



Republic v Limo (Criminal Case 14 of 2023) [2025] KEHC 6323 (KLR) (15 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 14 OF 2023
RB NGETICH, J
MAY 15, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARY CHEPKOSGEI LIMO ACCUSED

JUDGMENT

1. The accused Mary Chepkosgei Limo 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 18th day of May, 2016 at Sagarar village in Koibatek Sub-County, within Baringo County, murdered Samson Kipsirem Keston.
2. The accused denied the charge and the matter was set down for hearing. The prosecution in proving the charges against the accused availed 5 witnesses to testify in court.

Prosecution's Evidence

3. PW1 Philip Kipchirchir testified that on 18th May, 2016, he was working in the farm at Torongo Sagarar village and at around 9:30a.m, he heard noise from his uncle Samson who was quarrelling. He went to check and saw Mary who is Samson's wife leaving home, he called her and she turned to see her and proceeded going. He went to check and found the door and the deceased herein lying near the door crying with his hand and leg broken and was complaining of pain from injury he sustained from being cut with an axe by his wife. He said he called family members and he was able to see the axe in the house which was close to where the deceased lay.
4. PW1 said family members advised him to save the life of his uncle and he called for a motor cycle taxi and also called neighbors Betty and Esther who went and removed his uncle from the house and they took him to Torongo hospital. He said the deceased Samson was talking when they arrived in hospital and they were referred to Eldama Ravine Hospital where he succumbed while being treated. They reported at Eldama Ravine police station where they were advised to keep the axe and the next



- day, police went and took the axe. He said that he was present when postmortem was done in Eldama Ravine and the doctor said the ribs collapsed/broken. He identified the accused as the wife of the deceased and said it is her who injured the deceased with an axe.
5. PW2 Betty Chepkemei Mutai testified that on the 18th August,2016, PW1 who is her neighbor called her to help the deceased. She said on reaching the deceased's house she found PW1 having removed the deceased from the house. She said she called a neighbor and a motor cycle taxi. She said the deceased said he was beaten by Kogo Targo and that he was hit with an axe. She confirmed that the deceased died while he was in hospital and Kogo Targo is accused herein.
 6. PW3 Jonathan Kibet Maiyo a motor cycle taxi operator testified that on 18th May,2016, he was at home when he was called by a neighbor PW2 to go to the deceased's house. He said his motor cycle could not carry the deceased because of the injury on the leg and chest and he went to look for a vehicle and took the deceased to the centre for treatment but he was referred to Eldama Ravine. He said the deceased was still talking and he mentioned Kogo the accused. He however said he did not witness what happened between the accused (kogo) and Samson.
 7. PW4 Dr. Arafa Saleh testified that he conducted postmortem on the body of the deceased Samson Kipserem on 27th May,2016 at Eldama Ravine Hospital who was identified by Philip Kipchirchir and Florida Chebichii Limo. On examination, he found that the body had a fracture of the right femur and radialomi fracture and on internal examination, he found fracture of the 3rd and 5th ribs on both sides of the chest. He formed an opinion that the cause of death was left hemothorax bleeding into the lungs as a result of fracture of the ribs. He produced the report as exhibit before court.
 8. PW5 No. 68955 CPL Bonface Chebuss who was based at DCI Koibatek- Eldama ravine Police station testified that on 18th May,2016 at about 15:45hours, one Lenard reported that about 9: 00a.m, at Sagarar village, his uncle Samson Keston aged 70 years was attacked and assaulted by his wife Mary Serem by using an axe and that he had been rushed to Eldama Ravine Sub- County Hospital where he died while undergoing treatment. On 19th May,2016 at about 11: 30a.m, together with PC Mark Bilinyo visited the scene at Sagarar village where on arrival at the homestead of the deceased, they found members of public among them Philip Kipchirchir.
 9. He said that PW1 Philip Kipchirchir identified for them the house where the deceased was attacked which was a kitchen and handed over to him an axe which had been used to attack the deceased. He produced the axe before court and stated that he recorded statements of witnesses among them Philip Kipchirchir.
 10. PW5 further said he established that the accused went into hiding after reporting at Eldama Ravine police station on the material day. He said the accused reported that she had been assaulted by her husband who had gone home while drunk. PW5 handed over the file to P.C Kwamboka after his transfer. He confirmed that he attended postmortem of the deceased and that the deceased had fractures on the ribs and right femur and on the 24th April,2023, he learnt from the DCI Koibatek that the accused had been arrested and charged.
 11. Upon the close of the prosecution's case, by ruling delivered on 17th July,2024 this court found that accused had a case to answer and proceeded to place her on her defence.

Defence Case

12. The accused Mary Chepkosgei Limo testified as Dw1. She confirmed that the deceased was her husband since 1978 and have children together but she denied killing the deceased. She stated that the deceased used to be harsh while drunk and on the 18th May,2016, at around 4:00a.m he asked her to go to the



farm and left. She said at the time, she used to sleep in the kitchen while the deceased slept in the main house. She said the deceased returned at 8:30a.m, and entered the main house and at the time, the children had gone to school leaving behind a grandchild aged 3 years. She said the deceased stood at the kitchen door then picked the child who was sleeping on the bed and threw her outside. She said when she inquired from him why he threw the child outside, the deceased removed the githeri she was cooking and poured out in the kitchen then he removed firewood and hit her on the shoulder and used a stool to close the door.

13. She said the deceased stepped on the stool while trying to hold her on the back of the neck and he fell down. That she went and got hold of the child and ran and that she did not see what happened to the deceased after he fell down. She said she realized the accused was going to kill her and took the child and went to a neighbor called Kapkeiyot whom she confirmed is not a witness in this case because she does not know what happened.
14. She said that the school children went and took the child and after leaving the child with the neighbour, she went to Torongo police station to report that the deceased had thrown the child and hit her on the hand. She said she was advised to go and report at Eldama Ravine police station where she was advised to visit hospital and she went to hospital the same day and went to her parents' home where she treated her hand; and later learnt from her children that the deceased was injured on the right leg and had passed on after 3 days.
15. She was arrested from home and informed that her husband had passed on. She said she used to go to her home whenever the deceased beat her. She said that she did not beat her husband with an axe handle on 18th May,2016. She said that there were jembe/hoes under the bed but she said that she did not use them to beat the deceased. She said she had reported the deceased to police on several occasions for beating her.
16. DW2 Florida Limo a daughter to accused and deceased testified that on 18th May, 2016 at around 4P.m, she received a call informing her that her sister' s child aged 3 years had been thrown and was injured. she said the child was staying with the grandmother the accused herein. She said she did not know anything about the death of the deceased.

Analysis And Determination

17. Section 203 defines the offence of murder and the definition brings out three ingredients which have to be proved beyond reasonable doubt as hereunder: -
 - a. proof of death
 - b. the cause of that death and proof that the death was due to an unlawful act or omission, that the unlawful act or omission was on the part of the suspect and
 - c. that the unlawful killing was with malice aforethought.
18. In Mombasa High Court Case Number 42 of 2009 between *Republic vs. Daniel Musyoka Muasya, Paul Mutua Musya and Walter Otieno Ojwang* the court expressed itself as hereunder:

“The prosecution therefore is required to tender sufficient proof of the following three crucial ingredients in order to establish a charge of murder:

 - a) Proof of the fact as well as the cause of the death of the deceased persons.
 - b) Proof that the death of the deceased's resulted from an unlawful act or omission on the part of the accused persons.



- c) Proof that such unlawful act or omission was committed with malice aforethought.”

(a) Proof of death

19. The death of the accused is not disputed as the prosecution witnesses testified that the deceased died at Eldama Ravine Sub-County hospital while undergoing treatment. PW 4 Dr. Arafa Saleh conducted postmortem on the body of the deceased. He formed an opinion that the cause of death was left hemothorax bleeding into the lungs as a result of fracture of the ribs. He produced the report as exhibit before court.

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

20. The evidence tendered by the prosecution witnesses is that the deceased made dying declarations that it is the accused who inflicted the injuries. PW1, PW2 and PW3 testified that at the time they arrived at the scene, the deceased was still talking and he informed them that it is his wife Kogo Targok the accused herein inflicted the injuries on him. 33(a) of the *Evidence Act* Cap 80, Laws of Kenya provides that a dying declaration is admissible to prove a charge of murder if it is proved that it was made by the deceased at a time he thought or expected that death was imminent.

21. In the case of *David Ngugi Gichuru v Republic* [2011] eKLR the Court of Appeal stated as follows:-

“It is not in dispute, and Mr. Monda readily conceded that no witness saw the appellant kill the deceased as indeed none of the witnesses was at the house of the deceased at the relevant time The main evidence against the appellant was that of the dying declaration of the deceased given to Boniface, Peter and Isaac long before the deceased died but given immediately the deceased was found on the ground along the road...”

22. PW1, PW2 and PW3 had no doubt that the deceased referred to the accused when he referred to her as Kogo Targok who is his wife as the person who inflicted the injuries on him. The accused confirmed that it is only her and her 3-year grandchild who were at her home at the time the deceased sustained injuries which he later succumbed to. This evidence was corroborated by the deceased in his dying declaration when he said it is his wife Kogo Targok the accused herein who injured him. The axe the deceased mentioned as the murder weapon was recovered at the scene which confirm that the deceased sustained the injuries at his home.

23. Further to the above, PW1 said that when the deceased raised alarm, he ran to check what was happening and while on the way, he saw the accused running away from the scene, he called her but she ignored.

24. In *Philip Nzaka Watu v Republic* [2016] eKLR, the Court of Appeal stated as follows:-

“While it is not a rule of law that a dying declaration must be corroborated to found a conviction, nevertheless the trial court must proceed with caution and to get the necessary assurance that a conviction founded on a death declaration is indeed safe...”

“The general principle on which a dying declaration is admitted in evidence is that it is a declaration made in extremity when the maker is at a point of death and the mind is induced by the most powerful considerations to tell the truth. In Kenya, however the admissibility of dying declaration need not depend upon the declarant being, at the time of making it, in a hopeless expectation of eminent death. There need not be corroboration in order for a dying declaration to support a conviction but the exercise of caution is necessary in reception into



evidence of such declaration as it is generally unsafe to base a conviction solely on the dying declaration of a deceased person.”

25. In this case immediately after the attack before the deceased was taken to hospital, he stated that it was “Kogo Targok” who attacked him with an axe. The deceased gave the name of the accused and repeated it before he was taken to hospital where he succumbed while undergoing treatment. The declaration was specific and there is no doubt who the assailant was. From the foregoing, I find that the dying declaration of the deceased herein is admissible.
26. In view of the above, there is strong circumstantial evidence to show that accused is the one who inflicted injuries to the deceased which resulted in his death.

(c) Proof of malice aforethought

27. Section 203 of the *Penal Code* provides that any person who with malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. 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.”

28. From evidence adduced, the accused and deceased were husband and wife. Further, that the deceased used to be harsh to the accused while drunk and on the material day, there was confrontation between the two which led to the death of deceased herein. There is no indication that the accused planned to kill the deceased. Malice aforethought was not therefore proved against the accused. From the foregoing, I proceed to find the accused guilty of the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code* and convict her accordingly.

29. FINAL ORDERS : -

1. Accused 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 15TH DAY OF MAY 2025.

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RACHEL NGETICH

JUDGE

In the presence of :



* Ms. Omari for State.

* Mr. Chepkilot for Accused.

* Accused present.

* Christopher – Court Assistant.

