



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kiptoo (Criminal Case E020 of 2021)
[2025] KEHC 7272 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7272 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE E020 OF 2021**

RB NGETICH, J

MAY 22, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

CALEB KIPTOO ACCUSED

JUDGMENT

1. The accused Caleb Kiptoo 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 on the 22nd day of April, 2021 at Kator Village within Kabarnet, Mosop Sub-location in Baringo County at around 20:30Hours, murdered Iren Suke. The accused denied the charge and the matter was set down for full trial where the prosecution summoned a total of 6 witnesses in support of the charge preferred against the accused.

Prosecution Evidence

2. PW1 Kipngetich Samuel who works in a barber shop in Kabarnet testified that on 22nd April, 2021 at around 10.30 p.m., he went out of his house for a short call and on coming back, he heard a lady scream twice and after at about 20 minutes, a man also screamed twice and he realized that the scream was from his neighbor in house No.18.
3. He said he lived in house No. 3 and that that he climbed the stairs and met his neighbour who lived in room No. 17 at the door coming out. They realized the person inside house No.18 was struggling to breath and they decided to break the door but there was another lock at the bottom. He said they broke door glass and on flashing a mobile torch to see inside, he saw a lady lying on the ground near the bed and the man was lying facing up with a knife lodged on the man's chest.
4. He testified that he tried calling Charles the caretaker but he was not picking his call. He called the Landlord who advised him to call the police and as he went to the police station, he passed by caretaker's



- house to wake him. The caretaker joined him to the police station and they went back to the scene with the police. He said the caretaker was asked to break door grills. The door grill were broken and the caretaker entered the house and opened the door. He said that police entered first then they entered and found blood on the floor but Kiptoo who is the accused herein turned to lie on the side and the knife had been removed. He said the lady who was lying down was not breathing. The witness identified the knife before court.
5. PW2 Darius Cheminingai, testified that on the 22nd April, 2021 at about 10:00 p.m., he was in his rental house No.17 in Kator when he heard commotions from house No. 18 and the man was saying, “have you said the child is not mine” and the woman said, “ni wako usiniue, then he heard a bang on either the floor or wall. He went out and met PW1. He confirmed that the door to house No.18 was locked and they tried to open in vain as there was another lock on the lower side. He said using a mobile torch, he saw a woman lying down facing down unconscious and a man who was still conscious lay facing up with a knife lodged in his chest. He confirmed that PW1 went to report at the police station and returned with the caretaker. He said the grills were broken and the caretaker entered and opened the door. He identified the man who lay in the house as Caleb the accused herein and said the lady died.
 6. PW3 Charles Kiptoo Kandagor testified that he was a caretaker at Kator and on 22nd April, 2021 at around 10:30 p.m., one Samuel Kipngetich went to inform him that there was a person stabbed in house No.18. He said since the house was locked from inside, he cut the grills and entered the house. He said he saw a knife and a lot of blood on the floor and that the two people in the house were husband and wife. He said the next day he was informed that the lady Irene Suke died and said it is the lady who used to pay rent using her phone and the man was Caleb Kiptoo the accused herein. He identified the knife in court.
 7. On 6th November, 2023, Post mortem report was produced in court by consent and marked Exhibit 1 and the Government Analyst report as Exhibit 2.
 8. PW4 Henry Kibet Suge testified that on the 30th April, 2021, he identified the body of the deceased Irene Naishubai Suke who was his cousin for postmortem which was done at Kabarnet Referral Hospital and said the body had about 16 stab wounds.
 9. PW5 Leah Rotich a Clinical Officer at Kituro testified that she was at Kabarnet Referral Hospital on 22nd April, 2021 when the accused Caleb Kiptoo was taken to hospital by police with history of having stabbed himself after killing his lover. She said the accused was unconscious and on examination, he was short of breath and soaked in blood. That local examination revealed multiple wounds on the left side of the chest and impression of multiple stab wounds was made. She said that he was admitted to the surgical ward and later taken to the chest ward where he was given medication and recommended for urgent medical review on 23rd April 2021. On 23rd April, 2021. She produced the medical report as exhibit 3.
 10. PW6 No.110570 P.C James Muchiri the Investigating Officer in this case testified that on the 22nd April, 2021 at around 11:00 p.m., he was called by his boss Mr. Chege who requested him to visit a scene of murder and take the role of investigating officer. Together with his colleagues, they accompanied Samuel Chepngetich to Katol village within Kabarnet Township and on arrival at the scene, they found members of the public in one of the rental houses which was locked from inside. They tried to gain access through the door but all was in vain and with the assistance of the caretaker Charles Kendagor (PW.), they broke the glass window and gained access and upon entering room No.18 through the window, they found 2 persons, a lady by the name Irene Suke and a gentleman identified as Caleb Kiptoo.



11. He said the caretaker Charles Kendagor identified the two and as the deceased as a tenant. He said that the lady lay helplessly facing upwards and the accused was lying facing downwards in a pool of blood and the man appeared to be in pain. They hurriedly processed the scene and took photographs. They found that the lady had multiple stab wounds and accused was lying on a kitchen knife which was full of blood. They collected the kitchen knife and thereafter took the two to Baringo referral Hospital and on arrival, the lady had already succumbed but the man Caleb Kiptoo who is accused herein was admitted.
12. He said they removed the body of the deceased to Baringo Teaching and referral Hospital mortuary awaiting postmortem and while at the hospital, the accused tried to escape from the hospital bed and through the efforts of other police officers and doctors, they were able to book him by O.B No.6 of 23/04/2021 at around 6:11 a.m. On 30th April, 2021 postmortem was conducted in the presence of the deceased's family and Government Pathologist Dr. Nancy. Postmortem examination revealed that the deceased died as a result of multiple stab wounds numbering 15.
13. He said that they collected blood samples of the deceased and the accused for DNA analysis and filled exhibit memo on the 5th May, 2021. He produced the exhibit memo form as exhibit 4 and the kitchen knife as exhibit 5 and also photographs of the scene as exhibits 6 (a-g) and certificate of photos as exhibit 7. He said that the accused was questioned and he recorded a statement under inquiry on 23rd April, 2021 which statement he produced in court as exhibit 8.
14. He said that the accused alleged that he was stabbed by the deceased but as the investigations officer, he has contrary opinion because he had 2 or 3 stab wounds and at the time they visited the scene, the deceased had already succumbed and the accused was still alive and was lying on the kitchen knife meaning he stabbed the deceased and later tried to kill himself by stabbing himself. That he was not seriously injured and was discharged within 24 hours.
15. Upon close of prosecution case, by ruling delivered on the 5th March 2024, the court found that a prima facie case had been established against the accused person and he was placed on his defence in accordance with Section 306(2) of the criminal procedure code.

Accused's Defence Case

16. The accused Caleb Kiptoo gave sworn statement. He said the deceased Irene suke was his wife and on 17th April 2021, she went to her home in Kilgoris to visit their child who was staying there and travelled back on 22nd April, 2021 and called him back while at Lesos to tell him that she would go to her people in Ziwa if she delayed. She later called him at Eldoret saying that she was travelling to Kabarnet and she was to go straight to work at Olive restaurant and that he should prepare supper for himself. He said that he went to the supermarket, bought vegetables and was heading to the house when the deceased she called and requested him to wait for her in town as she was no longer going to work as she had spoken to her employer.
17. The accused testified that they met and went to the house and while in the house, she spoke to him about the child as they drunk alcohol. He said the deceased had taken alcohol to the house and he had also purchased alcohol in town. At 9:30 p.m., the deceased asked the accused to cook ugali as she prepared vegetables and before he cooked ugali while she was preparing vegetables, he went outside for a short call and stayed for about 7 minutes then went back to the house with water and when he entered the house, she said to him, "so you are still speaking to the person I was told". He said she was referring to a lady neighbor by the name Regina. He said they started exchanging words and when he realized that she was extremely annoyed, he wanted to leave the house but she locked the house and said, "you are not going anywhere".



18. The accused said the deceased told him even the child they had was not his but for a police officer who bought the alcohol they were drinking in Eldoret. In anger, the accused responded by saying their neighbor Regina had his pregnancy and that he was going to Regina but he did not leave and as he tried to take water, he suddenly felt a stab on the chest.
19. He said the deceased locked the door inside from and threw the key the window and switched off lights and she went back and stabbed him thrice then he got hold of the knife to prevent her from stabbing him again. He said the glass he was using to drink water fell down and water spilled to the carpet and it became slippery and he fallen down and found himself in hospital. He said he could only remember fighting with many people but he could not understand how he stabbed her. He said he bled excessively and he was not on his right senses. He further stated that they had lived together since the year 2016 and they had not disagreed and had one child aged 8 years who is with maternal grandparents. He said he normally sends up keep but he has not gone to see the child. He said that he tried to talk to the deceased's family for reconciliation and her mother was willing but the other relatives were unwilling and that if they agreed to talk, he would have wanted reconciliation.
20. The accused denied stabbing himself and that PW2 said that he heard him scream before the deceased screamed. He said an intern who treated him explained to him how he reached the hospital and said he was not treated immediately because the police thought he was going to die. He blames himself and the deceased for the death of the deceased and also blames her spy for giving her wrong information. He said he did not intend to kill his wife.

Analysis And Determination

21. The offence of murder contrary is defined in Section 203 of the [Penal Code](#) as follows:-

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
22. From the above definition, the following are ingredients for the offence of murder:-
 - a. Whether the deceased died.
 - b) Whether the accused person inflicted the injuries that caused the deceased death.
 - b. Whether the prosecution has established that at the time of the incident the accused actions were actuated by malice aforethought.

Whether the deceased died:

23. The prosecution evidence on this ingredient was mainly based on the evidence of PW1, PW2, PW4 and PW6 who said that they visited the scene and found the body of the deceased lying on the on the floor and that the deceased had several stab wounds. The post mortem report was produced by consent in court which confirmed that the cause of death was internal bleeding secondary to multiple stab wounds. From the foregoing, there is proof beyond reasonable doubt that the deceased's herein died.

Whether the accused person inflicted the injuries that caused the deceased death:

24. From the evidence tendered before court, it is clear that none of the prosecution witnesses saw or witnessed the accused or any other person 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. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr. App. R 21: -‘It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.’ Further, the conditions for the application of circumstantial evidence in order to sustain a conviction in any criminal trial have been laid down in several authorities by this court. 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.”

25. And in *Sawe Vs. Republic* [2003] KLR 364, the Court of Appeal amplified on the above thus:-

“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.”

26. From evidence adduced by PW1, he heard a lady scream in house No.18 where both accused and deceased were found locked and seriously injured. There was no other person in the house. The deceased was found having several stab wounds and was declared dead on arrival at the hospital. The accused was unconscious with stab wound to the left chest. The accused says he cannot explain what happened but he admits taking away the knife from the deceased. Even though he said that he took the knife from the deceased to prevent her from stabbing him further, the several stab wounds found in the deceased’s body rules out the narrative of stab resulting from self defence. There is no doubt that the accused stabbed the deceased severally inflicting fatal injuries. He therefore caused the death of the deceased and was not acting in self defence.



Whether the prosecution has established that at the time of the incident the accused actions were actuated by malice aforethought.

27. Malice aforethought is provided for under Section 206 of the [Penal Code](#). It may be established by way of evidence when any of the following circumstances exist:

- “(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 death or grievous harm to some person, whether that person is the person killed or not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.
- (c) An intention to commit a felony; and
- (d) An intention to facilitate the escape from custody of or the flight of any person who has committed a felony or attempted it.”

28. In the case of *Nzuki –v- 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. ...

29. 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.

30. PW1, PW2, PW4 and PW6 confirmed that the deceased sustained several stab wounds at the back. The postmortem report showed that the deceased died of 15 stab wounds. The injuries inflicted on the



deceased were very severe but I however note that the accused and deceased were highly provoked by utterances concerning infidelity on part of each of them and in my view the two were not in their proper senses to consider the likely result of their actions. They acted out of extreme anger and in my view the action by the accused was not premeditated. From the foregoing I find that malice aforethought was not proved beyond reasonable doubt. I proceed to find accused guilty of the lesser charge of manslaughter contrary to Section 202 as read with section 205 of the penal code.

31. Final Orders: -

1. Accused is hereby convicted of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. Right of appeal 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 22ND DAY OF MAY, 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:

Ms. Omari for State.

Accused present.

No appearance for Accused.

Karanja/Christopher – Court Assistants.

