



**Republic v Lonyangiro (Criminal Case E002 of 2022)
[2025] KEHC 3433 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL CASE E002 OF 2022
RPV WENDOH, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAMELA CHEMNUNG LONYANGIRO ACCUSED

JUDGMENT

1. The accused, Pamela Chemnung Lonyangiro faces a charge of Murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The accused is alleged to have murdered Simon Mayua Lorema on 23/1/2022 at Parsoka village, Batei Location, Kipkomo Sub- County, West Pokot. The deceased was the Accused's husband. The accused pleaded not guilty to the charge and the case proceeded to full trial with the prosecution calling a total of nine (9) witnesses.
3. PW1 Mary Lotudo Chepare of Parsoka Ortum, recalled the 23/1/2022 about 7.30a.m. when she was going to fetch water, the accused called her and informed her that the husband was sick and she needed a mobile phone to call her Son Rafael PW1 gave her the phone; that Accused asked her to assist her take the deceased, Simon, to Hospital; that the accused informed her that she had quarrelled with Simon and she had hit him with a metal rod, which she showed PW1. PW1 denied that accused had any injuries on her body. PW1 entered the house and found Simon on the floor with blood oozing from two spots on the head. PW1 did not witness Simon being assaulted. Neighbours came to the scene and Danny and Chelimo came and took Simon to Hospital on a motorcycle.
4. PW2, Dancan Kiptoo Lorema is a son to the accused and Simon. He recalled that on 22/1/2022, he left the Accused and the deceased, at their other home at Parsoka where they have a goat shed. He went back to their home at Ngasian. The next morning, his sister Cynthia Chelimo called to inform him that their father had been injured. PW2 proceeded to Parsoka where he arrived at 8.30 a.m., found the



father on the floor, and tried to get him up but he refused to be disturbed. PW2 noticed that the father was bleeding from the head. PW2 said that the deceased declined to tell him what had happened to him. He found the father alone and went to look for neighbours. He met Mary (PW1) and Nobert and the younger sister Chelimo arrived and they took the deceased to Hospital on a motorcycle. When leaving the homestead, the accused arrived. At the hospital, he noticed that the deceased's right arm was fractured. They were also joined by his elder brother Rafael. Soon thereafter, they were informed that their father had died. PW2 could not tell how the father sustained the injuries. He said that his parents used to have the usual marital quarrels.

5. PW3 Domitila Chesang Lorema a daughter to the deceased recalled 24/1/2022. She was present at Kapenguria County Referral Hospital where she identified the father's body before post-mortem was done. PW3 had last seen the father on 22/1/2022 at her mother's home at Lumon village and that thereafter, he left for Ortum where he lived with the accused who was his third wife. PW3 was only informed of the father's death but did not know how he sustained the injuries. PW3 was present at Kapenguria police station when the accused was taken there for allegedly assaulting the deceased.
6. PW4 Luke Njithe Ambuga is a Medical Officer based at Kapenguria County Referral Hospital. He conducted the post-mortem on the body of Simeon Lorema. On examination, he found that the deceased had sustained deep cuts on the scalp, two cuts on the right side of the scalp, 5cm long, a cut on Superior scalp 4cm long; one cut on left anterior scalp 4cm long, a cut on left anterior scalp 1 cm long, bruises on the neck with increased mobility of the neck. Both lower arms were broken with commuted fractures. The right hand had an open fracture, bruises on the back and lower limbs; that the injuries were consistent with use of both sharp and blunt objects. Internally, there was bruising on left lower chest walls. PW4 formed the opinion that the cause of death was bleeding secondary to the injuries.
7. PW5 Isaack Kipkemi Lomolu was informed of Simon's death by his wife Bernadette Lorema and proceeded to Ortum Mission hospital where he saw the body of the father-in-law (deceased) which had three cuts on the head, and both arms were broken. He informed his sister-in-law, PW3 Domitila who informed police from Ortum police station. They visited the deceased's home where the door was opened by one of accused's sons, where they found disturbed stones where there had been a fight. On the door being opened, he saw a stick. The accused's son gave accused's phone number to the police who called her and they found her at her sister's home.
8. PW6 CPL. Barnabas Wandaka of Ortum Police Station recalled receiving a report from Laban Lomun on 23/1/2022, that his father had been injured in a fight between him and his mother and that he had died. In company of other police officers, they went to Ortum Hospital where they found the body, took photographs. They then proceeded to the home at Parsoka where they saw some blood drops on the door and beside the house. They also recovered a panga and axe which they took possession of and handed to DCI officers. They found Accused at Cheseгон village in her brother's house.
9. PW7 PC Johnson Kimanga of Ortum Police Station was with Cpl. Wandaka PW6, and other police officers when one Raphael Lorema reported about the attack by the mother on the father. They proceeded to Ortum hospital where they viewed deceased's body, then proceeded to the home, recovered a panga and axe and photographed the home. He confirmed that accused was arrested in another village. Both PW6 and 7 admitted that they did not record in their statements about recovery of the panga and axe.
10. PW8 Salvin Cheruto Katugui is a Government Analyst based at Kisumu. She received several exhibits from PC Wamae of West Pokot for purposes of analysis and DNA sampling. They were, two broken sticks, carrier bag, panga, axe, blood sample of Simon Lorema, Blood sample of Pamela, Saliva swab of Pamela, a whitish jacket and finger nail sample of Simon.



11. Upon analysing the exhibits, she did not get any human blood on the panga and axe; the two sticks, and jacket were slightly stained with blood of human origin and that they matched the DNA of Simon. She denied having generated any DNA from the jacket to confirm whether or not it belonged to accused.
12. PW9 CPL. George Wamae of DCI West Pokot was the Investigating Officer in this matter. He was assigned to investigate the Murder case on 23/1/2022. On 24/1/2022, the court granted custody of Accused to him and they visited the scene of crime at Parsoka village. He conducted a search in the presence of Duncan, deceased's son. They recovered two blood-stained sticks (P.exh.4 (a & b), a cream jacket which accused was wearing on 22/11/2022 (P.exh.5) a metal rod (piece) P.exh.7.
13. He also took possession of a panga and axe which had been recovered earlier (P.exh.2 & 3) and that the two, metal rods were forwarded to Government analyst for investigation. Blood was drawn from both Accused and deceased for generation of DNA. He forwarded them to Kisumu Government Chemist laboratory.
14. According to PW9, the cream jacket was found in the house and it is Duncan (PW2) who informed them that the mother had been wearing it on 22/1/2022.
15. In her unsworn evidence, the accused admitted that the deceased was her husband and on 22/1/2022, about 6.30p.m., she was with Simon at home. She locked up the goats and entered the house and locked the door; that a dispute had started earlier between them and the deceased attacked her. She tried to open the door to escape but he stood in the door way; that both of them were drunk. He pushed her and hit her on the head. She got hold of the stick he had; that they slept in that house and on 23rd she realized that they had seriously injured each other. She later opened the door, called neighbours to assist. She got a phone from Mary Cheruto PW1 and called her son to get a motor cycle; the deceased was taken to Ortum by motor cycle while the others followed on foot; that the gate was locked and she went to get money from her sister; that she was arrested by police from her sister's home before she sought treatment; that a conflict arose between them when her daughter gave birth and died, left children and deceased refused the children yet for ten (10) years, she had looked after his children from the other wives. She denied killing the deceased intentionally but rather, it is him who attacked her.
16. Ms. Sugut, the accused's Counsel filed written submissions on 18/2/2025 in which she urged that the three ingredients that need to be proved in a charge of Murder, that is death of the deceased; Accused's possession of men's rea and that the accused caused the death of the deceased, were not all proved.
17. As regards whether the accused had the intention to murder the deceased, Counsel submitted that PW1 explained that, in fact, the accused was tending to the deceased when she called her for assistance and only failed to escort the deceased to hospital because there was no space on the motor cycle; that PW1 gave evidence that the accused was in an abusive marriage characterized by frequent violence. Counsel relied on Section 17 of the [Penal Code](#) which avails an accused the defence of self defence; that PW9 also confirmed that the couple had a domestic problem; that whereas the Government analyst confirmed that the wooden stick had the deceased's DNA, the panga and axe did not have; that accused only used the necessary force to prevent further injury to herself or probable death because she had no means of escape since the deceased had locked the house from inside. Counsel further relied on the case of State -V- Truphena Ndonga Aswani HCCR. E011/2020 and urged the court to acquit accused of the charge of murder.
18. The Accused faces a charge of murder contrary to section 203 as read with Section 204 of the [Penal Code](#). This being a, criminal charge the prosecution has the duty to prove its case beyond reasonable doubt. As was held in the Locus Classicus Case of Woolmington v DPP 1935 UKHL1. Where the court stated thus; "Throughout the web of the English Law, one golden thread is always to be seen that it is



the duty of the prosecution to prove the prisoner's guilt..... if, at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given by either the prosecution or the prisoner, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained”

19. Lord Denning in *Miller v Ministry of Pensions* [1947] ALL ER 372 defined what ‘beyond reasonable doubt’ means, and said

“The degree is 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 defeat 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 Cr. A 4/2029 *Mary Syevutha Peter -V- Republic*).

Guided by the above decisions, the prosecution has the duty to prove beyond reasonable doubt the following ingredients;

1. The death of the deceased;
2. That the Accused caused the death through an unlawful act or omission;
3. That the accused possessed malice aforethought.

Death of deceased:

20. The death of the deceased is not in dispute. The accused has not disputed it. PW2,3,5,6,7 saw the deceased's body; PW3 and 5 & 6 witnessed the post mortem. PW4, the Doctor who performed the post mortem found that the deceased had sustained 5 cut wounds on the head, bruises to the neck, both left and right, lower arms were broken with commuted fractures, and the right hand having an open fracture; bruises on the back, and lower limbs. Internally, there were injuries to the lower left chest wall and lower lung lobe. It is evident that these injuries were inflicted on the deceased who died due to bleeding.

Whether accused caused the death:

21. Although the accused did not specifically admit killing the deceased, in her defence, she stated that they were drunk and that the deceased attacked her and she acted in self defence. PW2 had left the accused and deceased at their home at Parsoka on 22/2/2022. PW1 confirmed that on 23/3/2022 as she was passing going to the river, the accused asked her for help to take deceased to Hospital and informed PW1 that she had quarreled with the deceased. Although accused was very economical with her words, PW1 identified the stick that accused alleged to have used in assaulting the deceased. On her own admission that she snatched the stick from deceased and defended herself, there is no doubt that it is Accused who injured the deceased and caused his death.

Malice aforethought:

22. Malice aforethought is defined in Section 206 of the Penal code as follows; -



206. 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.
23. The question is whether the accused had the necessary mens rea (intention) to cause grievous harm to kill the deceased.
24. The accused raised the defences of intoxication and self defence which this court will consider in light of accused's unsworn defence and the prosecution evidence.
25. Section 13 of the [Penal Code](#) constitutes a defence in a criminal charge in certain circumstances. It provides as follows;
13. Intoxication
- (1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge
 - (2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and—
 - (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or
 - (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission. [Rev. 2012] CAP. 63 [Penal Code](#) 21 [Issue 1]
 - (3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the [Criminal Procedure Code](#) (Cap. 75) relating to insanity shall apply.
 - (4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.
 - (5) For the purpose of this section, “intoxication” includes a state produced by narcotics or drugs.
26. In the instant case, the accused stated that both her and deceased were drunk at the time she quarreled with the deceased. However, it was not clear how, or from what she was drunk. The extent of



drunkenness if at all, was not alluded to or established. PW1 had been with the Accused and deceased on the evening of 22/1/2022 and never alluded to them being drunk. The accused's defence was so vague as to what exactly transpired. She told the court that accused attacked her after she locked the door and she managed to snatch the stick he was using. The accused did not tell the court how she used the stick on the deceased. The deceased was found to have sustained very serious injuries 5 cut wounds to the head, fractured arms, with one open fracture. The Doctor found that the injuries were inflicted by both sharp and blunt objects. The accused was very economical with her explanation of what she actually did to the deceased. A mere stick could not have caused all the said injuries. The axe and panga that were found at the scene did not have any blood on them. They may have been the sharp objects used to injure the deceased but either, they had been cleaned or the accused got rid of the sharp weapon that she used to injure the deceased.

27. In the case of *Kupele Ole Kitaiga v Republic* [2009]eKLR, CRA 26/2007 The Court of Appeal had this to say on defence of intoxication. "A clear message must also go out to those of the appellant's ilk who deliberately induce drunkenness as a cover up for criminal acts. Unless a plea of intoxication accords with the provision of Section 13 of the *Penal Code*, it will not avail on accused and does not avail the appellant in this case".
28. From the defence, accused talked of having tethered the goats before entering the house when the accused attacked her. She seemed to have been very alert of her surroundings but suddenly could not tell what happened after the assault. From the circumstances of this case, the provision of section 13 of the *Penal Code* have not been met. There was no evidence to show that either the accused was intoxicated or was accidentally intoxicated, or if she was intoxicated, she did not know what she was doing. Accordingly, I reject the defence of intoxication.

Did the accused act in self defence.

29. The defence of self defence is provided for under Section 17 of the Penal code which reads as follows:
 17. Defence of person or property Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.
30. The said common law principles were expressed in the case of *Palmer v Republic* [1971]AC 814 where the court said

"It is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, but may only do, what is reasonably necessary. But everything will depend upon the particular facts and circumstances..... some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in immediate danger, he may have to avert the danger by some instant reaction.... If the attack is over and no sort of peril remains, then the employment of force may be way of revenge or punishment or by way of paying off an old score or may be pure aggression....." See CRC.17/2019 (Nyamira)

In *Mokwa v Republic* [1976-80] I KLR 1337, the court held self defence is an absolute defence even on a charge of murder unless in the circumstances of the case, the accused applied excessive force."



In *Mungai v Republic* [1984] KLR 85, the court held; “it is a doctrine recognized in East Africa that the excessive use of force in the defence of the person or property, whether or not there is an element of provocation present, may be sufficient for the court to regard the offence not as Murder but as manslaughter.

2 while there is no rule that the excessive force in defence of the person which in all cases lead to a verdict of manslaughter, there are nevertheless instances where that result is a proper one in the circumstances, and on the facts of the case being considered”.

31. In the case of *DPP v Morgan* [1975] 2 ALL ER 347 the court observed that the test of culpability where the defence of self defence is raised is a subjective one not objective. It means that, whether or not a defence of self defence will be accepted depends on the circumstances of each case. This court is alive to the fact that the onus still rests on the prosecution to disprove the defence raised. In the instant case nobody witnessed the incident. We only have the accused’s version of what unfolded on the said night. I must observe that contrary to the defence Counsel’s submission that the accused was a victim of domestic violence, there is no evidence to that effect. PW2, accused’s own son stated “my father and mother used to have the usual marital disputes”. The accused did not tell the court exactly what she did after accused allegedly snatched the stick from the deceased. Accused did not receive a single scratch on her body. The court appreciates that if indeed she acted in self-defence, she did not have to wait till she was injured to defend herself as was held. In *R.V. Deana* 2C App R 75 CCA, the English court observed “there is no rule of law that a man must wait until he is struck before striking in self-defence” No doubt the accused viciously attacked the deceased and inflicted on him very serious injuries which I have referred to above. However, I have also considered the accused’s conduct after the act. She did not run away immediately because the next morning, PW1 saw her try to give the deceased tea. PW1 also confirmed that accused sought help to take deceased to hospital and called her children to come. This court is convinced that the accused’s conduct did not display malice aforethought. For the above reasons, I will find accused guilty of a lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. I convict her accordingly.

DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 20TH DAY OF MARCH, 2025

R. WENDOH.

JUDGE.

Judgment delivered in Open Court in the presence of:-

Ms. Selina for the State

Ms. Chebet holding brief for Ms. Sugut for Accused

Accused – present

Juma/Hellen - Court Assistants

