



REPUBLIC OF KENYA



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**Republic v Korir (Criminal Case 23 of 2016)
[2025] KEHC 1690 (KLR) (Crim) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1690 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 23 OF 2016**

**JK SERGON, J
FEBRUARY 6, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

GEOFFREY KIPLIMO KORIR ACCUSED

JUDGMENT

1. The accused person herein is charged with murder contrary to section 203 as read with Section 204 of the *Penal Code*.
2. The Particulars of the offence are that, on the 20th day of June, 2016 at Tabaita Village, Ainamoi Location within Kericho County, the accused murdered Betty Chelangat Korir.
3. The accused person pleaded not guilty to the charge and the prosecution called eight (8) witnesses to prove its case.
4. Nicholas Kipkirui (Pw. 1) a minor aged 16 years and a nephew to the accused stated that on the material day he was grazing cows in the homestead belonging to the accused and deceased. He stated that Betty Chelangat (the deceased) asked him to fetch firewood and that he saw the accused approach and lock the kitchen door with a padlock. He stated that the accused ran away soon thereafter. He stated that he peeped through the window and saw blood and informed his brother Edwin whose house was within the homestead, his brother broke into the kitchen and they saw Betty Chelangat, the deceased lying in a pool of blood. He stated that they screamed and members of the public flocked into their homestead. He stated that the police came and took the body of the deceased. On cross examination, he confirmed that he was a minor and understood the importance of an oath. He stated that he did not see the perpetrator of the offence.



5. Edwin Kipngetich Korir (Pw. 2) stated that on the material day, he was at his house when his brother (Pw. 1) informed him that the accused had assaulted his wife, the deceased. He stated that he went to the crime scene which was the kitchen of the deceased and found that it was locked with a padlock. He stated that he broke the door and stumbled upon the deceased lying in a pool of blood. He stated that the deceased had a cut wound to the head. He stated that he screamed for help and members of the public came to the scene. He stated that police officers from Ainamoi Police Post came to the crime scene. On cross examination, Pw. 2 confirmed that his house was about 10 metres away from the crime scene and that he did not hear any commotion on the material day. He stated that he did not see any weapon at the crime scene. He stated that he did not know the perpetrator of the offence.
6. Andrew Kiprop Bett (Pw.3) the assistant chief Laliat Sub Location stated that on the material day, he received information that the accused had killed his wife, the deceased. He stated that he proceeded to the homestead of the accused which was the crime scene. He stated that upon arrival, the members of the public directed him to the kitchen, he saw the deceased who was lying in a pool of blood and she had a deep cut on her head. He stated that he called the OCS Nyagacho Police Station and the in charge Ainamoi Police Post. He stated that while they were waiting for the law enforcement officers to come to the crime scene, the members of the public showed him a panga which was blood stained and proceeded to identify the panga in court which was marked as MFI-1. He stated that the police came to move the body to the mortuary for preservation. He stated that on the following day, he accompanied the accused and his nephew (Pw. 1) to Ainamoi Police Station where the accused surrendered himself to the law enforcement officers. On cross examination, Pw. 3 stated that at the time he arrived at the crime scene there were several members of the public at the scene.
7. Samuel Mutai (Pw. 4) stated that on the material day, he was at Laliat Trading Centre with other village elders when they received a report that the accused had murdered his wife Betty Chelangat. He stated that he proceeded to the crime scene alongside other nyumba kumi elders. He stated that at the crime scene, he found the body of the deceased in a pool of blood and she had a cut wound on the head. He stated that there were several people in the compound. He stated that he informed CPL Elsie Leting about the incident and that law enforcement officers came to the crime scene and ferried the body of the deceased to Kericho District Hospital. He stated that on the following day he recorded a statement at Ainamoi Police Post. On cross examination, Pw. 4 confirmed that he was not present at the time of the murder. He confirmed that the accused was not present at the crime scene.
8. Inspector Samuel Sitonik (Pw. 5) the OCS Koinonia Police Station, Bomet County police force number 23370 stated that on the material day he received a call from CPL Elsie Leting based at Ainamoi Police Post who had received a report on the incident where the accused is said to have killed his wife. He stated that he mobilized his men and they went to the crime scene where they found the deceased lying in a pool of blood in her kitchen, she had deep cuts on the head and there was a panga nearby which was recovered as an exhibit, he produced the panga as P.Exh. 1. He stated that the preliminary investigations revealed that the deceased had been killed by the accused who had fled, he therefore was not present at the crime scene. He stated that the crime scene officer took photographs of the crime scene and that the matter was left to the investigation officer to conduct further investigations. He stated that on 21.6.2016 he got a call and was informed that the accused had surrendered himself to the law enforcement. On cross examination Pw. 5 confirmed that he was not the investigating officer and that he was not the first to arrive at the crime scene, when he arrived at the crime scene there were members of the public and therefore there was a possibility of tampering with the crime scene.
9. Sergeant Mulongo Tali (Pw.6) a duly gazetted crime scene officer. He stated that he was in court to produce crime scene photographs and a report on behalf of his colleague P.C David Ouma who was away on official duty. He stated that he was conversant with the handwriting and signature of P.C



- David Ouma as they have worked together in several stations. He stated that in the said report dated 24.5.2018, on 20.6.2016 P.C David Ouma accompanied other law enforcement officers to attend to a crime scene and that the crime scene was documented by way of several photographs. Pw.6 produced several photographs taken at the crime scene as PExh. 2 (1) to (12) and the report prepared by P.C David Ouma as P.Exh. 3. On cross examination, he confirmed that he did not visit the crime scene. He conceded that the photographs did not have a timestamp hence it was difficult to say when they were taken. On re-examination, he stated that the photographs were taken on 20.6.2016.
10. Dr. Wesley Rotich (Pw. 7) a medical officer attached to Londiani Sub-County Hospital stated that he was in court to produce a post mortem report prepared by Dr. Daisy Chebet who is currently out of the country for further studies. He stated that he worked with Dr. Daisy Chebet for a period of 21/2 years, he was therefore conversant with her signature and handwriting. He stated that Dr. Daisy Chebet conducted an autopsy on the body of the deceased on 23.6.2016 and formed the opinion that the cause of death was cervical spine injury and injury to great neck vessels following cuts to the head and neck and produced the post mortem report as PExh.4.
 11. Richard Kimutai Langat (Pw. 8) a government chemist analyst stated that on 13/10/2016 he received a police exhibit memo from CPL Elsy Leting from Nyagacho Police Station with the following items; a blood stained panga marked as item A, blood sample of the deceased in a vial marked as item B and blood sample of the accused in a vial marked as item C. He was tasked to determine the DNA genetic relationship in the said items. He stated that preliminary investigations revealed that panga was lightly stained with human blood. He stated that his findings were that the DNA profile generated by the panga item A matched that of the deceased but has no genetic relation with the accused's DNA profile. He stated that he prepared a report dated 12.4.2017 and produced it as P.Exh. 3 and the exhibit memo as P.Exh. 5. On cross examination, Pw. 8 reiterated that the DNA profile generated from the stain on the panga has no genetic relationship with that of the accused.
 12. Section 211 of the *Criminal Procedure Code* was complied with, the accused person opted to give a sworn statement and to avail 1 witness to support his case.
 13. Geoffrey Kiplimo Korir (Dw. 1) a farmer stated that he and his wife had a tumultuous relationship and that he was aware that Reuben Chepkwony was having an affair with his wife. He narrated that on the material day he arrived home and could not find his wife, upon enquiry at the local centre he got information that she was at a drinking joint and left to spend more time with Reuben Chepkwony. He testified that he saw them emerge from a bush and that they ran away. He testified that he went back to his home and found his wife in the kitchen and in the company of Reuben Chepkwony who yielded a panga and attempted to assault him. He testified that he snatched the panga and in the process the panga inadvertently cut his wife who was behind him. He testified that after the awful incident he was in shock and immediately left for Ainamoi Police Station to report the incident.
 14. On cross examination, Dw. 1 confirmed that his nephew Nicholas Kipkirui who testified for the prosecution was sent to get firewood to prepare a meal on the material day and that when he returned they had already fought and that Reuben Chepkwony had fled the scene. Dw. 1 confirmed that he cut his wife and fled the scene and afterward surrendered himself to the police.
 15. Christine Chelangat Chumo (Dw. 2) testified and stated that the accused was her son in law, she urged this court to exercise leniency as her daughter was disrespectful to the accused, she was a notorious drunkard and was moving around with other men.
 16. At the close of the defence case, Mr. Kiletyen, the Learned Counsel representing the accused stated that he would file written submissions on behalf of the accused person, however, at the time of writing



this judgment he had not filed any submissions, therefore this court considered the material on record to arrive at a fair and just determination.

17. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.
18. The offence of murder is provided for in section 203 of the [Penal Code](#) that provides as follows; “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.” In Republic v Andrew Omwenga [2009] eKLR the court held: “It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission – there are therefore three ingredients of murder 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 the 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.”
19. The accused person in this case was charged with the offence of murder contrary to section 203 as read with Section 204 of the penal code. The offence of murder is defined in Section 203 of [Penal Code](#) as the unlawful killing of a person or persons with malice aforethought.

Death and Cause of Death

20. In this case the death of the deceased person is not disputed, several prosecution witnesses testified that on the material day the deceased was found lying dead in a pool of blood and had sustained fatal injuries on her head. Pw. 7 a medical officer attached to Londiani Sub-County Hospital produced the post mortem report prepared by Dr. Daisy Chebet who is currently out of the country for further studies. He stated that Dr. Daisy Chebet conducted an autopsy on the body of the deceased on 23/6/2016 and formed the opinion that the cause of death was cervical spine injury and injury to great neck vessels following cuts to the head and neck and produced the post mortem report as PExh.4 which report was adopted by this court.

Whether the accused committed the unlawful act which caused the death of the deceased

21. This court is cognisant of the fact that none of the prosecution witnesses witnessed the assault on the deceased, there is therefore no direct evidence linking the accused to the unlawful act that caused the death of the deceased. However, having considered the facts of this case, it is the finding of this court that the prosecution’s case is founded on circumstantial evidence that points towards the culpability of the accused.
22. Pw. 1 testimony placed the accused at the scene of crime, he testified that on the material day, he was sent by the deceased to fetch firewood and upon returning to the homestead saw the accused approach and lock the kitchen door with a padlock and that the accused ran away soon thereafter. Pw. 1 testified that he informed Pw. 2 who broke the door and they stumbled upon the lifeless body of the deceased in a pool of blood, with a cut to her head. Pw. 3 the assistant chief testified that upon arrival at the crime scene, the members of the public showed him a panga which was blood stained and proceeded to identify the panga in court which was marked as MFI-1. Pw. 8 a government chemist conducted a forensic analysis on the panga recovered at the crime scene and stated that his findings were that the DNA profile generated by the panga matched that of the deceased. It is therefore the finding of this court that there is forensic evidence linking the accused to the instant offence.
23. The accused explained how the deceased sustained the injuries in his defence. The accused person mounted a defence based on provocation, he stated that he and the deceased had a tumultuous



relationship and that he was privy to the fact that the deceased who was his wife was having an extra marital affair with one Reuben Chepkwony.

24. Dw. 1 narrated that on the material day he arrived home and could not find his wife, upon enquiry at the local centre he got information that she was at a drinking joint and left to spend more time with the said Reuben Chepkwony. He testified that he saw them emerge from a bush and that they ran away. He testified that he went back to his home and found his wife in the kitchen and in the company of Reuben Chepkwony who yielded a panga and attempted to assault him. He testified that he snatched the panga and in the process the panga inadvertently cut his wife who was behind him. He testified that Reuben Chepkwony fled from the scene. He testified that after the awful incident he was in shock and immediately left for Ainamoi Police Station to report the incident.

© Whether the Accused Person had Malice Aforethought.

25. For the charge of murder to succeed, it must be proved that they acted with malice aforethought. Section 206 of the Penal Code provides circumstances from which malice aforethought may be inferred. They are: "(a) An intention to cause 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; © An intention to commit a felony;(d)..." Having considered the brief facts of this case and the defence mounted by the accused, I find that the accused person herein did not have malice aforethought and that he acted out of provocation. Where a person is charged with the offence of murder and evidence points out that he committed the offence under provocation the same is reduced to manslaughter, section 207 Penal Code provides that; "When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only."
26. Considering all the evidence, I am satisfied that the prosecution has proved a charge of manslaughter against the accused beyond reasonable doubt. I therefore find the accused; Geoffrey Kiplimo Korir, guilty of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convict him accordingly.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 6TH DAY OF FEBRUARY, 2024.

J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Ruttoh

P/Counsel – Maundu

Sang for the Accused

Accused – Present in Person

