



**Republic v Kiplang’at (Criminal Case 24 of 2020)
[2025] KEHC 8932 (KLR) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8932 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 24 OF 2020**

**JM NANG’EA, J
JUNE 17, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

JULIUS KIPKEMBOI KIPLANG’AT RESPONDENT

JUDGMENT

Charge facing the accused person

1. The above named (hereinafter referred to as “the accused”) was on 25th May 2020 arraigned in this court on information and charge of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence state that on the 9th May 2020 at Upper Ol-Rongai village in Ol-Rongai location, Rongai sub County, within Nakuru County he murdered William Kipkemboi Tomno (hereinafter referred to as “the deceased”).

PARA 2.

The accused denied the offence.

The Prosecution case.

3. Part of the prosecution evidence was recorded before my brother (Justice H.M. Nyaga) who has since transferred to another work station. This court took over the case on 15th October 2024 and directed that hearing would continue from the point the previous court left off.
4. The prosecution evidence is that on 9th May 2020 at 6 am PW4 overheard the deceased who was her husband speaking with someone on his mobile phone that was on loud speaker mode. She heard the person on the other side of the telephone introducing himself as a Kenya Defence Forces Officer and requested to meet the deceased near a church. The same person had also called the deceased the previous day but the latter couldn’t go to meet with him because of a curfew then in force. After the second



call, the deceased left home riding his motorcycle registration number KMEF 240 X Make Boxer, blue in colour.

5. Later that day at 10.00 am her land lady and other neighbours gave her sad news of alleged killing of the deceased. She went to the mortuary where the body had been taken for preservation and saw the body. PW 4 said she observed injuries on the head and chest. She was shown his motorcycle and cell phone at Menengai Police Station. The witness stated she did not know the cause of death but she recalled seeing a text in the deceased's phone from a telephone number saved as "Juli Tech" communicating thus; "kimeumana" She saw the message weeks to the death but She couldn't recall the telephone number from which the text was sent.. The deceased used to buy electrical items from a shop called July Tech. in Rafiki Centre.
6. PW 5 is a Police Officer attached to Menengai Police Station. He testified that in the material evening at around 7 pm, the accused turned up at the report office riding a red motorcycle and identified himself as Julius Kipkemboi. He surrendered for arrest claiming to have killed someone at Kabarnet Farm and had left the body and the murder weapon there. The accused complained that the unnamed victim had a love affair with his wife. He was locked up in the police cells pending further investigations.
7. PW 7 is one of the case investigating officers who testified to visiting the scene of the reported murder in the company of other officers. They found the victim's body on a rough road with a motorcycle registration number KMTC 952 Q, a sharp blood-stained somali knife, knife porch and hammer beside it. There were wounds to the chest and the head. The body was removed to Nakuru County Referral Hospital Mortuary for preservation and post-mortem examination.
8. According to PW 7, the accused recorded a statement under caution in which he confessed to the killing. Investigations showed that the deceased had a love affair with the wife of the accused. No records showing any such nexus were obtained and produced in court. The witness tendered the deceased's motorcycle log book availed by his wife; the deceased's motorcycle registration number KMEF 240 X; the knife suspected to have been the murder weapon; the knife porch; the hammer , the motorcycle registration number KMTC 952 Q alleged to belong to the accused and an Exhibit Memo. Form by which the exhibits were sent for forensic analysis.
9. PW 6, an Analyst based at the Government Chemist's Department in Kisumu, told the court that they received a blood sample purported to have been extracted from the deceased and a blood-stained knife from the police with a request to determine whose blood was on the knife. Upon carrying out necessary DNA profiling PW6 opined that the deceased's blood was the one on the knife. The Analysis report dated 8th January 2021 was produced in evidence.
10. PW 3 is the Pathologist who conducted post-mortem examination of the deceased's body on 12th May 2020 at Nakuru County Referral Hospital upon identification by his relatives who included PW 1 and PW 2. Three stab wounds were noted in the chest , extending to the heart, lungs and the liver. Lots of blood collected in the chest cavity and abdomen. The pathologist's opinion was that the cause of death was multiple injuries to the heart muscles with massive blood loss due to sharp blade trauma to the chest, in keeping with homicide.

The Defence Evidence

11. Upon close of the prosecution evidence and consideration of the defence submissions on "no case to answer", the accused was put on his defence to the charge. He gave sworn evidence and called no witnesses.



12. The accused told the court that he is an Electrician by occupation. On 9th May 2020 at about 7am he rode on a motorcycle to Masinjeri area to perform some wiring work. At Kabarnet Farm he saw a mob and stopped to find out what was happening. He saw a bleeding body on the ground which he recognized to be that of the deceased he knew as a fellow Electrician employed by Kabarak University. He decided to ride to Menengai Police Station where he reported the matter. The police did not, however, record his report but they detained and later charged him with the offence of murdering the deceased.
13. The accused denied killing the deceased, adding that he was not the owner of motorcycle registration number KMCT 952 Q referred to by the prosecution witnesses. He further refuted the claim that he murdered the deceased because of a purported love affair between him and his wife. The accused told the court that he was not even married at the time, saying that he only got married two years after the incident.

Final Submissions

14. The prosecution Counsel did not offer submissions.
15. The defence Counsel on their part submit inter alia that the prosecution evidence does not prove the charge beyond reasonable doubt. It is contended that there is no evidence proving the element of malice aforethought allegedly harboured by the accused in the commission of the offence. Counsel rightly states while citing judicial determinations in Republic vs Kiprof & Another (Criminal Case No. E005 of 2025 (2025) KEHC 1804 (KLR) and Republic vs Silas Magongo Onzere alias Fredrick Mamema (2017) eKLR that every homicide is generally unlawful unless otherwise excusable under *the constitution* and the law.
16. Noting that there is no eye witness to the alleged murder, the defence Counsel is of the view that the prosecution case is dependent on circumstantial evidence which must unerringly point to the guilt of the accused before a guilty verdict is returned {(see case law in Chirago & Another vs Republic (Criminal Appeal No. 104 of 2018 {2021} KECA342 (KLR) also referred to by Counsel)}.
17. The accused further contends that the DNA evidence is not sufficient to link him to the murder since it was not established that his finger prints were on the knife suspected to be the murder weapon. The prosecution is further faulted for failing to carry out analysis of the deceased's phone communication to determine if the accused conveyed any threat to him. The implication in the prosecution evidence that the accused is a Kenya Defence Forces Officer has not also been verified, submits the Defence Counsel.
18. As per the defence submissions it is indeed the legal position that in homicide cases, death is presumed as unlawfully caused unless it is otherwise accidentally caused in circumstances that make it excusable. Judicial determinations in Uganda vs Lydia Draru Alias Atim HCT-00-CR-SC-0404 High Court of the Republic of Uganda; Akol Patrick & Others vs Uganda (2006) HCB (Vol. 1) 06 and R vs Gusambiza s/o Wesonga 1948 15 EACA 65 also underscore the legal position.
19. Determination of this case turns exclusively on circumstantial evidence there being no eye witnesses to the murder. In the Ugandan case of Musili vs Republic CRA NO. 30 of 2013 (U R) as well as in this court's decisions in *Muthini vs Republic (Criminal Appeal 15 of 2023)* { 2024}KEHC 2182 (KLR) (22 February 2024) (Judgement) and Republic vs Andrew Mueche Omwenga (2009) KEHC 1573 (KLR) it is restated that for a conviction to be founded on circumstantial evidence the chain of relevant events must consistently and unerringly point to the guilt and not innocence of the accused. The latter two cases emphasize the prosecution's burden of proof the charge beyond reasonable doubt.



For the burden to be discharged, guilt should be the only rational inference to be drawn from the court's appreciation of the entire facts and circumstances of the case in terms of the cited case law.

Issues for Determination

20. The sole issue for determination, therefore, is whether the prosecution has proved beyond reasonable doubt that the accused murdered the deceased, actuated by malice aforethought.
21. In *Mwangi vs Republic* (Criminal Appeal No. E054 of 2023) [2024] KEHC 3113 (KLR) 15 March 2023) (Judgment) this court explained that for circumstantial evidence to be reliable it must be inconsistent with the accused person's innocence.
22. In the case of *Ahamad Abolfathi & Another vs Republic* (2018) eKLR also cited by the Prosecution and Defence Counsel, it was elaborated that;

“Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”
23. In a much older case (*Republic vs Taylor, Weaver & Donoram* (1928) Cr. Application R 21), it was observed that;

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that is circumstantial.”
24. In the often quoted case of *Sawe vs Republic* (2003) KLR 364 also relied upon by the defence, it was stated that circumstantial evidence must satisfy three tests, namely;-

“the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
25. As in the case of *R vs Kipkering Arap Koskei* (1949) EACA 135 Counsel further made reference to, the prosecution must also show that there existed in-culpatory facts that were incompatible with the innocence of the accused and incapable of any explanation upon any other reasonable hypothesis other than that of guilt.
26. Section 206 of the [Penal Code](#) provides that malice aforethought is proven by one or more of the following circumstances;-
 - a. Intention to cause death or do grievous harm whether the death actually occurs or not.
 - b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.
 - c. An intention to commit a felony.
 - d. An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.



27. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive (see Case law in Robert Onchiri Ogeto vs Republic (2004) KLR (1a).
28. The court is not satisfied on the evidence and in the circumstances of the case, that the prosecution proved the charge against the accused beyond reasonable doubt. It is astonishing that the purported confession in the accused's statement under caution was not tendered in evidence despite being the main piece of evidence the prosecution has against the accused. The alleged murder weapon was not examined for finger prints to rule out commission of the offence by any other person other than the accused. It is evident in the circumstances that the case was poorly investigated. The prosecution evidence is insufficient to convict the accused. The prosecution therefore failed to prove the charge against him beyond reasonable doubt. He is acquitted of the offence pursuant to section 215 of the [Criminal Procedure Code](#). Any bond/bail security deposited in court is discharged for release to the owner.

JUDGEMENT DELIVERED IN PHYSICAL COURT THIS 17TH DAY OF JUNE, 2025 IN THE PRESENCE OF:

J. M. NANG'EA - JUDGE

The Prosecution Counsel, Ms Mwaura.

The Defence Counsel, Mr Kiptoon (present online).

The Accused, present.

Court Assistant, Jennifer.

