



**Republic v Kyalo alias Righa alias Boi (Criminal Case 4 of 2017)
[2024] KEHC 1015 (KLR) (7 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL CASE 4 OF 2017
GMA DULU, J
FEBRUARY 7, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAULO KYALO ALIAS RIGHA ALIAS BOI ACCUSED

JUDGMENT

1. The accused person herein stands charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of offence are that on 2nd April 2017 at Bosnia (Kwa Tom) village in Taveta Sub-County within Taita Taveta County murdered Anthony Mwangi alias Peter Mwangi.
3. He has denied the charge, and in their efforts to prove their case, the prosecution brought to court ten (10) witnesses, who testified before different succeeding Judges. On his part, the accused person tendered sworn defence testimony and did not call any additional witnesses.
4. PW1 is Doctor Kigora Gitau who testified to a post-mortem report which he completed and signed on 14th April 2017 at Taveta Sub-County hospital.
5. It was his evidence that he examined the body of Anthony Mwangi Mukuria brought to the mortuary by a police officer by the name Caroline and identified by Elizabeth Mwaki Joseph and Elijah Wachira Mukuria.
6. It was his finding that the body had blue undergarment and black trouser both of which were dirty with soil, and it was of a male African about 45 years of age and average build.
7. Body was well preserved and did not have many external injuries except a cut wound on the right side of the chest about 5cm long. On the left hand however, there was a deep cut on the mid arm extending



from the mid line with a length of 14cm, with a depth of 4 centimetres. There were also defensive injuries noted on the left forearm with multiple bruises.

8. On the right arm, there were also defensive injuries. The internal organs were not examined, and cause of death was excessive bleeding and shock secondary to massive haemorrhage from the cut wound on the left hand. The doctor's evidence was that due to the excessive bleeding noted, blood could not be transported in the body, thus causing death.
9. It was also his evidence that police took blood samples for toxicology and DNA testing. He produced the signed post mortem examination report as an exhibit.
10. In cross-examination, he maintained that it was the bleeding in the hand that caused the death, and said that if the deceased was given immediate medical treatment, he could have survived.
11. PW2 Elizabeth Mwake testified that she was the wife of the deceased of one (1) year who was employed as a plumber at Gicheha Farm. It was her evidence that on 2nd April 2017 on her arrival home at 5 pm from a funeral, a young man Patrick who was a workmate of her husband informed her that her husband had been slashed and rushed to Taveta Hospital.
12. It was her further evidence that at 7:30 pm a person called Mwarangi also a mason in the farm, informed her that her husband had died. On her part, she proceeded to the hospital the following morning and confirmed that her husband was dead. She saw the body in the mortuary with a cut wound on the left hand. She was also present when post mortem examination was done on the deceased on 14th April 2017. In cross-examination, she stated that she did not know the accused person before.
13. PW3 was Patrick Nzioka Kyende who worked at Gicheha farm as an operator. It was his evidence that he knew the accused person Righa as a security guard at the farm. He also knew the deceased as a plumber for 5 years.
14. It was his evidence that on 2nd April 2017, he asked the deceased to make a shed where people could rest. He also assigned Mwangangi inner wall painting work. It was his further evidence that as he took his supervisory rounds, he found Righa (the accused) and the deceased holding each others shirts. When he enquired for the reason, he was informed that the reason was because the deceased had asked Righa why he was still in security uniform and told him to remove the uniform to assist in other work. This was about 11:00 am .
15. The witnesses then calmed them down and the deceased continued working while Righa left. According to this witness, after lunch the deceased came to him and then proceeded again to work. After half an hour, he heard screams from where the shed construction was going on. The witness then proceeded there and found Antony (the deceased) crying for help and bleeding from the left hand. At that time he did not see Mwangangi but saw Righa carrying a panga (machete), and the *panga* and clothes of Righa had blood stains.
16. It was his evidence that he saw Righa chasing the deceased, and that two passersby Michael and Nzwili followed Righa, and that when Antony fell and Righa in anger tried to cut him, these people overpowered Righa and took away the *panga*.
17. It was his evidence also that first aid was given to the deceased, and the profuse bleeding initially was controlled and when the village elder mama Genta arrived, Mwarangi carried the deceased who was still conscious to Chala where an Administration Police vehicle was used to take the deceased to Taveta Sub-County Hospital – which was about 10km away, through a rough road on which it would take 1 ½ hours.



18. It was his further evidence that by the time they reached hospital, the deceased was no longer talking but throwing his legs around. The doctors put him on a drip, and the witness went back to Gicheha farm and informed Anthony's (deceased's) wife Elizabeth about the incident at about 5 pm, and that around 7:00 pm to 8:00 pm, Mwarangi informed him that Antony had died. He was later informed that the Administration Police at Chala had arrested Righa. It was his evidence that Righa used to work at night.
19. In cross-examination, he stated that he went to the same school with the accused person, and that they had worked together at the farm for two (2) months. He did not know if deceased took alcohol. He stated that he did not know who among the deceased and the accused first held the other's shirt, and that when he asked them what the matter was, the accused (Righa) told him to ask Antony (the deceased).
20. He did not know where Anthony went for lunch and did not know the person who brought the panga. He maintained that Righa wanted to finish Antony because Righa exhibited a lot of anger. He stated that Anthony fell after being injured and just cried. He stated that the incident occurred at 2p.m and the deceased got medical treatment at 4p.m.
21. PW4 was Cpl. Joseph Kioko of Chala Administration Police Post. It was his evidence was that on 2nd April 2017 IP Salim Mumo informed him on phone that someone had been stabbed and the suspect had been arrested by the public. Together with APC Kasina, they rushed to the scene and on arrival were informed that the victim had already been rushed to hospital in critical condition.
22. At the scene, they found the suspect already tied with ropes by the public and appeared to have been assaulted and injured. They recovered a panga from the village elder and escorted the suspect to Chala Administration Police offices. He identified the panga in court. He stated that he saw a pool of blood at the scene. He identified the suspect (accused) in court.
23. In cross-examination, he stated that the public informed him that the *panga* belonged to the accused person. He stated that the shops were a distance away from the scene. He stated that the village elder said that she had been informed that the panga was used to cut the deceased.
24. PW5 was Mwidadi Omar a Government Analyst stationed at Mombasa who testified on a chemical analysis report signed by another Government Analyst George Lawrence Ogunda, who had been transferred to Kisumu.
25. It was his evidence that they received exhibits from PC Caroline John which were a *panga*, buccal-swap, and a T-Shirt from the deceased.
26. They were requested to analyse if exhibits "A"- *panga*, "C" T-shirt, could match with exhibit "B" buccal-swap. The analysis established that exhibit "A" and "C" tested positive for human blood. It was also established that DNA from *panga* (A) was compatible with "C" (T-Shirt). The DNA from suspect did not match with "A" and "C". He produced the report as an exhibit, and was not cross-examined by defence counsel.
27. PW6 was Michael Kabucha Nduruma. It was his evidence that on 2nd April 2017 he went to ask for his salary from Mama Njoki, when suddenly he heard screams of someone crying for help. When he turned round he saw a person holding a panga and following another man who was pleading for help and running. Then the person who was running fell down and he noticed that he had suffered injuries and was bleeding, while the man with a *panga* did not have any injuries.
28. According to this witness, the person who was having the panga surrendered it to mama Njoki who was the home owner. It was his evidence that he knew the man with a *panga* before as neighbour.



29. He testified that they persuaded the man with the *panga* Paulo Kyalo to surrender the *panga*, and that he knew the injured person only by the name Mwangi. It was his evidence that they took the injured person to hospital, and the police later came and collected Paul Kyalo. According to him, the injured person died before arrival at the hospital.
30. He identified the accused person in court as the person who had the *panga*, and stated that he did not know the reason why accused cut the deceased.
31. In cross-examination, he maintained that he did not know what caused the problem. He stated that the deceased did not say anything other than crying. He stated that he did not see the accused cut the deceased with a panga, and confirmed that mama Njoki also sold alcohol.
32. PW7 was James Ngwili Martin a casual labourer whose evidence was that on 2nd April 2017 at 1:30 pm he was at mama Njoki homestead at Chala to get his salary. While there the deceased ran there and fell down as he was chased by the accused. According to this witness, the arm of the deceased was cut and blood was oozing out.
33. It was his evidence that those present restrained the accused and took away the panga and called the headman and the police who came and took away the accused. In the meantime, the injured man was taken by neighbours to Taveta hospital. He knew accused before the incident, and identified him in court.
34. In cross-examination, he stated that he did not see anybody inflicting injuries on the deceased. He had never known that the accused person had cut someone with a panga before.
35. PW8 was Ronald Agaki Ondieki a worker (watchman) at Gicheha Farm, whose evidence was that he knew Paulo Kyalo alias Righa alias Boi as a colleague at his place of work. He also knew Anthony Mwangi alias Timothy Mwangi also as a work colleague.
36. On 2nd April 2017 at 10:00 am, while at his eatery where he sells food, the accused person went there for tea. According to this witness Mwangi the deceased had given the accused work to build for him a kiosk. At 1:00 pm the deceased told the accused that he should have removed his uniform to do the work.
37. Shortly thereafter, he heard screams and moving towards that direction, he found that Mwangi had been cut with a *panga* on the right side of the neck and was screaming for help. According to this witness, at that time, the accused person was still holding the *panga*, while Mwangi was lying on the ground. It was his evidence that the panga was blood stained and that the deceased was just crying in Kiswahili – help me help me.
38. It was his evidence that members of the public took away the panga from the accused. He stated that Mwangi who worked as a plumber was taken to Chala dispensary, then to Taveta hospital and after a day, they were informed that he had died.
39. In cross-examination, he stated that the deceased, the accused person and himself worked together, and that he did not see the accused person cut the deceased. He stated that the deceased merely cried “help me help me,” but did not mention the name of the person who cut him.
40. PW9 was IP Peter Kyalo of Crime Scene Investigations, Voi, gazetted by the Director of Public Prosecutions in a notice of 30th June 2015. On 11th April 2017 accompanied by PC Caroline he proceeded to Taveta Sub County hospital mortuary and took several photographs, which he processed, and prepared a certificate. He produced the photographs and certificate as exhibits. He was not cross-examined by defence counsel.



41. PW10 is IP Caroline Ndungwa John currently of DCI, Thika West, the Investigating Officer. It was her evidence that on 3rd April 2017 she was a Constable in Taveta.
42. It was her evidence that she was instructed by Corporal Dereva to investigate the matter, and established that Paulo Kyalo alias Boi had been booked for assault and that the assaulted person had died.
43. They then proceeded to Bosnia village, where she gathered information and recorded statements from witnesses and arrested and charged the accused person in court.
44. It was her evidence that a *panga* was recovered and that the police also took possession of the deceased's T-Shirt and obtained blood samples of deceased and accused and took same to Government Chemist Mombasa for analysis. She attended post mortem examination of the deceased. She produced the panga and T-Shirt as exhibits in court.
45. In cross-examination, she stated that she gathered from witnesses that the deceased and accused worked on the same Gicheha farm. She stated that from information received, the *panga* was used by the deceased and Marangi to do the work which they had been given. That was the prosecution evidence.
46. When put on his defence, the accused person tendered sworn defence testimony and did not call additional witnesses. He said that he is Paulo Kyalo Mwanyale, aged 32 and working as a watchman, and knows the deceased as a workmate at Gicheha farm for 3 months.
47. It was his defence that on 1st April 2017 he went to work at 6:30 pm and on 2nd April 2017 he left work at 6 am and proceeded home at Kivukoni and, on the way met his friend Ronald Mogaka also a security guard and took tea at Mogaka's kiosk. At 10:00 am, Mwangi and Mugambi came quarrelling about work in high voices.
48. According to him, when he came out of Mogaka's kiosk Mwangi told him to stop and give him his uniform, saying that he could not do any other work while wearing the uniform.
49. He stated that at that point Mogaka ordered Mwangi out and Mwangi left the kiosk and Mogaka called Patrick who said that Mwangi was loud because of alcohol.
50. It was his testimony that Patrick took possession of the items that Mwangi was using such as nails, panga and iron sheets, the left the scene. Later, after 2 hours he (accused) left to go home and passed at the place where Mwangi was making a shed, and Mwangi stopped him and demanded for his uniform, then held him and removed a panga from his waist, raised it and the accused shouted for help from Mogaka who came. Patrick also came and Mogaka asked Patrick why he had given Mwangi a *panga*. Patrick then asked them to snatch the *panga* from Mwangi.
51. According to him, thereafter there was a struggle to take the *panga* between Patrick and Mwangi, and in that struggle the accused, in trying to take away the *panga*, accidentally cut Mwangi on the upper left arm, and after he was cut the deceased released the *panga*, and left the scene running and fell at mama Njoki's compound and stopped talking.
52. It was his defence that the deceased was bleeding from his upper arm and they tied him with a rope to reduce the bleeding and called the village elder Frank Karai, who came and told the accused person to record a statement with the police. He remained at the scene until 5 pm when the police came and took him. He denied killing Anthony.



53. In cross-examination, he stated that he was employed at Gicheha farm in January 2017 as a security guard. He admitted that witnesses such as Ronald Akaki Ondieki (Mogaka) said in court that he chased the deceased, but still maintained that he did not have a panga nor kill the deceased.
54. At the close of the prosecution and defence evidence, both the Director of Public Prosecutions and learned defence counsel Ms. Munyari filed written submissions which I have perused and considered.
55. The accused person herein stands charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap.63) which he has denied.
56. In accordance with the provisions of Section 107 of the Evidence Act (Cap.80), the burden is on the prosecution to prove all the elements of the offence. This being a criminal case, the standard of proof is beyond any reasonable doubt – see Sawe =versus= Republic (2003) eKLR.
57. The elements of the offence of murder are firstly the death of the deceased. Secondly, whether the death was caused by the accused person. Thirdly, whether the death was unlawful. Fourthly, whether the death was caused with malice aforethought.
58. With regard to whether the deceased died, the evidence both for the prosecution and defence is that Anthony Mwangi was injured on 2nd April 2017 at Bosnia in Taita Taveta County. He bled profusely from an injured arm. He was taken to Taveta Sub-County hospital and died while undergoing treatment. Post-mortem examination was done, and testified to in court and report produced as an exhibit. In my view, the prosecution proved beyond reasonable doubt that the deceased died of shock due to excessive haemorrhage, as shown in the post mortem report.
59. Was the death of the deceased caused by the accused person? On this element, the evidence of the prosecution is that nobody saw the accused person cut the deceased. There was evidence however from witnesses that is PW3 Patrick Nzioka, PW6 Michael Kambucha, and PW9 Ronald Agaki Ondieki who testified to seeing an incident on 2nd April 2017 wherein the accused person chased the deceased with a panga. The said panga, was confirmed by the Government Analyst PW5 Mwidadi Omar to have had blood stains of the deceased, so it was the weapon used.
60. On his part, though the accused person in his defence admits that the said panga caused the fatal injury on the deceased, he said that it was an accidental injury caused in his struggle to disarm the deceased, though he mentioned other people as the people who tried to disarm the deceased.
61. In my view, from the totality of the evidence both for the prosecution and the defence, the prosecution proved beyond any reasonable doubt that the accused person herein caused the fatal injury that resulted in the death of the deceased. His defence is not plausible, as such severe injury could not have been caused by the deceased on his own arm, or through an attempt to disarm him. I find therefore that the prosecution proved beyond any reasonable doubt that the accused person herein caused the death of the deceased. The fact that the panga belonged to the deceased, even if true does not help the accused person.
62. Was the death unlawful? The accused person has put up a defence of accident, or maybe provocation, to suggest a lawful death. From the evidence on record, I find no lawful reason for the violent death as from all the evidence on record, it was the accused person who went to the place of work of the deceased after they had disagreed and been pacified earlier in the day, and inflicted very severe injuries on a person who was defenceless at his place of work. I thus find that the death herein was unlawful.
63. Was the death caused with malice aforethought? Malice aforethought is defined under Section 206 of the Penal Code as an intention to kill or cause grievous bodily harm.



64. In the present case, from the evidence on record, the accused person planned and followed the deceased at his place of work. He cut him and was seen following him with the panga which was later retrieved from him by the public. It is clear from the evidence on record that if the panga was not taken away from him, he was going to attack the deceased even after he had fallen down helpless.
65. I find that the prosecution proved beyond any reasonable doubt that the death herein was caused with malice aforethought.
66. Having found as above, I conclude that the prosecution has proved beyond any reasonable doubt all the ingredients of murder contrary to Section 203 as read with Section 204 of the *Penal Code* against the accused person. I accordingly find the accused guilty of the offence charged and convict him of murder accordingly.

DATED, SIGNED AND DELIVERED THIS 7TH DAY OF FEBRUARY 2024 AT VOI IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Sirima for State

Ms. Munyari for accused

Accused

