



**Republic v Kipyegon (Criminal Case E049 of 2019)
[2025] KEHC 5963 (KLR) (14 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5963 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E049 OF 2019
SM MOHOCHI, J
MAY 14, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

PETER KORIR KIPYEGON ACCUSED

JUDGMENT

- 1. Peter Korir Kipyegon is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*;

“That on the 23rd September 2021, at Baringo Valley village in Gacharage Sub-Location Tamnyota Location, Kuresoi North Sub-county within Nakuru County, murdered Simon Kipkurui Too.”

- 2. The accused was arraigned on the 13th October 2021 the Information was read out and the accused pleaded not guilty.
- 3. On the 5th October 2023, the trial commenced with the Prosecution calling its 1st witness and thereafter called three (3) more witnesses before closing the Prosecution’s case on the 2nd October 2024.
- 4. Prosecution called a total of Four (4) witnesses, PW1 –Ann Chemtai the Deceased wife and an “eye-witness” to the incident; PW2- Simon Muiruri a neighbor and immediate responder to the incident; PW3-Dr. Risper Renson Wambua a pathologist and expert witness; PW4-CPL John Kigen Investigating Officer.

Prosecution’s Case.

- 5. PW1 Anne Chemtai a farmer from Kuresoi North testified under oath that on the 23rd September, 2021 at about 3:00 p.m. she was at home washing clothes and when she went to hang clothes, she heard



- a person screaming like he was drunk, when she looked, there she saw that there was a person who was throwing his hands in the air. He was insulting her husband, saying her husband had a love affair with his wife. When he got near the gate, he mentioned, Bibi yangu, Mama Oscar.
6. She realized it was husband of Mama Oscar, her neighbour. It was someone she knew from physically. The dogs rushed to the gate. She called them back and saw from far as the person turned away.
 7. She saw him going away and knew him as Baba Oscar. She then rang her husband, the deceased Simon Kipkurui Too. He was Deputy Baringo Valley Primary School. He was also a pastor.
 8. When she rang him she was in shock and spoke to him. Her husband said, he has begun to spoil his name yet he has not finished with Pastor Too? Then she rang her husband again and told him to tell the village elder who was the husband to Mama Oscar, he is the accused.
 9. Her husband called her and said village elder had called him, told him that Baba Oscar appeared drunk. That he would deal with the matter the following day and have the matter reported at Tomiyote Police Station.
 10. She then left to cut grass for cattle. About one hour later, she saw the same person walking towards her home. He was not drunk but kept looking back. He was not shouting. She ran towards home. She did not see him.
 11. She rang her husband to find out whether he had come from school. As she was about to tell him that she had seen the man who had come was back, she saw deceased coming back. He was walking through the maize plantation where the path is. She began walking towards him. He was about 20m from her. She asked whether he had seen a person near the road. He said no with his hands, just then Baba Oscar the accused came from the maize plantation.
 12. He went towards mzee, he stabbed him, as she saw, mzee grabbed him. They fell. She began to scream, rushing home and picked a piece of wood to go hit Baba Oscar she found him holding the knife. Mzee her husband was lying on Baba Oscar.
 13. Baba Oscar was holding the knife as if to stab her husband on the back and she took the knife from him and threw the knife. That she hit Baba Oscar and picked her husband. She heard his teeth biting. (he went into convulsion) Then his head went off. She noted that mzee was dead.
 14. Baba Oscar was still lying on the ground and she screamed loudly attracting the attention of her neighbour Simon Muiruri aka Hema, who came got hold of her and said he was calling for an ambulance. She said her husband was dead. She screamed wanting to hit Baba Oscar again, but Simon held and took her home. She did not leave her house again.
 15. By the time she was taken to the house Baba Oscar was still on the ground and she did not see whether he had any injury while lying on the ground. She did not hear him say anything.
 16. The witness identified the accused (dock identification) as Baba Oscar is the accused whom she has known before. That one who passed his home as you go to a certain school where she was teaching. She learnt his name is Peter Korir but she was used to Baba Oscar.
 17. Upon Cross-Examination by Ms. Mungai Advocate, the witness explained that when she first heard the noise, she did not know who it was who was making noise. She peeped out when she was hanging clothes. There is a road from his home leading to the road to other witness home. He was shouting loudly. From her home there is a shamba, then a road, then houses.



18. There is even a person who came out of the house and asked what it was. When she first heard him, she did not go near him. She was seeing him from over the fence and did not see any weapons. He was drunk, throwing hands, shouting that pastor had an affair with his wife. she never spoke to him.
19. When she rang her husband, he said “why the accused was looking for him yet he was abusing Pastor Too. There was a Pastor Too, and her husband was also Pastor too. The accused had gone to the home of Pastor Too the other one and insulted him.
20. Her husband was fearful. He said he would go to police station the following day. When she saw accused 2nd time he was coming from the side of his home, she passed another side and arrived at the gate. She did not see him when she reached the gate.
21. When she saw her husband, he was coming from her front towards the gate. There is a road in front of her gate, then maize, then another road from Baringo Valley Secondary School. There was a foot path and the Accused appeared between my husband and her.
22. That the accused stabbed her husband once and removed. She ran towards home as she screamed and her neighbour came later, they heard screams. she was running home screaming. No one came at this home. Neighbour came as she was hitting the accused she did not check whether he had an injury.
23. She just threw the knife, which she saw was a sharp, kitchen knife. She could not describe it further. And that the Police came to the scene about 6:00 - 6:30 p.m. I am not sure. It was not yet dark
24. PW2 Simon Muiruri resident of Gacharage Baringo and a farmer was the deceased’s neighbor for 5 years prior to his death.
25. That he bought land from the deceased’s father, the accused in 2012 so he knew him. He recalled that on 23rd September, 2021 at 4. 50p.m he was at home with his wife sorting out potatoes, the radio was on. He heard screams and asked his wife to switch off radio to hear where screams were coming from.
26. He ran outside the gate at a neighbor’s where screams were coming from Mama Enoch (Ann) she was wife of deceased.
27. Dogs were barking and he thought they were attacking someone, getting there. At Ann’s place, he found deceased Mwalimu Tom, he lay there next to the road and his Assailant lay there on the front.
28. He turned him and saw he was Baba Oscar. They both lay side-by-side. The Deceased was bleeding on left chest. The assailant was bloodied and no visible injuries.
29. The deceased lay unresponsive and his wife was saying he has been killed. They escorted wife into the house he was with a young man cannot recall his name.
30. The deceased wife identified Baba Oscar as the murderer, he was the accused on the dock. He was not in his senses and not communicating.
31. The deceased wife complained they were not acting, the witness took phone and called Daniel who had a car and he said he was unavailable. When he looked at the deceased he realized he was dead.
32. A mob came and attacked the accused before police came from Temoyota Police Station and rescued accused and collected the deceased body.
33. In Cross-Examination by M/s Rotich advocate the witness concurred being the deceased neighbor like 60 meters along a one street away. That the Accused is neighbor but does not live on the land.



34. Where incident occurred, deceased was his neighbor and accused and he bought land at their place and is not his neighbor. That he never knew what brought accused at the scene.
35. They respondent three people; Njogu, himself and Kiprotich, where they live they are scattered.
36. Deceased was alive and unresponsive when he saw him. He never saw the knife. He never saw deceased being stabbed. He saw both laying there. He did not know he had stabbed him. It is screams that made him respond.
37. PW3 Dr. Risper Renson Wambua a medical officer based at Elburgon County Hospital with 6 years' medical practice conducted a postmortem on 30th September, 2021 at Molo Sub-County hospital on the body of one Simon Kipkurui: -
 The postmortem has: General examination
 Male African 41 years, good nutrition and physique height 510cm.
 Postmortem changes
 He noted body had hardening of joint rigor mortis.
 External appearance of the body
 Deceased had deep cut wound on left chest 8 cm traversing diagonally. The right side was noted to be.
 Internal appearance of the body
 Noted there was chemosis of skin and borne (darkening). The 4th rib had fracture at point around 4 cm from
 Cardio Vascular System
 Severe conjunctiva Looking at heart left atrium had a deep cut wound approximately 6cm long diagonally 1.4 cm. deep. The wound was in upper left chamber. Many clots in the chest cavity.

For the digestive system urinary system.

38. Based on my examination I formed opinion that the Cause of death was massive hemorrhage due to penetrating chest injury. She signed the report and it was stamped on 30/09/21.
39. The witness produced Postmortem report produced as Exh.1.
40. The Accused was found with a case to answer and placed to his defense of which he elected to give sworn evidence without calling any witness.

Defence Case.

41. DW1 Peter Kipyego Korir, an early retired Kenya Prison Officer, recalled that on 11th June, 2021 schools had re-opened. His son was studying in Bomet area, Muguma Secondary School at Form 2 he had not sent his school fees; they had sold potatoes at home in Kuresoi. The broker of potatoes was yet to pay him.
42. He explained to his wife Betty Chepngetich Koech, that he shall go and see broker at center and if he does not find him, he was to go to Molo and withdraw a little money he had.
43. That he found the broker at 9 – 9.30 a.m. at Gacharage center, who asked him to wait for money at 10.00a.m.
44. That at 10.15a.m. the broker gave him Kshs.12,000, he went to Duka bought 10kgs of Nitrogen for top dressing. Some money he put aside for the fees.



45. That he took boda boda to Mawingu center and disembarked mid-stream to his home while carrying the fertilizer on his back.
46. Upon arrival he found the jikoni was closed and main house was closed but were not locked. He decided to put fertilizer in the main house and await return of his wife.
47. When he pushed the door it was locked from inside, he heard his wife asking “ninani” the witness responded “fungua mulango.” and at that point he heard her say “mungu wangu.”. She came and opened door and embraced and held him tight. She said in Kalenjin “Njumandel” in Kiswahili it means, “kuja toka.”
48. The person who came from his bedroom was “Mwalimu Too” the deceased. He struggled to free myself from his wife, the deceased left from door and picked up a fire wood near door and he came and hit him at the back of his head and he collapsed. That he regained consciousness at 6 p.m. when his daughter was calling someone.
49. He recalled that on 23rd September, 2021 he woke up went to attend to his cabbages on the seed bed until 1p.m. That the seeds were not ready for transplanting the ground to plant was overgrown with weeds, he was to spray roundup he went to lunch until 3 p.m. When he went to Bomas center the duka guy was unavailable and came at 4p.m. He bought household and the “dawa,” he came and upon reaching “Mzee Ngeno” shamba he decided to pass by his son Geoffrey Siele, to give him a pump for spraying the dawa, his pump was leaking.
50. He got there called out loudly as there were dogs. His daughter came, He don’t know the daughter’s name. She told him both her parents were unavailable. The witness left, their land a v-shaped, he went to the junction to his house.
51. At Mzee Ngeno shamba there is a “way” next to maize. He saw a strange thing, Mwalimu Too was emerging from the maize farm he was holding a log stick. He told me “haukufa.”
52. The deceased said he shall break his limbs he becomes lame and the deceased shall have sex with his wife as he watched. And when his daughter is of age, the deceased promised to plant a seed in her for him to be seeing.
53. Mr. Too started beating him, he tried to block but deceased managed to beat him. He fled into the maize farm as deceased could not find him there.
54. While going in maize farm deceased tripped him with a stick and he fell down. Deceased used the stick to strangle him to the ground. That he started struggling to get up and when he was almost standing up the deceased’s wife appeared while screaming, she jumped the fence while carrying a knife. He saw she might stab him on the chest or stomach. He went back down on his knees and Too was still strangling him. His wife came and stabbed him on his upper left eye.
55. That the witness woke up with more force while Too held him. He flew up and beat his wife with a kick on the chest twice. She fell down the knife dropped near him. That he and deceased Too fell down and he left him.
56. He woke up and dived near where the knife was. Mr. Too followed him and slept on him. Deceased struggled to grab the knife from him and he resisted while holding the knife and slept on it. Too came and placed his knee on his waist and struggled him with his hands.
57. He was unable to breath and Simon Muiruri appeared. When he arrived instead of separating them, Simon Muiruri said he had killed Ann who lay there.



58. He hit him on the head, he rolled, he fell pain on his hand, he found he had been stabbed on his right hand. Too the deceased was grumbling while sleeping on him. He was hit 2nd time by Simon and he lost consciousness. He never saw anything else. He found himself at the Keringet Police Station. The accused prayed that he be acquitted.
59. In Cross-Examination by M/s Mwaura Prosecution Counsel the witness responded as follows;He was fine.That on 11th June, 2021 he was visiting broker known as Kabuthi, he was not there, he will not be testifying.The door was locked from the inside.His wife opened and embraced him calling Too to come and get out.He is supposed to complain to the police.He never reported incident to police.From dawa, he passed at Mwalimu Geoffrey and never knew the name of young girl.He is in custody.He never called this witness today.He was shocked to find Too in his house.He was having an illicit sexual affair with his wife.He was not amused.He moved on.He was shockedHe was not angry.Yes, he deceased hit his head.He never reported.On 23rd September, 2021 when he met Too, he was to be most angry, that day they never met.Anger arises only on a particular caseThe wife of deceased was brandishing the knife.The deceased struggled to get the knife from him. He was sleeping on it.
60. That is the defence closed their case and prayed for 21 days to file written submissions

Determination.

61. I have carefully considered all the evidence availed before Court the filed submissions and the only issue in question in this case is whether the prosecution have proved whether the accused persons caused the death of the deceased persons and was there actual malice?
62. The offence and punishment for murder is provided for under Section 203 and 204 of the *Penal Code*. The said provisions provide that;
- “203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
204. Any person who is convicted of murder shall be sentenced to death.”
63. To establish the offence of murder, the prosecution is required to prove beyond reasonable doubt, proof of death, proof that the death was caused by the accused, by an unlawful act or omission and that, the unlawful act or omission was through malice aforethought.
64. Section 206 of the *Penal Code* defines Malice aforethought as follows:
- “206. 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.”

Proof of Death.

65. PW5 and PW6 identified the body of the deceased at the Nakuru PG Hospital on the 18th October, 2021.
66. The post mortem report by Dr. Titus Ngulungu was produced as P-Exh 1. The post mortem report revealed that the cause of death was massive hemorrhage due to penetrating chest injury.

Whether the death was caused by an unlawful act or omission.

67. It is my considered view that, the prosecution has established that the accused person caused the death of the deceased by an unlawful act or omission.
68. The Evidence of PW1 is corroborated sufficiently by the evidence of PW2 and PW3 of the encounter between the accused and the deceased on the fateful evening resulting to the injuries that the deceased succumbed to and PW3 confirmed the cause of death to have been massive hemorrhage due to penetrating chest injury.
69. The offence of murder is complete when, “malice aforethought” is established if, pursuant to Section 206 of the *Penal Code* evidence proves 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.”
70. In this instance the evidence by PW1 and PW2 indicates that the arguments emanated from an alleged illicit love affair between the accused’s wife and a Pastor Too. It is noteworthy that Pastor Too when challenged with this allegation denied being the culprit indicating there being another pastor Too where the accused had equally gone to. PW1 testified that she went towards mzee, he stabbed him, as she saw, mzee grab him. They fell. She began to scream, rushing home and picked a piece of wood to go hit Baba Oscar she found him holding the knife. Mzee her husband was lying on Baba Oscar.
71. That Baba Oscar was holding the knife as if to stab her husband on the back and she took the knife from him and threw the knife. That she hit Baba Oscar and picked her husband. She heard his teeth biting. (he went into convulsion) Then his head went off. She noted that mzee was dead.
72. While the Evidence points to the direct implication on the accused in the stabbing resulting to the death of the deceased the intention to cause the death or to do grievous harm to the deceased is foggy with doubt;



73. When none of the aforesaid elements are proved but there is otherwise an unlawful killing of another human being, the person commits the felony of manslaughter under Section 202 of *Penal Code* which is punishable under Section 205 of *Penal Code* by a term of imprisonment extending up to life.
74. In this instance while the deceased succumbed subsequent to a single stab wound to the chest
75. With regards to the defence case, the accused alleged to have acted in self defence and he however failed to corroborate his evidence to the extent that the deceased wife stabbed him on the eye, that she was the one who came armed with the knife.
76. The Court cannot countenance the evidence by the accused of an affair of historic nature noting that the alleged encounter with Pastor Too in his house had been almost ninety days earlier which case was never reported to the police.
77. The Accused never availed supporting evidence in proof that on the fateful day he had gone to free area, he never called Mzee Ngeno's daughter to corroborate his theory of being on his way from the boma center having purchased Round-up for spraying and that no evidence at all was called to fortifying of defence.
78. The accused defence evidence is equally silent as to the whereabouts of the items he alleges to have purchased at the boma center or in fact what happened to it.
79. The defence evidence is unbelievable.
80. This Court is thus unable to discern the actual chain of events leading to the accused stabbing the deceased and there is indication of a fight between the deceased and the accused which fight was joined by PW1, however and that while the extent of injury inflicted would constitute malice aforethought, the intention and what gave rise to the fight remains foggy and thus the benefit is to the accused and the Court is thus unable to locate malice aforethought.
81. As a result, Accused is found guilty of a lesser charge of manslaughter contrary to Section 202 (1) of the *Penal Code* as read with Section 205 of the *Penal Code* and is convicted accordingly.

It is so ordered.

JUDGEMENT READ, SIGNED AND DELIVERED AT NAKURUTHIS 14TH DAY OF MAY, 2025

MOHOCHI. S. M.

JUDGE

