



**Republic v Chepkurui (Criminal Case 45 of 2023)
[2025] KEHC 6815 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6815 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 45 OF 2023**

RB NGETICH, J

MAY 22, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

DICKSON KIPKEMOI CHEPKURUI ACCUSED

JUDGMENT

1. The accused Dickson Kipkemoi Chepkurui has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the charge were that the accused person on the night of 25th and 26th August, 2019 at Ararae village, Kapkechui Location in Mogotio Sub- County within Baringo County murdered one Isaiah Saiba Njoro.
2. The accused denied the charge and the matter was set down for full trial with the prosecution summoning a total of 6 witnesses in support of the charge preferred against the accused.

Prosecution Evidence

3. PW1, Mary Cheptoo Kipsoto testified that on 25th August, 2019 at 3 p.m she had gone to Joseph Kurui's land in Mukuyuni to harvest beans and found his daughter chepchumba who assisted her to harvest beans. After harvesting beans, the accused Dickson requested her to assist Chepchumba to cook and while in the kitchen, she heard movement outside then she heard the accused Dickson and the deceased Isaiah argue. She left her beans and went. While going back for her beans, she passed by Mzee Philemon's home where she was informed that there were many people at accused Dickson's home. She said shortly after the chief and police arrived and informed them that there was somebody beaten and stabbed in the home and that the person beaten was Isaiah though she did not see him.
4. She said she saw the accused Dickson on 26th August, 2019 and he said someone bite his shoulder. She said she did not know who killed Isaiah and that on the 25th August, 2019, she did not see Isaiah and



Dickson when she went out of the kitchen as she got hold of the child and ran with her. She testified that there are three rooms in Dickson's house and that Dickson was sleeping on a chair and he was drunk. She said she did not know Dickson but she knew his brother. She said she was going to his mother and that she saw Dickson since he is the one who requested her to assist the girl to cook and confirmed that Dickson was the accused in the dock.

5. PW2, Philemon Kipruto Barmulwo testified that on 25th August, 2019, at 8:00 p.m. the accused Dickson who is a neighbour went to wake him and on inquiring what was wrong, he requested that he opens the door as he wanted to tell him what had happened though he did not say anything beyond saying, "nimefanya" meaning "I have done". He said that he did not open the door and that he knew his voice since he has been their neighbour for long. He said that his two elder daughters Agnes Kibet and Florence Barmulwa were eating in the kitchen which is separate from the main house.
6. He said at 1:00 p.m. after Dickson saying he had done it, he left and the next day, he saw people crowded in his home as they are neighbours and the people said Dickson stabbed someone twice and later, he saw a police vehicle which was carrying a body. He confirmed that Dickson was the accused in the dock.
7. PW3, Peter Titomet who is Assistant Chief Mukuyuni Sub-location testified that on 26th August, 2019 at 11:00 a.m. while going to work, he received a call from Ararai village asking whether he had heard what had happened in the village and that a body had been found but the caller did not introduce himself. He said he informed him that he had not heard the issue and he immediately informed the area chief Samuel Toroitich who said that he had been informed and requested that they visit the scene together. He found the chief at the scene. He said the body was around 100 metres from the nearest house and that there are many people in the homestead and it looked like the person stepped on the grass and fell. He said the body lay facing up and there was blood in the mouth and the shirt was open.
8. He testified that the chief called OCS Mogotio who went to the scene with police and they took them to the scene. He said the body was turned and they realized there was blood at the back though he cannot recall the colour of the shirt. He said the deceased had several stab wounds on the back about 5 to 7 times and the back side of the shirt had blood. He said the deceased was called Isaiah a herder from the neighboring village. He said the suspect Dickson was arrested the same day in his presence at the scene.
9. PW4 Samuel Rotich testified that on 26th August 2019, he was at home when he received a call at 11:00 a.m. from Willy Kandie who informed him that a body had been found in their land. He said Willy is the brother of the accused and they live at Ararai village Mukuyuni Sub-location. He said he went to the scene using motor bike and on reaching, he found a crowd of people and saw a body lying about 70 m from the accused's house. He said he heard people saying that there was someone with blood on his shirt and he removed him from the crowd and saw a wound from a bite on his left shoulder and he handed him over to the OCS Mogotio and they went to check the body. He said accused's shirt had blood on the shoulder. He confirmed that the person he arrested is the accused herein and he positively identified the shirt belonging to accused and another which was green in colour belonging to the deceased.
10. PW5 Stephen Tomno testified that on 31st August 2019, he identified the body of the deceased to the doctor for postmortem.
11. PW 6 Jonathan Kiplagat formally of DCI Mogotio testified that on 26th August 2019, at about 1500 hours while at the station, he received the suspect and recovered one dotted white shirt with blood stains. He placed him in custody and visited the scene for more information. He said at the scene, there was blood stains but the murder weapon was not recovered. On 26th August 2019, he proceeded to Eldama Ravine Hospital Mortuary to check on the body of the deceased. He said he saw 2 stab wounds



on the left side of the back. He collected a greenish shirt from the deceased for further investigations and on 31st August 2019, he identified the deceased's body together with the relatives to the doctor for postmortem. He said that he later charged the accused with the present charge. He identified and produced the white dotted shirt in court as the exhibit. He also identified the greenish shirt from the deceased and produced as exhibit before court.

12. Upon the closure of the prosecution case, by ruling delivered on the 16th September 2024, the court found that the accused had a case to answer.

Accused's Defence Case

13. In his defence, the accused Daniel Kiprotich Korir gave unsworn statement and availed 3 witnesses. The accused DW1 testified that he did not call the deceased on 25th and 26th August, 2019. He said at around 11:00 a.m. he was returning cattle when he found a person lying on a raised place. He said he called his brother Willy Kandie who was in Nairobi to call the chief and his sister in-law called the Assistant chief called Peter Titome and spoke to him telling him that he had found a dead person on his land.
14. He further stated that the Chief Samuel Toroitich went and inquired from him where the body was and requested to go with him because many people had arrived and some may be angry. He said that they went to Mogotio Police Station. He disputed the evidence of Cheptoo Kipsoto and Philemon Kipruto Bargugwa and said he was the one who informed him what happened. He said that he saw his in-law's cattle heading to go to the farm and he went to return the cattle and that is when he saw the body. He denied killing the deceased.
15. DW2 Willy Kandie Kurui testified that the accused Dickson Kipkemboi Chepkurui is his younger brother and on 26th August 2019, he was working in Nakuru when his brother the accused herein called him at around 11:00 a.m. and informed him that he had found a person killed in their farm and he did not know how the person was killed. He advised him to call the chief to handle the situation and he called the chief Samuel Toroitich (PW4) who informed him that he was on leave but he was going to take action and after about 1 hour, the accused called him and informed him that the chief was suspecting him as having killed the deceased herein. He said he advised him to relax and let the officers do their work. He said at the time accused called him he did not know he was the suspect. He said the accused told him, he may have been suspected because the body was found in their farm. He said he was not able to speak to accused again and he later learnt that he had been arrested.
16. He said the accused has children and he was staying with his mother as the accused's wife is deceased and it is the accused who is taking care of the children. He said that he did not get an opportunity to talk to the Chief concerning the accused as it would have been interfering and he knew the accused was suspected because the body was near his house.
17. DW3 Emily Cheboskwony Kurui a sister in-law to the accused said she did not see the accused kill the deceased on the night of 25th and 26th of August, 2019 and that the accused who appeared shaken arrived home at around 10:00 a.m. and informed her that he had found somebody dead in the farm. The accused showed her the dead person. DW3 advised the accused to call Willy Kandie (DW2) and the Chief. She confirmed that she knows Cheptoo Kipsoto and said that she did not see her at her home on 25th August, 2019. She said the body was found in their land though far from where they live.

Analysis and Determination

18. The accused faces a charge of murder contrary to Section 203 of the [Penal Code](#) and the ingredients for the offence of murder are as follows:-



- i. Proof of death.
 - ii. Proof that the accused person inflicted the injuries that caused the deceased death.
 - iii. Proof of malice aforethought.
 - i. Proof of death
19. It is not disputed that the deceased died. PW2, PW3, PW4 and PW6 said that they visited the scene and found the body of the deceased lying on the ground with the head facing up and upon turning the body of the deceased, they discovered that the deceased had several stab wounds at the back and there was blood at the back of his shirt. The accused in his defence together with his witness DW 3 confirmed that they saw the body of the deceased at their farm and they notified DW2 and the authorities who went and collected the body. The post mortem report was produced by consent in court which confirmed that the cause of death was massive left lung hemothorax due to deep stab wound. The defence confirmed that the deceased's body was found in their land. There is therefore no doubt that the deceased died.

(ii) Whether it is the accused who caused the death of the deceased

20. From the evidence adduced before court, it is clear that none of the prosecution witnesses saw or witnessed the accused kill the deceased. Thus, there was no direct evidence linking the accused to the death of the deceased. The prosecution case on this aspect therefore hinged on circumstantial evidence. In the case of *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR, the Court had this to say on circumstantial evidence:-

“However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an Accused person just as direct evidence.

...Suffice to mention *Abanga alias Onyango v. Republic* CR. App No. 32 of 1990(UR) in which this court held as follows: “It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i)the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

21. Further in *Sawe Vs. Republic* [2003] KLR 364, the Court of Appeal stated as follows:-

“In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied upon. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence remain with the prosecution. It is a burden which never shift to the party accused.”

22. PW1 testified that on the 25th August, 2019 she was at the homestead of the accused where she had gone to harvest beans. She heard the accused and the deceased quarrel and she decided to leave the homestead. PW2 who was accused's neighbor testified that on the night of 25th August, 2019, the



accused went to his home and called him to open the door saying that he wanted to inform him what had happened at his home but he refused to open the door though he recognized the voice of the deceased whom he knew as they had been neighbours for long. He said that the accused uttered the words “nimefanya” meaning I have done and then left. The next day he learnt the deceased had been killed. On being informed of the incident, PW4 who is the area chief went to the scene and found the accused with a blood-stained shirt. He said that he arrested the accused and then handed him over to the police who re-arrested him.

23. The evidence of the prosecution witnesses PW1, PW2 and PW4 all linked the accused to the murder of the deceased. Further to the above, the accused had an injury from a bite and a blood-stained shirt a clear confirmation that he was involved in a physical struggle with someone and the evidence confirm that the person he was involved with inflicted injuries to him is the deceased herein. The fact that the deceased’s body was found within the farm of the accused by none other than the accused further strengthen circumstantial evidence herein.

(ii) Whether malice aforethought was proved

24. Malice aforethought is set out under Section 206 of the [Penal Code](#) as thus:

“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.”

25. In the case of *Nzuki –vs- Rep 1993 KLR 171* the learned Judges of Appeal set out the principles of determining whether intention to commit murder is proved as follows:

- “1. Malice aforethought is a term of art and is either an express intention to kill or implied where by a voluntary act by a person intending to cause grievous bodily harm to his victim and the victim died as the result.
2. Before an act can be murder, it must be aimed at someone and must be an act committed with one of the following intentions
 - (a) To cause death;
 - (b) Cause grievous bodily harm; and
 - (c) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits these acts deliberately.



3. Without an intention of one of these three types, the mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder.
 4. ...
 5. ...
26. In the cited case of Nzuki, supra, the Court of Appeal held that even though the appellant's conduct was done with the knowledge that the action is likely or highly likely to cause death or grievous harm, that in itself is not enough if there is no evidence to establish that the accused had formed an intention to cause death or to cause grievous harm, or knew his conduct may cause serious harm or death but committed the act deliberately any way.
27. PW3, PW4 and PW6 confirmed that the deceased had several stab wounds at the back. The postmortem report showed that the deceased died of stab wounds. The nature of the injuries the accused inflicted on the deceased was well defined by the pathologist in his postmortem report. The injuries inflicted on the deceased were very severe. The acts of the accused as evidenced from the prosecution witnesses and the postmortem report is evidence of malice. It is clear that deceased while attacking the deceased had the intention of killing him. The choice of where he aimed and severely injured the deceased are indicative of one bent on inflicting maximum harm or death on his victim. The fact that the accused targeted the parts of the body that are very delicate and could easily lead to death, all establish that the accused had premeditated his actions.
28. From the foregoing, I find that malice aforethought under Section 206 (b) of the Penal Code was proved beyond reasonable doubt. I find that the accused conduct and the circumstances of this case taken together are consistent with a person whose actions were actuated by malice.
29. In view of the above, I find that the prosecution has proved the charge of murder contrary to Section 203 of the Penal Code as against the accused person beyond any reasonable doubt. Consequently, I find the accused guilty of murder as charged and accordingly convict him.
30. Final Orders: -
1. The accused is convicted of the offence of murder contrary to Section 203 as read with section 204 of the penal code.
 2. Right of appeal 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 22ND DAY OF MAY 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:

Ms. Omari for State.

Ms. Barasa holding brief for Mr. Mwaita for accused.

Accused present.



Karanja/Christopher – Court Assistants.

