



**Republic v Kurere & 3 others (Criminal Case 24 of 2023)
[2024] KEHC 2667 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2667 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 24 OF 2023
RB NGETICH, J
MARCH 14, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMSON KORIR KURERE 1ST ACCUSED

BISMACK KIPCHUMBA (DECEASED) 2ND ACCUSED

RAEL SOTE 3RD ACCUSED

FRANCIS TANUI 4TH ACCUSED

JUDGMENT

1. The accused persons were jointly charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge being that on the 23rd day of May 2014, at Oldepes village in Mogotio District within Baringo County, jointly with others not before court murdered Christine Jemeli Koech alias Kabon Ngotoi.
2. The accused persons pleaded not guilty to the charge and the matter was set down for hearing with prosecution calling 7 witnesses and the accused persons gave sworn evidence and did not call any other witness.

Prosecution Evidence

3. PW1 Mandai Simon Ledama testified that on the 23rd May, 2014 at 1pm he was sleeping at his home when he heard footsteps of people passing by their house. He did not bother about the footsteps and shortly, he heard a phone ring outside and thought it was his brother but he did not enter the house and after some time, he heard people cry while making noise and when they reached his house, one locked the door from outside. He peeped through the window and saw many people who he could not



identify passing by; he then heard his mother's voice among the persons who were passing by saying "Sio mimi nilifanya hicho kitendo."

4. He said the first time he heard the noise, it emanated from his mother's house and the second time is when he heard people passing with his mother from the direction of his mother's house. He stated that when he heard his mother's voice, he stayed put but shortly, his brother went and opened the door from outside. He said he followed the people alone and on reaching close to them, he hid in the bushes and saw two motorbikes and he could hear his mother continue to say "Sio mimi nilifanya hiyo kitendo". He said at that time, he identified one of the people as Mr. Kiprop Kurere who put his mother in a motorbike with another person and ride off and the other people took off using the second motorbike. He said Kiprop Kurere is his cousin. He said he went to his uncle Mr. Kitiyenye Mandai who lived nearby and woke him up and informed him that cousin Kiprop together with others took his mother.
5. He further stated that he went to his house and his brother Stephen Mandai informed him that the people who had taken their mother were Kiprop Kurere and Kurere's father Samson who is the husband to his auntie. He said he slept with his brother and on the 24th May, 2014 he got the information from his uncle Kitiyenye Mandai that his mother had died. He said Samson said Kurere who is his aunt's husband is accused 1 herein and he is the father of Kiprop Kurere whom he identified at night and who is not before court.
6. PW2 one Francis Lakakeny Ngoitoy testified that on 23rd May, 2014 at about 4.00 p.m, he was at work in Mogotio when he received a call from Kiprop Kurere who informed that his brother was unwell and asked him to accompany him to see his brother at Oldebes. He said he declined as he was at work but later went to his place at Mayani where they found about 20 people outside the house. He said Kiprop entered the house while he stayed out. He stated that after some time, Kiprop and others came out and left on two motorbikes. He said he entered the house and found Kiprop's mother with the sick boy and on enquiring where people had gone, he was told they had gone to bring Christine to come and see the sick boy. He said Christine was his step mother and Kiprop is his cousin. He testified that he and Osman followed the group of Kiprop and others with his motorbike where they went to the home of Christine. He said it was about 10 p.m. and there was light which enabled them to see the group of people at Christine's home. He said outside Christine's home was Kiprop and Francis who is also his cousin but he did not identify any other person in the group.
7. He said they broke the door and asked Christine to go to Kiprop's house to see the sick boy. He said among them was Kipchumba, a relative to Kiprop and that Kiprop said Christine should treat the sick boy while outside Kiprop's house. He said he then heard people slapping Christine while telling her she knew what was ailing the sick boy meaning she bewitched the boy and they wanted her to treat him; he said he could not tell who was slapping her as they were inside the house while they were outside. He said they stayed there up to midnight and left Christine and others in the home. He later learnt from his brother that Christine had died at Sote's house. That when Christine was being beaten in the house, Sote was in the same house inside. He identified Sote as A2. He said he saw all the accused persons inside the house where the sick boy was lying.
8. PW3 Cheruiyot Mandai a brother inlaw to the deceased identified the deceased's body to the doctor for post mortem examination. PW4 Stephen Kiprotich Mandai testified that that on 22nd May, 2014 at 9.30 p.m. his mother and brothers Kiptoo and Ledama were in the next house sleeping. He went out and found (4) people being Kurere, Kiprop, Kipkemoi and Mrefu Kipchumba. He said Kurere was calling his mother Christine, the deceased herein to come out and go with them to treat a child. His mother opened the door and stood at the door but refused to go with the (4) people. He said Kiprop, son of Kurere followed her into the house and kicked then slapped her forcing her to agree to go with



- them. He said as the (4) people left with his mother, young children, Ledama and Kiptoo cried and Kiprop asked them to go into the house and sleep. Pw3 said he followed the group and went to tell his brother Simon that their mother had been taken by the (4) people but found and found that his brother's house had been locked from outside. He opened the door for him.
9. He said they followed the (4) people who had gone with their mother and later went back as his brother Simon proceeded to follow them. He said 2 of the 4 people Kiprop and Kipkemoi went back and asked for "mafuta ya kondoo" – oil extracted from sheep but pw3 told he did not know where it was and they went away.
 10. He said the next morning his elder brother Simon and Kibet went to find what happened to their mother and on coming back, his mother had been beaten, had suffered injuries and had been taken to hospital. He later learnt that his mother had died. Pw3 said the 4 people who had gone for their mother were neighbors and were related as clan members and Kurere is his auntie, a sister to his father.
 11. PW5 one Stephen Ngetich testified that on 24th May, 2014 at 11.00 a.m., he was at the shopping centre when he received telephone call from Assistant Chief Oldebes sub location Mr. Wesley Molo informing him that he had received a report of a lady who had been killed at Samson's home. He went to Samson's house and found the body of the deceased in a grass thatched house in the compound which belonged to the children of Samson Kurere. He said the other house in the compound belonged to Samson Kurere which he lived in with his wife Rael Kurere and Rael was outside the house. He took her to his office. He said Samson Kurere and Rael Kurere are 1st and 2nd accused respectively. He said accused 3 and 4 were arrested by Assistant chief Rotich and police officers.
 12. PW6 one No 89080 PC Leonard Ochola testa DCI officer testified that on 24th May, 2014, he accompanied the Deputy OCS and PC Todosia and PC Driver Kulei to Oldebes to the scene which was the home of 1st accused Kurere Korir where they found the deceased lying on a bed who was half naked wearing a skirt only; and the body had large bruises on the head and back. They learnt from the Assistant chief that four suspects had been arrested being Kurere Korir, Rael Sote, Kipchumba Bismack and Francis Tanui.
 13. He said he learnt that 1st accused's son was unwell and it was suspected that he had been bewitched by the deceased. They were shown suspects by Administration police officers who had arrested them. He said the suspects who were handed over to them were taken to Mogotio police station and the body taken to the PGH Nakuru mortuary after pictures was taken. Post mortem was done on 26th May, 2014.
 14. PW7 Dr. Wangari Wambugu a pathologist at Baringo County, Kabarnet produced post mortem report on behalf of Dr. Titus Ngulungu of PGH, Nakuru who conducted the post mortem at Nakuru Municipal Mortuary on 25th May, 2014. He concluded that the cause of death was severe head injury due to the multiple blunt trauma. he produced the Post mortem report signed on the 26th May, 2014 as Exhibit No 1.

Defence Evidence

15. Accused 1 Samson Kipkorir Kurere testified that the deceased's husband is a brother to his wife. He said on the 24th May, 2014, his child Dan Kiprono was unwell. He said they called the deceased to see the child and Bismark together with other young men went for the deceased Christine. That the four being Bismark (Accused 3 who died before hearing commenced), Amos and Kiprop, and a fourth one he could not recall. He stated that on bringing the deceased, she was interrogated and beaten by the young men, Bismark, Amos and Kiprop. He said he was in the main house when the deceased was being beaten and when he heard her scream, he went and told them to be slow as they are relatives and to stop



- beating the deceased. He said they stopped and after they had left, he questioned the deceased who told him she had been beaten. He said he asked her to remain so that they make take her to hospital.
16. He said since it was late, he decided to give her a place to rest; she slept in the house and they kept checking her at night. He said her neck was seriously injured but had no cut. He said in the morning, she was seriously ill. He said as he prepared to go to the chief to report, he was told she had died. He confirmed that the deceased was beaten in his house and insisted that he did not beat her but he was arrested because the deceased died in his house. He said his wife was also arrested and that he told police the people who beat the deceased but one was arrested and the rest were not arrested.
 17. Accused 2 Rael Sote Korir testified that on the 24th May, 2014, her child was unwell and Bismark who is her brother in-law's son told her it looked like his child had been bewitched. She said Bismark and other young men went to bring the deceased from her house and was put in the house where the child was. She said she was outside and there were many people who beat the deceased and left. She confirmed that the deceased slept in their house and in the morning, they tried to take her to hospital but she had died. She said Bismark was with Amos, Kiptoo and Kiproop and the deceased was her brother's wife. She said it was Bismark who called the other 3 men. She also said she informed the police but only Bismark was arrested. She said she was arrested with A1 because the deceased died in their house. She added that the child who was sick recovered.
 18. Accused 4 Francis Tanui testified that he is a cousin to Accused 2 and Accused 1 is Accused 2's husband and therefor his brother inlaw. He said he did not know what happened on the 24th May, 2014. He said he had gone to the 1st accused's house to see a sick child who was seriously sick but he did not go back to that house. He said the chief and the police found him on the road and arrested him without interrogating him. He said he was not with those who killed the deceased.

Accused's Written Submissions

19. The defence counsel filed written submissions and argue that it is trite law that in any case the prosecution has the burden of proving every element of the offence an accused is charged with and in this case the offence of murder. On whether the prosecution proved the offence of murder to the standards required, he submitted that for the prosecution to secure a conviction on the charge of murder, the key ingredients which constitute the offence set out by the Court in *Nyambura & others v R* [2001] KLR 355 have to be proved.
20. He submitted that on proof of death of the deceased, the prosecution witness did not advance a strong case to show that it is the accused persons who caused the death of the deceased. He submitted that PW4, Stephen Mandai, who was a crucial eye witness did not assist the court as he said he did not identify the people who took away his mother since it was dark.
21. That a further witness who was PW5 found the deceased already dead. He said the doctor testified that the deceased died as a result of blunt force trauma; that it was imperative that the deceased was beaten but the question is, who beat the deceased. He submitted that no single witness saw the accused persons hitting the deceased person.
22. He said the accused persons in their defence said in unison that the deceased was hit by the 3rd accused person together with his friends but unfortunately the 3rd person passed on the eve of the hearing. Further that the witnesses further informed the police the names of the people who beat the deceased but they were not arrested.



23. He submitted that the three remaining accused are before court as a result of circumstantial evidence and urged this court to closely examine the evidence on record to establish whether it satisfies the following: -
- a. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
 - b. The circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
 - c. 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.
24. That the foregone principles were set out in the case of *R v Kipkering Arap Koske & another* [1949] EACA 135 and have repeatedly been used in subsequent cases including the Court of Appeal cases of *GMI v Republic* [2013] eKLR, *Mush Tulo v Republic* [2014] eKLR among many others.
25. Counsel submit that it is in the house of the 1st accused person that the deceased was found having been beaten by the 3rd accused person together with his friends, who happen to be the son of the 1st accused person together with the 2nd accused who is 1st accused's wife and a sister in law to the deceased. That none of the accused persons before court were seen by any of the prosecution witnesses hitting the deceased.
26. That the 1st accused person is before court because he is the one who ordered that the deceased to be brought to heal his son who was ailing, an act that any other responsible father could do. That it was shocking that his other son, who is the 3rd accused person together with his age mates went berserk and beat up the deceased who succumbed to her injuries.
27. As to whether there was malice aforethought in the accused persons causing the death of the deceased, counsel submit that none of the witnesses availed by the prosecution showed or led the court to an inference that the accused persons before court had malice aforethought to commit the said murder. That as a matter of fact, it is the third accused person who brought all this trouble and the 1st and 2nd accused person sought to refrain them from doing so. He urged the court to find that the prosecution did not prove their case to the required threshold and proceed to acquit the accused person of the offence herein.

Analysis And Determination

28. The 1st, 2nd and 3rd accused persons are charged with the offence of murder. Section 203 defines the offence of murder and for the offence of murder to be established the following elements have to be proved
- a. proof of death,
 - b. 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
 - c. that the unlawful killing was with malice aforethought.
29. There is no dispute that the deceased herein died. PW5 one Stephen Ngetich the chief of Oldebes location, said he went to Accused 1's house on 24th May 2014 and found the body of the deceased in a grass thatched house in the compound which he learnt was a house of Accused 1 and Accused 2



's children. PW7 Dr. Wangari Wambugu a pathologist at Baringo County, Kabarnet produced post mortem report on behalf of Dr. Titus Ngulungu of PGH, Nakuru who conducted the post mortem at Nakuru Municipal Mortuary on 25th May,2014 and confirmed that the deceased died as a result of severe head injury due to the multiple blunt trauma.

30. What I now wish to consider is whether the accused persons caused the death of the deceased. It is not disputed that the deceased died in the house of Accused 1 and Accused 2. A1, A2 and A4 all said it is A3 now deceased who beat the deceased herein together with others who were not arrested; they said they mentioned the names to police but the police only arrested A3 who is now deceased. PW2 testified that Kiprop had called him to his home to see his brother who was sick. He said he was present at Kiprop's home when the deceased was being beaten and he saw the 4 accused persons inside the house. His evidence was not challenged. Evidence of pw2 places all the 4 accused persons including A3 who is now deceased at the scene.
31. Pw2's evidence corroborates evidence of pw4 deceased's son who said he saw the people who went to collect his mother and took her to A1 and A2's home. He said they were Kurere, Kiprop, Kipkemoi and Mrefu Kipchumba. He said Kurere was calling his mother telling her to go out and accompany them to go and heal their son.
32. I now wish to consider whether accused persons had malice aforethought. Section 206 define malice aforethought as hereunder:-

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances –

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;

Knowledge that the act or omission causing death will probably cause the death of or grievous harm 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;

An intent to commit a felony;

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”
33. From evidence adduced, the accused persons believed that the deceased had bewitched the son of Accused 1 and Accused 2 who was sick. They acted out of anger and desire to have the boy healed. In my view, they did not intend to kill the deceased. They may have wanted to threaten her so as to heal the son from witchcrafty/exorcise witchcrafty if she had indeed bewitched the boy. It is unlikely that they anticipated that the deceased herein would dies
34. In view of the above, I find the accused persons guilty of the offence of manslaughter and jointly convict them accordingly.

Final Orers

35. A1, A2 and A4 are jointly convicted of the offence of manslaughter under section 202 as read with section 205 of the [Penal Code](#).

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 14TH DAY OF MARCH 2024.



.....

RACHEL NGETICH

JUDGE

In the presence of

Mr Kemboi for Accused persons present.

Ms Ratemo for State.

Accused 1, 2 & 4 present.

Karanja, Court Assistant.

