



**Republic v Chepkwony (Criminal Case 19 of 2015)  
[2024] KEHC 2539 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2539 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 19 OF 2015  
HI ONG'UDI, J  
MARCH 13, 2024**

**BETWEEN**

**REPUBLIC ..... STATE**

**AND**

**BERNARD KIPKOSGEI CHEPKWONY ALIAS KIMALEL ..... ACCUSED**

**RULING**

1. Bernard Kipkosgei Chepkwony the accused herein is charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal code. The particulars being that the accused on 22<sup>nd</sup> March, 2015 at Sigotik Location in Njoro sub-county within Nakuru county murdered Geoffrey Kibet Kirui.
2. He denied the charge and the case proceeded to full hearing with the prosecution calling five (5) witnesses. Both parties filed written submissions on whether the accused has a case to answer and I have considered them alongside the evidence adduced.
3. There is no dispute about the fact and cause of death. All the five (5) witnesses have confirmed that the deceased Geoffrey Kibet Kirui died on 22<sup>nd</sup> March, 2015. Dr. Daniel Wainaina (PW1) who did the post mortem found the deceased to have stab wounds, bruises, and a fractured 4<sup>th</sup> rib with a penetrating chest injury which had ruptured the lung. There was bleeding into the chest cavity. He found the cause of death to be the penetrating stab chest injury caused by a sharp object with massive blood loss. He produced the post mortem report EXB 1.
4. Philip Kibii Kilel (PW2) received information of the deceased's death and went to the scene. He explained what he was told about the fight and killing by persons whose names he did not give. The suspect was the accused and his mother was arrested since the suspect was not present.
5. Kiprono Kirui (PW3) is a brother to the deceased. He was only notified of the death and visited the scene.



6. No. 60131 Inspector Sarah Situnwa (PW4) received a report from Schola Jepkemoi on 24<sup>th</sup> March, 2015 at 9am while in her office. The reportee indicated that her brother who had committed a murder in Njoro was on his way into hiding. The suspect was later arrested at Kiobatek Hotel within Ravine township, with the assistance of Schola Jepkemoi. In cross examination the witness said she didn't establish whether a murder had occurred, and even where the suspect was residing. No O.B was captured about the arrest.
7. No. 67817 P. C Sande Tunye (PW5) formerly at Njoro DCI Office said he was in the office on 23<sup>rd</sup> March, 2015 when he received information of the deceased's death. He went to the scene with C.I Mwangangi. They gathered information that there had been a fight between the accused and deceased at a chang'aa den and the latter was stabbed by the former. The murder weapons (Somali sword & rungu EXB3) were handed over to him. A lady by the name Susan Karitu was said to have witnessed the fight, and recorded a statement, but was not a witness in the case. So far this is the evidence adduced by the prosecution in this matter.
8. Section 306(1) of the Criminal Procedure Code provides as follows:

When the evidence of the witnesses for the prosecution has been concluded, the court if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.
9. Oxford Companion of Law at Pg 907 defines "prima facie" in the following terms:

"A case which is sufficient to all an answer while prima, facie evidence such is sufficient to establish a fact in the absence of any evidence to the contrary is not conclusive:
10. Upon analysis of the evidence adduced herein it has clearly come out that the only person who allegedly witnessed a fight between the accused and deceased was one Susan Karitu. PW5 indicated in his evidence in cross examination that despite this lady having witnessed the fight between the accused and deceased and despite him having recorded her statement she was not a witness in the case. It is not clear why the lady who was alleged to be an eye witness was not considered and called as a potential witness in this case.
11. According to PW4 she was in contact with the accused's sister (Schola) who reported to them the murder in question. She even assisted them arrest the accused. To my surprise PW4 a whole inspector of police never bothered to find out anything about the murder which did not take place under jurisdiction. She did not even confirm that any murder had occurred and she never booked the accused for murder in their stations O.B.
12. It is also clear that she never recorded a statement from this crucial witness called Schola Jepkemoi. The result was that Schola was never considered as a prosecution witness in this case.
13. Philip Kibii Kilel (PW2) and P. C Sande Tunye (PW5) only told the court what other people told them which was indeed hearsay evidence. PW5 said he did not even know the person who gave him the weapons (knife & rungu) he produced in court as EXB 2 & 3. The said weapons had no blood stains and were never tested for finger-prints.



14. The evidence before this court is so distorted and cannot even be considered as circumstantial evidence as submitted by prosecution counsel Mr. James Kihara. In the case of Republic Vs Michael Mucheru Gatui [2002] eKLR Etyang J states thus:

“First and foremost, it is trite law that in cases dependent on circumstantial evidence the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, all facts so established should be consistent only with the hypothesis of the guilt of the accused, and the circumstances should be of a conclusive nature and tendency and should be such as to exclude every hypotheses but the one proposed to be proved”.

This statement by the high court covers all that one needs to take into account before declaring any evidence as being circumstantial.

15. The accused herein as rightly submitted by the defence counsel M/s Sabaya was arrested and charged due to suspicion by members of the public, Schola Jepkemoi and Susan Karitu none of whom came to testify.

16. It was stated in the case of Sawe V Republic [2003] KLR 364 that:

5. The circumstantial evidence in the instant case did not irresistibly point to the appellant to the exclusion of all others so as to justify conviction.
6. The evidence used to convict the appellant did not satisfy the legal requirements of circumstantial evidence to warrant or justify the conviction of the appellant.
7. Suspicion, however strong, cannot provide the basis of inferring guilty which must be proved by evidence beyond reasonable doubt.

17. I am duly guided by the above decisions as I make this determination. In conclusion I find that the prosecution has failed to prove a prima facie case against the accused person. For my part I find him not guilty and acquit him under section 306 (1) of the Criminal Procedure Code

18. Orders accordingly.

**DELIVERED, DATED AND SIGNED THIS 13<sup>TH</sup> DAY OF MARCH, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG’UDI**

**JUDGE**

