



**Republic v Indeche & another (Criminal Case 47 of 2019)
[2025] KEHC 2952 (KLR) (11 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2952 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 47 OF 2019
JM NANG'EA, J
MARCH 11, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

KIZITO INDECHE 1ST ACCUSED

FRANCIS NDUNG'U 2ND ACCUSED

JUDGMENT

1. The accused person (Kizito Indeche) was arraigned in court jointly charge alongside another with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the information and charge state that on 15th September 2019 at California area, Gilgil Sub County, of Nakuru County the two accused persons jointly murdered Peter Kibathi (hereinafter referred to as “the deceased”). Both denied the charge. The charge as against the 2nd accused was later withdrawn.
2. The prosecution evidence as presented by six (6) witnesses is that the deceased was a foreman at a construction site while the accused was one of the workers under his supervision. PW5 who was hired to do painting work on the development visit the construction site on 14th September 2019. He encountered a commotion at the gate and learnt of a fight involving workers. The deceased and the site’s had been informed. PW5 told the court that he carried the injured to hospital in his vehicle and also reported the incident to the police. The witness also informed the owner of the construction site (PW4) about the incident and that the latter went to see the victims in hospital. Later PW5 learnt that the deceased had succumbed to his injuries.
3. PW4 testified that he had also visited the construction site earlier that day (14th September 2019) at around 9:30 a.m. and found some workers there including the site (Mr. Chepkong’a). The latter informed police that they were waiting for the deceased to come and pay them for work done. Soon



- thereafter the deceased arrived and asked for Kshs. 15,000/= to pay the workers. PW4 paid him a deposit of Kshs. 9,000/= and promised to remit the balance of Kshs. 6,000/= by M-pesa.
4. PW4 then travelled to his home in Naivasha. On arrival PW5 ran him up relating that there had been a fight at his construction site and that the deceased and the said Chepkong'a had been injured. He visited his injured workers in hospital. The deceased was in a bad condition and could not talk. The allegedly described one of their assailants as a Luhya who had helped PW5 fix a water tank. On being shown a photograph by PW5, the Care Taker is said to have recognized the image as that of the suspect. The witness identified the Luhya in court as the 1st accused person.
 5. The deceased's father and brother testified as PW1 and PW2 respectively. They had received information of the attack and went to see the deceased at Nakuru County Referral Hospital where he was receiving treatment. His eyes had been gouged out and the head was swollen. The witnesses stated that the deceased died the next day on 15th September 2019.
 6. PW3 is the Pathologist who conducted post mortem examination of the deceased's body on 17th September 2019. The nose and forehead were bruised. There was blood clot in the brain. The cause of death was opined to be severe head injury leading to skull fracture and subdural haematoma.
 7. The Investigating Officer (PW6) told the court that PW4 reported the incident to him on 14th September 2019 naming one Indeché as the assailant. He visited the construction site and was shown a wooden stick with nails which was allegedly used to assault the deceased. The deceased was receiving treatment and could not speak. Members of the public are said to have arrested the said Indeché, the 1st accused, on 14th September 2019 and handed him to the police.
 8. The accused was put on his defence upon close of the prosecution case and offered a sworn defence. While confirming that he was among workers at the construction site on the material date he denied assaulting the deceased. The accused further stated that he and other workers protested non-payment of their dues but the Care Taker ordered them to leave the site. When he went to complain at Pakawa Police Post, the police arrested him claiming that someone was beaten and injured at the site. The accused denied attacking the deceased saying there was no fracas at the scene at all.
 9. Having considered the prosecution and defence evidence, the issue for the court's determination is whether the prosecution proved beyond reasonable doubt that the 1st accused killed the deceased and with malice aforethought. Whereas the 1st accused concedes that he was one of the workers under the deceased's supervision at the construction site in question and was unhappy for non-payment of his dues, he denies attacking the deceased.
 10. Section 206 of the [Penal Code](#) provides that malice afterthought is proven by one or more of the following circumstances;-
 - a. Intention to cause death or do grievous harm whether the death actually occurs or not.
 - b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.
 - c. An intention to commit a felony.
 - d. An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.
 11. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive (see Case law in Robert Onchiri Ogeto vs Republic (2004) KLR (1a)).



11. The medical opinion proffered is that the deceased died of severe head injury that led to bleeding and blood clot in the brain. Clearly, the attacker's intention was to cause death or do grievous harm in terms of Section 206 of the [Penal Code](#) set out supra. The attacker must have known that such injuries could cause death. The killer was therefore driven by malice afterthought.
12. Is the 1st accused culpable? No eye witness to the incident testified. One Chepkong'a who was the Construction Site's Care Taker and who was also allegedly injured was not called to testify. PW6 seemed to state that he relocated to Tanzania before testifying. None of the other workers at the construction site on the material date testified to shed light on the circumstances leading to the fatal injuries occasioned to the deceased. PW5 appears to have gone to the scene after the incident and did not witness it. It is evident that the case was not seriously and professionally investigated. Even the members of the public who ostensibly arrested the 1st accused were not called to testify and explain the circumstances surrounding his arrest. As already noted, the fact that he might have had a motive to attack the deceased is not sufficient proof on its own. The members of the public who arrested the accused were not also called to testify.
13. Due to the foregoing observations, the prosecution has not proven the 1st accused person's complicity beyond reasonable doubt. His defence expressing his innocence is not displaced by the prosecution evidence. He is accordingly acquitted of the information and charge herein pursuant to Section 215 of the [Criminal Procedure Code](#). The bond/bail security deposited by or on behalf of the 1st accused is discharged.

J. M. NANG'EA - JUDGE

JUDGMENT DELIVERED THIS 11TH DAY OF MARCH, 2025 IN THE PRESENCE OF:

Prosecution Counsel, Ms Sang

Defence Counsel, Mr. Murunga

Court Assistant (Jeniffer)

J. M. NANG'EA - JUDGE

