



**Republic v Ngetich & another (Criminal Case E021 of 2023)
[2025] KEHC 3528 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3528 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E021 OF 2023
JK SERGON, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

LEONARD KIPRONO NGETICH 1ST ACCUSED

GEOFFREY KIRUI KIPLANGAT 2ND ACCUSED

JUDGMENT

1. Leonard Kiprono Ngetich, Geoffrey Kirui Kiplangat the Accused herein were charged with the information of Murder Contrary to Section 203 as read with 204 of the [Penal Code](#).
2. The Particulars of the offence are that, on the 22nd day of October, 2023 at Cheloskei Village, Kebeneti Location, Soin/Sigowet Sub - County within Kericho County, murdered Daniel Kipngetich Chepkwony.
3. The accused persons took plea and pleaded not guilty to the charge of murder and the prosecution called six witnesses who testified in support of its case against the accused.
4. Julius Cheruiot Kipketer (Pw. 1) a farmer, he testified that on the material day he was in the company of the deceased, they were taking tea, when he heard some commotion outside his homestead, 2nd accused menacingly threatened to kill the deceased who was his father and he was in possession of a stone and wire. The deceased made attempts to diffuse the tension and said that the underlying land dispute between him and his sons would be resolved by the chief. Pw. 1 testified he went back to his house and shortly after he was informed that the deceased had been injured. He stated that he found the deceased lying down, with injuries all over his body and in dire need of medical assistance. Pw. 1 testified that he organised for the deceased to be taken to hospital. Pw. 1 stated that whereas heard the 2nd accused menacingly threaten to kill his father, he saw the 1st accused standing near the road where the fighting had erupted. Pw. 1 stated that the deceased was accosted by both accused persons (sons)



- who were in the vicinity. On cross examination, he confirmed that he did not witness the accused being assaulted.
5. Kiptanui Koech (Pw. 2) a farmer testified that on the material day he received a report that the deceased had been assaulted by the sons and that he went to the crime scene and found the deceased lying down. Pw. 2 testified that he informed the area chief who sent over some police officers to the crime scene. Pw. 2 stated that the deceased was ferried to hospital by a boda boda and that he was accompanied by one Leonard to Sigowet Hospital for medical treatment. Pw. 2 stated that he was later informed by the area chief that the deceased had been taken to Moi Teaching and Referral Hospital.
 6. Robert Kipyego (Pw. 3) a farmer stated that the accused persons are his cousins and the deceased person's uncle was his uncle. He testified that on the material, he received a call from his aunt who requested him to rush to Sigowet Hospital. Pw. 3 testified that at Sigowet Hospital while in the company of his aunt, the deceased told him that he had been assaulted by the 2nd accused and requested Pw. 3 to take care of him while he was in hospital. Pw. 3 stated that he accompanied the deceased to Moi Teaching and Referral Hospital, the deceased had sustained injuries to his neck and chest and that he succumbed while being treated.
 7. Dr. Kevin Langat (Pw. 4) a medical officer stated that he conducted an autopsy on the deceased on 29.11.2023 and formed the opinion that the cause of death was cervical spinal injury, lung contusion secondary to assault and produced the post mortem report as PExh. 1.
 8. Sharon Rotich (Pw. 5) a casual labourer testified that on the material day, she went to a particular home to collect her dues, while in the said home she saw the 2nd accused with a wire in hand and she overheard Geoffrey trying to establish the whereabouts of his father (the deceased) and menacingly threatened to kill his father (the deceased) owing to a protracted land dispute between the deceased and his sons. She stated that overhead a heated argument between the 2nd accused and the deceased, the deceased was of the view that the land dispute would be resolved amicably by the village elders. She stated that she saw Geoffrey assault the deceased with a stick and Leonard attempting to move the body of the deceased from the crime scene, which was outside Pw. 1's homestead. She stated that she informed a village elder what she had witnessed on the material day. She stated that she was interrogated by police officers about the incident and that she learned that both Geoffrey and Leonard were apprehended soon after.
 9. CPL Micheal Chesire Kirui (Pw. 6) the investigating officer stated that on the material day he received a report that there was an elderly man who was assaulted by his sons and that members of the public had tried to intervene in vain hence sought for police intervention. He stated that upon arrival at the crime scene they found the man lying down and writhing in pain and that he disclosed that he was assaulted by his sons owing to a protracted land dispute. He stated that they secured a boda boda to take the man to Soim/Sigowet Sub - County Hospital where he was referred to the Moi Teaching and Referral Hospital for further treatment where man succumbed while undergoing treatment at the facility. He stated that the suspects were at large and that one was intercepted by members of the public who took to Mintilittwet Police Post and that he was arrested and taken to Sondu Police Station whereas the other accused surrendered himself to lawful custody at Kebeneti Police Station, he was arrested and taken to Sondu Police Station where he was charged.
 10. At the close of the prosecution case, this court having arrived at a finding that the accused persons have a case to answer, section 211 of the [Criminal Procedure Code](#) was complied with, the accused persons opted to give an unsworn statement.
 11. Leonard Kiprono Ngetich (Dw. 1) stated that on the material day his parents had quarreled as his father wanted to sell a portion of land. He stated that his father went to visit Julius who is their neighbour



and soon after he had left, Geoffrey (2nd accused) arrived and enquired about the whereabouts of their father. Dw. 1 stated that he was informed that their father was visiting the homestead of Julius, he went to the homestead and picked a quarrel with their father. Dw. 1 stated that he went to the same homestead and found his father and Geoffrey (2nd accused) quarreling and that when he wanted to go near where they were the members of the public restrained him. Dw. 1 stated he returned to the farm and while on his way, met his mother who informed him that the police who were in the homestead of Julius were looking for him. Dw. 1 stated that he went to the homestead, found his father lying down and unable to walk, and covered him with a blanket. Dw. 1 further stated that he was interrogated by the police about the incident.

12. Geoffrey Kiplangat Kirui (Dw.2) stated that on the material day he was informed that their father was planning to sell the entire land. Dw. 2 stated that when he enquired about his father's whereabouts, he was informed that he was visiting with their neighbour Julius. Dw. 2 stated that he went to the homestead in a bid to dissuade their father from selling the remaining piece of family land and that both he and his father were embroiled in a heated argument when his father who is a diabetic fell down.
13. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.
14. 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."
15. The accused persons in this case were charged with the offence of murder contrary to section 203 of the penal code which defines murder as the unlawful killing of a person or persons with malice aforethought.

Death and Cause of Death

16. In this case the death of the deceased person is not disputed, several prosecution witnesses testified that the deceased succumbed to his injuries at the Moi Teaching and Referral Hospital while receiving medical treatment. Pw. 4 a medical officer stated that he conducted an autopsy on the deceased on 29.11.2023 and formed the opinion that the cause of death was cervical spinal injury, lung contusion secondary to assault and produced the post mortem report as PExh. 1 which was adopted by this court.

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

17. On the material day, there were several prosecution witnesses who saw Geoffrey Kirui Kiplangat (the second accused) and the deceased embroiled in a heated argument over a protracted land dispute. The testimonies by Pw. 1 and Pw. 5, placed Leonard Kiprono Rotich (the first accused) in the crime scene. According to Pw. 1, the first accused was within the vicinity when the deceased was assaulted by the second accused who was in possession of a wire and Pw. 5 saw the first accused attempt to move the deceased's injured body. In the circumstances, I find that the accused persons' defence amounted to mere denials. Accordingly, I am therefore satisfied that the prosecution proved beyond reasonable doubt that it was the accused persons who unlawfully caused the deceased's death.



Whether the Accused Person had Malice Aforethought.

18. 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, I find that the accused herein had malice aforethought, which can be inferred from their actions on that fateful day, their callous actions were tainted with indifference as to whether death or grievous harm would result. On the material day, the second accused was heard by several prosecution witnesses menacingly threatening to kill the deceased. The accused persons assaulted their elderly father and they were indifferent as to whether death or harm would ensue. Based on several prosecution accounts it is clear that the assault was motivated by a protracted land dispute that subsisted within the family. In *Nzuki v Republic* [1993] KLR 171, the Court of Appeal observed that malice aforethought can be inferred from the acts of an accused person. The Court elaborated as follows: "Malice aforethought" is a term of art and is either an express intention to kill, as could be inferred when a person threatens another and proceeds to produce a lethal weapon and uses it on his victim; or implied, where, by a voluntary act, a person intended to cause grievous bodily harm to his victim and the victim died as the result."
19. Accordingly, I find that the defence put forward by accused persons namely: Leonard Kiprono Ngetich and Geoffrey Kirui Kiplangat does not displace the prosecution's case. The prosecution has proved its case against the accused beyond reasonable doubt and in the premises, I find the accused guilty for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The accused persons are hereby convicted.

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

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor - Masisa

Accused – Present in Person

Miss Sang holding brief for Miss Kirui for the Accused

