with PW2. The first person to be punished by being caned was PW2.

38. When did the beating of the deceased start and who beat him? According to PW1 he at no point saw the 1st accused beat the deceased. However, this is what he states at page 10 of paragraph 3 of the typed proceedings

“Robert and his brother and worker went to the Center to look for Collins. Daudi was there too. They found Collins and they started beating him. I saw Daudi and Evans Kipkoech beating Collins. I did not see Robert beating Collins as they were heading back to Robert’s compound”.

“Daudi kicked him on the chest. When they came back to Robert’s compound with Collins, he was already in bad state. He had been undressed and had been badly beaten. Robert commanded Collins to hug Aaron. When Collins tried to do so, he fell to the ground”.

39. From PW1’s earlier narration they were at Robert’s house when Mary (Robert’s mother) came saying the person she wanted was Collins. It was at that point that the 1st accused, his brother (no name given)



and his worker (no name given) left for the centre to look for Collins. PW1 and the 2nd accused did not accompany them to the centre. The simple question that the court asks itself is where PW1 was when he allegedly saw the deceased being beaten by the 2nd accused and one Erick Kipkoech or any other. The 2nd accused never went to the centre, so from where was he beating the deceased if PW1 is to be believed?

40. The deceased was PW1's real son who was a minor, aged 15 years. What steps did PW1 take to assist his son who was in trouble? He remained at the 1st accused's house as the 1st accused and two others went for him? PW1's evidence does not just add up.
41. Aaron (Harun) who testified as PW2 is the one who had allegedly been given the phone by the deceased who was younger than him. There is no dispute that he was beaten by the 1st accused. He however, avoided to say anything in respect of the beating of the deceased. He denied seeing the 2nd accused at the house of the 1st accused nor him beating the deceased. Infact the person he mentioned was Evans who was never arrested or charged. The evidence of this witness is of no help in the case against the two accused persons. There is something he was hiding just like PW1.
42. There was an issue raised about stinging nettle venom. PW1 told the court that the deceased told him before he died that the 1st accused had given him stinging nettle venom to eat. The pathologist (PW1) told the court that when he examined the deceased's body he found food material in the trachea. He then added "There was stinging venom like from bees" it is not clear where the stinging venom was. Was it part of the food material in the trachea? It is nowhere shown that the food material in the trachea was ever taken out for purposes of analysis.
43. Lastly still on the stinging nettle venom PW6 who was the investigating officer produced before the court two red carrier bags containing "stinging nettle venom", EXB 2a & b. This had been taken to the DCI Njoro from Mau-Narok police station by PW8. Besides producing the said items EXB 2a & b there was no scintilla of evidence adduced on the same. It is not even stated where they were plucked from, and if indeed they were "stinging nettle venom".
44. The two accused persons gave sworn evidence and denied the charge. Their witness (DW1) made mention of a crowd whose participants disappeared on seeing the 1st accused approaching them. On an earlier inquiry she had been told the crowding was in respect of a person who had stolen a phone.
45. From the above analysis it is clear that proper investigations were not undertaken in this case. The mere fact that the houses of the 1st accused and his father were burnt by villagers was not evidence to confirm that the 1st accused killed the deceased. What happened to the deceased was uncalled for and very painful. Had proper investigations been carried out, more concrete evidence would have been availed to the court.
46. The above being the position, I find that the prosecution has failed to prove beyond reasonable doubt that it was the two accused persons who killed the deceased. A crowd is most likely to have done this. For my part I find the two accused not guilty and acquit them under section 322(1) of the [Criminal Procedure Code](#). They shall be released forthwith unless lawfully held under separate warrants.
47. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 13TH DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

