



**Republic v Chesire (Criminal Case 19 of 2018)
[2025] KEHC 5908 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5908 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 19 OF 2018**

RB NGETICH, J

MAY 8, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

MUSA CHESIRE ACCUSED

JUDGMENT

1. The accused Musa Chesire 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 14th day of October, 2018 at Illiagat trading centre, Tenges Location in Baringo Central Sub- County within Baringo County murdered Rhoda Cheronno Lelei.
2. The accused denied the charge and the matter proceeded for hearing with prosecution calling 12 witnesses.

Prosecution’s Evidence

3. PW1 Gibson Chepsergon Rono testified that on 14th October, 2018, at 3: 50p.m, he was going to Illiakat Centre when he found Musa Mosop on the farm who requested him to take his grandchild to the mother at the Centre. He went with the child to the centre and as they approached the Centre, he saw a person lying on the ground and he noticed that the person was the mother of the child as he knew her well.
4. He said after about 5 meters from her, he saw blood on her dress and he took away the child as he did not want the child to be traumatized. He said when he reached home, he called Musa and informed him of what he had seen. He said he believed the mother of the child had been killed and that they left the child at home and went back to the centre with Musa where Musa confirmed that she was dead and they then went to look for the father of the deceased. He said he remained there until the body was



- taken away then went home and the next day, they went to Kabarnet police station and he recorded his statement. He said Musa is a relative and the deceased is his cousin.
5. PW2 Joseph Mosop Lelei testified that on the 14th October,2018 at 8: 30a.m, he left Tenges Primary school where he worked as a watchman and arrived home at 9:30 a.m, and inquired from his wife where Chepkalel was and she informed him that she had gone to the deceased Rhoda Cherono Lelei's kiosk. He said that they the proceeded to a marriage ceremony and when they arrived there they found Chepkalel who said that she had come from Rhoda's home and after a short while Mary, Musa and Gibson arrived. He said Musa came back after a short while and requested him to be calm and informed him that his daughter Rhoda Cherono Lelei had been killed at the Kiosk. He went to the kiosk in company of his wife and Musa where he confirmed that she had been killed by being cut with a panga on the neck.
 6. He said that Many people gathered at the scene and they reported the incident to the chief Agnes Mitey. He said he noticed that the deceased Rhoda had keys in her hands and the doors of the kiosk were locked but the windows were open. He said the Chief called the D.O who called the police and the police went to the scene at midnight and took the body and asked them to go to Kabarnet police station the next morning to record statements.
 7. He said on 15th October,2018, they recorded their statements and in the afternoon, the chief held a baraza to inquire into the death and requested that they meet again on the 16th October,2018 where they met and people attended but the accused was missing; they went looking for him and found him hiding in a bush. He was arrested, interrogated and he confessed to have killed the deceased.
 8. PW 3 Musa Mosop said that on the 14th October,2018, at about 4:30 P.M, he was in the farm when Gibson arrived and informed him that he was going to the Centre to buy sugar. He said he requested Gibson to take the child to her mother Rhoda Cherono Lelei who was at the center and after a short while Gibson who appeared shocked went back with the boy. On inquiring what was wrong, Gibson asked him to follow him to the centre. They left the child at home and went to the centre and saw Rhoda had been cut on the neck almost severed. They reported to the Assistant Chief. He said that he is the village elder of that area and they reported the matter to Agnes Mitey. Pw3 said he went to inform the deceased's father.
 9. He said that they went to the centre and found the Assistant chief and other people had arrived and the Assistant Chief reported the matter to the police and they waited for the police until midnight when they removed the body. He said the police inquired whether there was an eye witness and nobody went forward and they went home. He later recorded a statement at Kabarnet police station.
 10. PW4 Victor Kipkoech Chepkuto testified that on the 14th October,2018, at about 7 p.m, he was at home when he received a call from a friend Isaac Tanui who informed him that there was a child who had been killed at Iliakat Shops. He called the brother of the deceased and went to the centre and found that the deceased had been cut with a panga on the neck and the body was lying on blood. He said the head was almost severed from the body.
 11. He further stated that on 15th October,2018, they went for a meeting at the home of Joseph Mosop who is the father of the deceased where the Assistant Chief was present and nyumba kumi people were asked to attend a meeting on 16th October,2022. That they met on 16th October,2022 in the morning and it was discovered that Musa Chesire the accused herein was missing. The people split into groups and looked for accused. He said they found him and arrested him and on being interrogated, he admitted that he had killed the deceased and he said he used a panga which he had hidden in the bush and led them to the bush to recover the panga. He also led them to the scene where he killed the deceased. The Assistant Chief called police officers who arrived and took the accused. He positively identified the



- panga in court. He recorded statement 18th October,2018, at CID offices. He said the accused Musa Chesire is his neighbour.
12. PW5 Amos Kibii Cheruiyot who is a member of nyumba kumi testified that on the 14th October,2018, at about 5.00 p.m, he heard that the deceased Rodal Lelei had been killed. He went to the Centre and confirmed that her neck had been cut and was lying dead on a pool of blood. He said they had a meeting and they noticed that the accused Musa Chesire was missing. They looked for him and found him in a nearby bush. They interrogated him and he admitted that he killed the deceased and also led them to where he had buried the panga. He also led them to where he had killed the deceased at the centre.
 13. PW6 Doctor Wangare Wambugu a pathologist at Baringo County referral Hospital, testified that on 23rd October,2018, she did postmortem on the body of Rhoda Cheron Lelei which was requested by DCI Kabarnet. That the body was identified by Joseph Lelei and William Kiplimo. He concluded that the cause of death was head decapitation due to sharp force trauma following assault. She produced the postmortem report as exhibit before court.
 14. PW 7 Agnes Mitei the Assistant Chief Tebei Sub-location testified that on 14th October,2018 at 5:30p.m, a village elder Gibson Rono informed her that Rhoda Lelei had died at the centre. She went to the centre and arrived at 7:00 p.m. and saw the deceased's neck was cut and the body lay on blood and she called the Chief Jackson Chuma and the Assistant County Commissioner and at 2p.m police took the body.
 15. She said they recorded statements the next morning and called a meeting on 16th October,2018. She said she called all clusters which are about 8 and Musa Chesire was missing in the cluster of Amos Cheruiyot. They looked for him and found him in a bush near his house. She said the accused admitted that he killed the deceased and led them where he had hidden the murder weapon a panga.
 16. PW 8 William Kiplimo together with deceased's father identified deceased Rhoda Lelei for postmortem at Baringo County referral Hospital.
 17. PW9 No.251474 PC Erick Kipchumba who informed the court that he was attached to Kabarnet Police station. He said that on the 14th October,2018, he received a call that the murder suspect had been arrested. He re-arrested accused from members of the public and took him to Tenges police and while on the way, they met officers from DCI Kabarnet and they handed over the suspect to them.
 18. PW10 Retired Kangogo Kalya testified that he was attached to Tenges D. O's office and that he retired in the year 2021. He said on 14th October,2018, at around 11: 00p.m, he received a call from the Assistant Chief Agnes Mutai who informed him that there was tension at Iliagat Sub-location where someone had been killed and shortly thereafter, DCI officers from Kabarnet arrived and requested him to give them 2 police officers to accompany them to the scene. He said Silas Kibet and Maurice Koech accompanied them and at 4:30a.m, D.O Tenges called him and informed him that the suspect had been arrested and was with the Assistant Chief. Together with police officer Eric Kipchumba, they got a motor bike and went to check and on arrival, they found many people at the scene who wanted to kill the accused and the Assistant chief handed over the accused and a panga to them. He positively identified the panga in court. He said they handed over accused to DCI. He identified the accused in court.
 19. PW11 No. 110570 PC James Muchiri who is attached to DCI Baringo central performing investigations duties testified that on the 14th October,2018, while on duty, he was requested by his boss DCI Mr. Chege to visit a scene of murder at Tenges division Iliagat village. Together with other police officers, they went to the scene and with the help of area Chief Agnes Mitei, they visited the scene at Iliagat trading centre where they found a middle-aged woman lying outside the shop with



visible deep cut on her neck lying in a pool of blood. That the deceased was identified by the villagers and also the chief as Rhoda Cheronno as ECD primary teacher in the area.

20. He said that they processed the scene and took photographs and at around 10:30p.m, they collected the body and took it to Baringo Hospital morgue awaiting postmortem. On 15th October,2018, they recorded statements of witnesses and on 16th October,2018, he received a call from the area chief Agnes Mitei who informed her that the suspect had been arrested and he was handed over with murder weapon to Administration Police at Tenges AP Post. They went to police post and re-arrested the suspect Musa Chesire and collected the panga.
21. He said that they booked the suspect at Kabarnet police station and on 18th October,2018, they recorded further statements of some of the witnesses and on 23rd October,2018, post mortem was done in the presence of the deceased's family by Doctor Wangare. He said 7 photographs were taken and certified by scenes of crime person in Nakuru. The murder weapon was taken to the Government chemist for DNA analysis and at the scene, he also collected a bunch of keys which the deceased was holding at the time of death and which were blood stained. That he also took samples from the deceased's son for purposes of comparison with those on the murder weapon. He said that he also collected soil from the scene which was covered with blood for analysis. He produced the 3 exhibit memo forms as exhibits in court.
22. PW12 Kipnetich Benard a Government analyst based in Nairobi, testified that on 7th November,2018, they received items from No.66275 CPL Philip Ndeto of Baringo central being a bunch of keys in a khaki envelop marked "B", soil samples in a khaki envelop marked "C", a panga wrapped in a grey T-shirt and enclosed in an envelope marked "A" and on 29th November,2018 they received additional items from CPL Philip Ndeto DCI Baringo central, a blood sample in vacutainers marked "D" and "E" Blood stained bandage on an envelope marked "F" both written Musa Chesire.
23. That on the 21st December,2018, they received additional items from CPL Philip Ndeto DCI Baringo central, blood samples in vacutainers marked "H" and "I" written Kiprop Kipruto deceased's son, blood stained bandage and enclosed in a white container marked "J" written Kiprop Kipruto deceased's son and accompanying the items were police exhibit memo form with instructions that they examine the items to determine the presence of origin of the blood stains and their genetic relationships.
24. That the findings on examination was that the panga item "a" was rusty and had no blood stains, both the bunch of keys items "b" and soil sample "c" were moderately stained with blood and the blood stains on the soil did not generate any DNA profiles. His findings were that DNA profiles generated 99.99% more chances that the donor of the blood stains on the bunch of the keys is the biological mother of Kiprop Kipruto. He signed the report on 18th February, 2020 and produced the report as exhibit before court.
25. Upon the close of the prosecution's case, by ruling delivered on the 25th day of July,2024 the court found that the accused had a case to answer and proceeded to place him on his defence.

Accused's Defence

26. The accused Musa Chesire DW 1 gave a sworn statement. He denied killing the deceased Rhoda herein but admitted that he knew her as a neighbor but she moved to live in Iliagat centre. He said that he had no relationship with the deceased Rhoda. He said that he knows Amos (PW 5) but denied that Amos was in the group tasked to look for him on 16th October,2018 a period of 2 days after Rhoda was found death. He said that he was herding cattle in the forest and did not know why his mother did not



go to represent him in the group and that he did not hear the chief saying that neighbors congregate in groups of 10.

27. He said that he knows Victor Kipkoech Chepkuto (PW 4) but he denied his allegation that he appeared confused in the forest. He admitted that he was found herding in the forest but he did not appear confused and the forest is not far from home and that he was doing his usual work of herding cattle. He said that he remembers the testimony of the Joseph Lelei and said that when they found him in the forest, they beat him up until he decided to admit so that they could stop beating him. He said they told him to admit he had killed the deceased or else they would kill him. He said when they found him in the forest, they immediately started beating him and he denied that he was hiding as alleged by PW 2. He denied having had any weapon; that he did not have a panga. He also denied leading them to recovery of a panga and said he knows nothing about the panga produced in court.
28. He said on 14th October, 2018, he had gone to drink busaa and arrived at night at around 7/8p.m, and that on Sundays there is a son to his brother called Kiprop who used to go and herd cattle and since it was on a Sunday, he had gone to herd cattle as usual. He said that he has not been in contact with Kiprop since he went to prison in the year 2018. That since 2018 he has been visited in prison once by his brother Kimutai who is not the father of Kiprop. He denied being involved in the death of Rhoda and that apart from being her neighbor, he had no relationship with Rhoda who was younger than him. He said that they were not from the same clan and there was no disagreement between him and the deceased Rhoda.

Analysis And Determination

29. Section 203 defines the offence of murder and requires proof of the following elements beyond reasonable doubt to establish the offence of murder: -
 - i. proof of death,
 - ii. the cause of that death, 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
 - iii. whether the unlawful killing was with malice aforethought.

i. Proof of death

30. From the evidence of PW 1, PW 2, PW 3, PW 4 and PW 7 the deceased died on the 14th October, 2018. They went to the scene and confirmed that the deceased died near her kiosk at Iliagat Centre. PW 6 doctor Wangare Wambugu testified that on the 23rd October, 2018, he performed postmortem examination on the body of Rhoda Cheronno Lelei following request by DCI Kabarnet. She concluded that the cause of death was head decapitation due to sharp force trauma following assault. She produced the postmortem report as exhibit before court.

ii. Whether the unlawful act or omission, that the unlawful act or omission was on the part of the accused

31. There is no doubt that there was no direct evidence that the accused caused the death of the deceased. Proof in criminal cases can either be by direct evidence or circumstantial evidence. When a witness, such as an eyewitness asserts actual knowledge of a fact, that witness' testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence. Therefore, where circumstantial evidence meets the legal threshold, it may well be a basis for finding the accused person culpable of the offence charged. In the case of Neema



Mwandoro Ndurya v R [2008] eKLR, the Court of Appeal cited with approval the case of R v Taylor Weaver and Donovan [1928] 21 Cr. App. R 20 where the court stated that:

“Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.”

32. Whereas it is appreciated that a charge may be sustained based on circumstantial evidence, the courts have established certain threshold to be met if a conviction is to be based thereon. In *Sawe v Rep* [2003] KLR 364 the Court of Appeal held.

“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 hypotheses than that of his guilt; Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on; The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.”

33. Further in the case of *R. v Kipkering Arap Koske & Another* [1949] 16 EACA 135, in the Court of Appeal for Eastern Africa had this to say:-

“In order to justify 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. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused.”

34. Therefore, for this court to find the accused guilty, the inculpatory facts must be incompatible with innocence and incapable of explanation upon any other hypothesis than that of guilt. This proposition was well stated in the case of *Simon Musoke v Republic* [1958] EA 715 as follows:

“It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.”

35. Further in the case of *Teper v R* [1952] AC at p. 489 the Court had this to say:

“Circumstantial evidence must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another. It is also necessary before drawing the inference of accused’s guilt from circumstantial evidence to be sure that there are no co-existing circumstances which could weaken or destroy the inference.”

36. From evidence of PW 2, PW 4 and PW 7 area assistant Chief called for a meeting on the 15th and 16th October, 2018 which meeting was to find out who the suspect in the killing was. The accused did not attend the meeting called by area chief. Upon being searched by members of public, he was found in the forest. He is the one who led the members of public and the chief to where he had hidden the murder



weapon after confessing that he had killed the deceased. Even though he said he confessed after being beaten, the recovery of murder weapon is incompatible with his innocence. From the foregoing, I find that there is overwhelming circumstantial evidence linking the accused to the death of the deceased.

iii. Whether the unlawful killing was with malice aforethought.

37. 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.”

38. 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. ...

39. 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.



40. PW 1, PW 2, PW 3, PW 4, PW 5 and PW 7 testified on the condition they found the deceased in. They confirmed that the deceased had had been cut and her neck almost severed from the head which information was confirmed by the findings of doctor who did the postmortem.
41. The injuries inflicted on the deceased were very severe. The acts of the accused as evidenced from the prosecution witnesses and the postmortem report is evidence of malice. It is clear that the intention the accused had in this attack was to cause the deceased death. The choice of the part of the deceased's body he aimed at to inflict injury and severity of the injury is indicative of one bent on inflicting maximum harm or death on his victim.
42. It is trite law that anyone who uses such a lethal weapon and uses it to strike the deceased as accused did, ought to know that the injuries inflicted are likely to cause the death of that person. The accused targeted the part of the body that is very delicate and could easily lead to death, this demonstrate that the accused had premeditated his actions.
43. From the foregoing, I find that malice aforethought under Section 206 (b) of the Penal Code was proved was proved against the accused beyond reasonable doubt. I find the accused's conduct and the circumstances of this case taken together are consistent with a person whose actions were actuated by malice.
44. From the foregoing, I find that prosecution has proved the charge of murder contrary to Section 203 of the Penal Code as against the accused person beyond any reasonable doubt.
45. Final Orders: -
 1. I hereby find accused guilty of the offence of murder contrary to section 203 as read with section 204 of the penal code and convict him accordingly.
 2. Right of appeal 14 days

Judgment delivered, dated and signed virtually at Kabarnet this 8th Day of May 2025.

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RACHEL NGETICH

JUDGE

In the presence of:

CA Elvis/Momanyi.

Ms. Kosgei for state

Mr. Maina holding brief for Mr. Mbeche for accused.

Accused present.

