



REPUBLIC OF KENYA



Republic v Bett (Criminal Case 41 of 2017) [2025] KEHC 6345 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6345 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 41 OF 2017
PN GICHOHI, J
MAY 15, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

GILBERT KIPCHIRCHIR BETT ACCUSED

RULING

1. Gilbert Kipchirchir Bett (hereafter referred to as Accused) is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on the 9th day of April 2017 at Kiptagich village Kuresoi Sub County within Nakuru County, he murdered Kenneth Korir.
2. He denied the charge and the matter proceeded for hearing with the Prosecution calling five (5) witnesses in support of its case.
3. After close of its case, both parties opted not to file any submissions and rely on the evidence on record.
4. Judy Cheron (PW1) testified that the Deceased was her workmate . She was asleep in her house on 10/4/2016 when she was woken up by Kennedy (PW3). He told her the deceased was sick and that they should go check on him. They went to the deceased's house which was in the same plot as her house.
5. They found the Deceased in bed in the neighbour's house. The neighbour was Langat. The deceased was being given first aid pressing using hot water and he was able to talk. He told them that he had pains on his neck. He did not say how he got injured.
6. They called one of their Managers to authorise a vehicle to take him to the hospital. The deceased was accompanied by Kennedy to Tenwek Mission Hospital.
7. The following day, she was accompanied by her colleague named Rob and visited Ken in hospital. He was still sick and told them that he had fallen on the stairs. He lived in lower floor of a storeyed house.



- He was later transferred to St. Luke's Hospital Eldoret. He died the following day. She did not know who killed the deceased and she does not know the accused person.
8. Philemon Siongok (PW2) testified that he was the Production Assistant while the deceased was their Factory Supervisor at Olenguruone KTDA Tea Factory.
 9. On 10/4/2016 at about 8.00 am, he received a call by Kennedy Kipruto (PW3) informing him that the Deceased was unwell and he needed facilitation to take the deceased to hospital. He authorised the driver to take the Deceased to Tenwek Hospital. Kennedy called from hospital informing him that the hospital needed the Deceased's parents urgently.
 10. PW2 managed to get the Deceased's father on a phone call and informed him but he said that he had no fare to go to Tenwek. He sent him Ksh 1,000. Later, PW2 confirmed with Kennedy that Deceased's father had arrived.
 11. He received the information that Deceased had been transferred to St. Luke's Hospital and admitted but he had died. PW2 does not know how the deceased died. He does not know the Accused and has never seen him.
 12. Kennedy Kipruto (PW3) testified that he was a store keeper at the Tea Factory and the deceased was his friend and workmate. He however does not know the Accused person.
 13. On 10/4/2016, the deceased called him at around 7.30 am requesting him to take him to hospital but he did not go as he thought it was a joke. The deceased called him again and therefore he went to his house and found him with Weldon. The deceased told him he got the injuries from a fall and had pains on the neck. He did not say where he fell. There were no visible injuries.
 14. PW3 called Judy and Rono who were his colleagues and they arrived. He called the Manager to give them a vehicle to take the Deceased to hospital. PW3 and the driver took Deceased to Tenwek Hospital. At the casualty, they were asked to call the next of kin. He therefore contacted the Production Manager (PW2) to trace the family.
 15. PW 3 later went for a post-mortem. He did not see any physical injuries on the deceased. He knew the deceased was living alone.
 16. Eric Kiplagat Kori (PW4) testified as the brother to the deceased. He was not present when the incident occurred. On 19/4/2026 he and his father David Kipkelei Rono attended post mortem on the body of deceased at Moi Teaching and Referral Hospital. Present were also police officers from Kiptagich Police Station. The doctor told them that the decease had a spinal cord injury near the neck and that it was caused by a blunt object.
 17. He recorded a statement and later learnt that the suspect had been arrested. He did not know him. He does not know the Accused person.
 18. Dr. Kibet Kaitany (PW5), a Pathologist at Moi Teaching and Referral Hospital in Eldoret performed the post mortem on 19/4/2016 at Moi Teaching and Referral Hospital Mortuary. It was his evidence that the body was identified by deceased's father David Rono and Eric Rono, a brother to deceased. The body was refrigerated and had evidence of Medical intervention.
 19. There were bruises on the right leg, soft tissue hematoma on the right side of the neck, a fracture of the spine on neck region. There was evidence of medical intervention on the said area. There was surgery where a metal was fixed the fracture as the spinal cord had bone fracture.



20. He opined that the cause of death was spinal cord injury due to cervical spinal fracture due to physical trauma. He produced the report as Exhibit 1.
21. He explained that the surgery had been done before the post-mortem was done but he could not tell the time since the body had been preserved. He further explained that due to the severity of the injury of the spine, the surgery attempted to align the fractions though it was not easy to survive such injuries.
22. On cross examination by Mr Matoke for the Accused person, the doctor explained that the main injury was on the neck region but he could tell the object used to cause the injury. He told the court that spinal fracture can also be caused by sudden twist of the neck, fall from a significant height like a tall building.
23. It was his evidence that the only injury she noted was a small 2x1 cm bruise in size and there was a 6cm surgery incision. He confirmed that it was possible to have a serious spinal fracture without an obviously visible skin injury.
24. He explained that the surgical incision was fairly recent that is about 7 days to the death, as it was still bleeding.
25. At the close of the prosecution case, this Court is to determine if the prosecution has established a prima facie case to warrant the Accused herein being placed on his defence on the charge of Murder where ingredients to be proved :-
 1. Death of deceased.
 2. The death was as a result of the direct consequence of accused's unlawful act or omission (actus reus).
 3. The unlawful act or omission was committed with malice aforethought.
26. As to what a prima facie case is, the Court of Appeal in Ramanlal Trambaklal Bhatt v Republic (1957) EA 332 thus: -

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot argue that a prima facie case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court could not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case, nor can we argue that the question whether there is a case to answer depends only on whether there is some evidence irrespective of its credibility or weight sufficient to put the accused on his defence.

A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence... It may not be easy to define what is meant by prima facie case but at least it must mean one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”
27. From the evidence on record, there is no doubt about the death of the deceased herein thus satisfying the first ingredient of the offence of Murder.
28. As for the second ingredient, there is no doubt that the deceased died of spinal cord injury due to cervical spinal fracture due to physical trauma. The evidence is that he told those who attended to him that he had sustained injuries from a fall.
29. Though the evidence that he lived alone and on the first floor of a storeyed building and the Doctor confirmed that such injury can also be caused by a fall from a height, the deceased did not tell those who



attended to him where he had fallen and what caused the fall. There is no evidence to show whether the fall was accidental or through an unlawful act or omission of any person.

30. Further, none of the witnesses identified the accused herein. None of them had seen him before and none of them knew who caused the death of the deceased.
31. The Arresting Officer did not testify to show how the Accused came to be arrested and worse still, the Investigating Officer did not testify so as to shed light as to how the Accused herein was connected to this death. There is even no circumstantial evidence to connect the accused with this death. In the circumstances, there is no case to warrant the Accused person being placed on his defence.
32. In other words, the Accused person has no case to answer. He is therefore acquitted under Section 306 (1) of the *Criminal Procedure Code*. He is set at liberty unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OF MAY, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Kihara for the State

Gilbert Kipchirchir Bett - Accused

Mr. Matoke for Accused

Ng'eno, Court Assistant

RULING HIGH COURT NAKURU CRIMINAL CASE NO. 41 OF 2017 Page 3

