



REPUBLIC OF KENYA



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**Republic v Korir (Criminal Case 11 of 2023)
[2025] KEHC 7268 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 11 OF 2023**

RB NGETICH, J

MAY 22, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

DANIEL KIPROTICH KORIR ACCUSED

JUDGMENT

1. The accused Daniel Kiprotich Korir 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 on the 20th day of April, 2021 at Poror Arama Location in Koibatek Sub- County within Baringo County at around 11.00hrs the accused murdered William Kipkoros Chumo.
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. PW 1 No.1173325 P.C Michael Mangiti testified that on 20th April, 2021 at 1.30 p.m while at Eldama Ravine police station, they were informed by the OCS that there was a suspect of murder and were directed to go and arrest. Together with his colleagues Anthony Wayombe and Ngethe Lawrence they rushed to the scene and on reaching there, they found area chief John Ruto who led them to the accused's house where they found a crowd at the homestead. He said that the suspect was seated outside the house holding sticks. They arrested him and called for a vehicle from the station. The DCI went to the scene with the vehicle. He said the deceased's body was on the road and the DCI documented the scene. That the deceased had injury on the head and both legs. They took the body to Eldama Ravine sub-county Hospital mortuary and the suspect to Eldama Ravine police station. He positively identified the sticks in court and which he produced as exhibits. He identified photographs taken at



- the scene by CPL Ekiru. He said that the accused was holding the broken sticks which had blood and the accused slippers had blood and were photographed.
4. PW2 Caleb Kimaiyo Koros testified that on 20th April,2021 while at Sinonin, he was called by John Bett who informed him that his father William Kipkoros Chumo had been killed. He called his brother Vincent to rush there but he found his body having been removed. He said his brother by the name Major went to identify the body. On the 28th April,2021 he was called for postmortem which he attended with his brother Gilbert. He said that he identified the body for postmortem and the doctor confirmed that he died due to injury on the head, chest, right hand and both legs. He said he did not reach the scene on the day of the incident.
 5. PW3 No. 234929 CIP Kennedy Ochieng formally OCS Eldama Ravine police station testified that on 20th April,2021, at about 13:30hours, he was in the office within the station for usual duties when he received a phone call from chief Boror Location Chief John Ruto. He said the chief reported that there was a dead body at Kipsarget village Poror Location. He said the person appeared to have been murdered by a person from the same village.
 6. He testified that he inquired from the chief the details of suspect which he gave general description and his homestead. That immediately after receiving details, he sent P.C Mangeti, P.C Ngethe and P.C Kikuyu to go the scene and in the meantime, he reduced the report on the O.B No.28/20/04/2021 at 13:42hours. He informed and consulted his DCIO about the incident who assigned CPL Ekiru Kiromoni to accompany him to the scene. They visited the scene at Kisarbet village. He said the deceased aged 74 years was identified by members of the public and upon checking the body of the deceased, the head was smashed with a heavy blunt object, both legs appeared broken near the ankle. He said the members of public who were standing by managed to identify the suspect as Daniel Korir who was traced and arrested at his homestead about 3 kilometres from the scene. He said the deceased appeared drunk at the time of his arrest and his clothes had blood stains. He said a wooden blood-stained stick was recovered by PC Ngethe and PC Manguti.
 7. He further stated that the accused admitted having murdered the deceased because the deceased had been disturbing him for long and further claimed that the deceased and his family took his cattle while he was in jail for 8 years. On further inquiries at the scene, they established that the deceased was married to accused's sister and they were in-laws. That during the marriage, the wife suffered mental illness and they blamed the deceased for bewitching the wife. The scene was processed and the body taken to Eldama Ravine Hospital mortuary. Postmortem was done in the presence of the investigating officer Ekiru Kirimoni upon the body being identified by deceased's 2 sons. He identified the walking stick recovered from accused and confirmed that photographs were taken at the scene by the Assistant to the investigations officer. He said the suspect was not at the scene and was traced and arrested from his house 3 kilometres from the scene.
 8. PW4 Andrew Kiplagat testified that on 20th April,2021, he was travelling from home to Nakuru when he received a call from a neighbor that there was somebody on the road who had been killed and was requested to call the chief. He said the dead person was Wilson and he was informed that Daniel had hit the deceased. He called the chief who called police and John Ruto. Shortly thereafter, he received a call that Daniel was at home. He informed the chief who informed the police and police went to Dan's home.
 9. PW 5 Polycarp Lutta Kweyu a principle analyst at Kisumu Government chemist for 11 years testified that on 11th June,2021 CPL Ekiru Kirimoi of DCI Eldama Ravine submitted items being a broken stick wrapped in a brown paper marked P1, Brown walking stick wrapped in a brown paper marked



- P2, Blood sample from William Kipkoros Chumo(deceased) marked P3, a pair of brown plastic sandals marked P5.
10. He said that it was requested of them to carry out DNA analysis on these items to determine the presence and origin of the biological evidential materials and was able to do analysis and his findings were that the stick marked P1 and walking stick marked P2 were heavily stained with blood while the sandals P5 were moderately stained. That the blood was positive for a human being and he proceeded to produce DNA profile by comparing their DNA profiles. Based on his findings, he formed opinion that the DNA profile generated bloodstains on the stick P1, the walking stick P2 and sandals P5 marked the DNA profile of William Kipkoros Chumo the deceased. He said that he prepared the report on the 6th May,2022 which he produced as exhibit 4(a) in court.
 11. PW6 No.66290 CPL Ekiru Kirimon from Eldoret South DCI's office testified that he was the investigating officer in the matter and on 20th April,2021 at noon while he was in the office, a case of murder was reported at the police station. The report was received by the OCS Eldama Ravine through phone by Poror chief Mr. Rutto and was booked in O.B No. 28 of 20th April,2021. He said together with the OCS and driver Kipchumba, they visited the scene and found the body of William Kipkoros Chumo. He said the deceased's head was completely shattered and both legs had serious injuries and there was a walking stick on the left side near the head. He took photos and removed the body to the mortuary and before reaching there to take the body, the accused had been arrested by police from Eldama Ravine police station who had also recovered blood stained stick from the accused which was handed over to him and which he positively identified in court. He said that they escorted the accused to the police station where they realized plastic shoes of the accused were stained with blood. He said that they kept the shoes as exhibits awaiting taking them to the Government chemist for analysis.
 12. He further stated that on 28th April,2024 at around 4p.m he asked the doctor to do postmortem which was done and the doctor found cause of death, filled in the form and signed. He said the body was identified by deceased's 2 sons being Caleb Kimaiyo Koros and Gilbert Kiplagat Koros. That the body was registered as Wilson Kendagor but the sons gave the correct names as William Kipkoros Chumo aged 75 years old.
 13. He said after postmortem he requested the doctor to extract blood samples from the deceased. That he marked the samples as exhibit P3 and escorted to Government chemist to be analyzed with other exhibits found at the scene of crime. He also escorted the accused for extraction of blood sample which he consented to by signing consent form. The samples were taken to Government chemist for analysis to confirm whether the accused was connected to the offence. He said the file was forwarded to DPP who recommended charge of murder against the accused.
 14. Upon closure of prosecution case, the court delivered a ruling on the 14th November,2024, finding that the accused had a case to answer.

Accused's Defence Case

15. The accused Daniel Kiprotich Korir gave unsworn statement and testified that on 20th April,2021, he was from Eldama Ravine town where he met the deceased who hit him with a walking stick and the accused who also had a walking stick hit the deceased back, the accused said he had not disagreed with the deceased. He said that he had sold a calf the previous day and he had 20,000 and after buying Duo Dip and eye medicine for the cattle, he remained with 19,000/= and when the deceased hit him, he thought the deceased wanted to steal his money as he may have known he had money because neighbors were present when he sold the calf. The accused said the deceased fell down when he(accused) hit him. He said he did not know if the deceased was a thief because he lives a bit far from him and as he left the



scene and he did not know whether the deceased had died. He said that he did not know how many times he hit the deceased as he was annoyed for being hit without any reason. He said that he hit the deceased on the head and that he found the two sticks at the police station but does not know where they were recovered.

16. The accused further stated that he boarded the land rover which had the body and he may have stepped on the blood and his shoes fell when he reached the police station. He said he had not disagreed with the deceased before the incident and that he knew him though he was not a close neighbor. He said that he does not blame any other person for the deceased's death because they were only two and that he hit the deceased because the deceased hit him and he did not know the deceased's intentions.

Analysis And Determination

17. The accused faces a charge of murder contrary to Section 203 of the *Penal Code*. Under that section murder is defined as follows:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

18. The ingredients for the offence of murder are well settled as hereunder:-

- i. Proof of death.
- ii. Proof that the deceased died due to an unlawful act or omission of part of the accused.
- iii. That at the time the Accused committed the unlawful act or omission, he had formed the intention to cause death or grievous harm on the deceased.

i. Proof of death of the deceased

19. There is no dispute that the deceased died. This was confirmed by his son Pw2 and Postmortem form produced by consent and marked Exhibit I on 25th May 2023.

(ii) Whether the accused person inflicted the injuries that caused the deceased death.

20. The prosecution evidence on this ingredient was mainly based on the evidence of PW 1, PW 2, PW 3 and PW 7 who said that they visited the scene and found the body of the deceased lying on the ground with the head smashed and with injuries on the legs. The post mortem report was produced in court. The accused in his defence does not deny being at the scene, he testified that on the fateful day, he was headed home from Eldama Ravine Town where he had gone to purchase dip for the cattle and the eye medicine when he met the deceased on the way. He said that the deceased hit him with a stick and he hit him back with a stick. He said that he had money about 19000/= and he thought the deceased wanted to rob him.
21. From evidence above, there is no doubt that it is the accused who inflicted injuries on the deceased which caused his death.



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

22. 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.”

23. 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. ...

24. 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.

25. PW1, 2,3 and 6 testified on the condition of the deceased. They confirmed that the deceased head had been smashed and legs broken. The postmortem report which was produced in court indicates that on



examination by the pathologist, they were crush injuries on the head/skull with deformed facial/frontal skull bones and brain exposed, contusions on the anterior chest wall, closed fracture distal right forearm, closed fracture right distal femur, closed fracture proximal right Tibia Fibula, open right distal Tibia/fibula fracture, open left Tibia/fibula fracture, closed left proximal Tibia Fibula fractures, multiple bilateral rib fractures, crush injury or multiple skull bones, mandible/maxillary frontal and Temporal skull bones, flattened/deformed facial bones, depressed skull fractures with bone tissues in cerebral tissue, exposed cerebral tissues. The report indicates that the cause of death was severe head injury with multiple depressed skull fractures.

26. 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 pictures of the deceased taken by PW7 at the scene give testimony of the severity of the attack and the injuries he suffered. PW7 documented the scene of crime. The acts of the accused as evidenced from the prosecution witnesses, the postmortem report and the photographs taken of the deceased is evidence of malice. It is clear the intention the accused had in this attack was to cause the deceased death.
27. None of the prosecution witnesses testified that the accused had any physical injury on his body at the time of arrest despite the accused having been arrested on the same date of the incident.
28. Having considered the evidence by the prosecution and the defence, I find that from the post mortem report P. Exhibit 1, it is clear that the deceased suffered multiple fractures to his limbs and a crushed skull which exposed his brain. 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.
29. It is trite law that anyone who uses such a lethal weapon and uses it to strike the head and hands several times as accused did, ought to know that the injuries inflicted are likely to cause the death of that person. The accused targeted the head, limbs, parts of the body that are very delicate and could easily lead to death, they establish that the accused had premeditated his actions.
30. The calmness with which he immediately fled the scene and went miles away from the scene portrays indifference. He offered no help to his victim. His actions were consistent with the conduct of someone who was running away, a sign of a person with a guilty mind. From the foregoing, 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.
31. On whether self defence applies to this case. It was the accused evidence that his actions were a reaction to the deceased provocation when he assaulted him. Section 17 of the Penal Code provides as follows:-

“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.”
32. Those principles have been clearly elucidated in the persuasive authorities in *Palmer v Republic* [1971] AC 814 and in *Republic v McInnes* 55 Cr. Appeal 551 where the Privy Council and the Court of Appeal respectively stated as follows:

“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 only do, what is reasonably necessary. But everything will depend upon particular facts and circumstances. Some attacks may be serious and dangerous, others may not be. If then 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 in a mediate defensive action may be necessary. If the moment is out 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. That may be no longer any link with a necessity of disproved, in which case as a defence it is rejected. In a homicide case these circumstances may be such that it will become an issue as to whether there was provocation so that the verdict might be out of manslaughter. Any other possible issues will remain. If in any case the view is possible that the intent necessary to constitute the crime of murder was lacking then the matter would be left to the jury.”

33. In *Robert Kinuthia Mungai v Republic* [1982-88] 1KAR 611, the Court delivered itself as;

“.....we think in view of the earlier East African cases we have considered, and the more recent English decision in *R v Shannon* Crim. LR 438 1980, that, the interpretation of the judgment of the Privy Council in *Palmer v Republic* is that while there is no rule that excessive force in defence of the person will 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”

“It is a doctrine recognized in East Africa that excessive use of force in the defence of the person or property, whether defence of the self-defence is upheld, a conviction 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. ...”

34. As indicated under paragraph 25 above, the pathologist found several injuries on the deceased. On the other hand, the exhibit any physical injury from the attack as claimed. One cannot therefore say that the accused’s life was in imminent danger at the time of this incident so to justify attacking the deceased and inflicting such severe injuries on him.

35. Even if the accused life was in danger, which I find it was not, the force used by the accused far exceeds reasonable force, is not excusable and cannot lead to a substitution of the charge of manslaughter. I therefore find that under the circumstances of this case, the accused acts were actuated by malice and not by a desire to defend himself. Self-defence does not apply to this case.

36. Upon analyzing and evaluating the entire evidence in this case, I find that the prosecution has proved that the accused deliberately attacked the deceased inflicting several injuries on sensitive parts of the body. His actions were premeditated and were aimed at causing grievous harm or death to the accused. I find that the accused committed the offence of murder contrary to Section 203 of the *Penal Code*.

37. From the foregoing, 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.

38. Final Orders:-

1. Accused is hereby guilty of the offence of murder contrary to section 203 as read with section 204 and is convicted accordingly.
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.

Mr. Kiptoo for accused.

Accused present.

Karanja/Christopher – Court Assistants.

