



**Republic v Eshiteti (Criminal Case 06 of 2018)
[2024] KEHC 2585 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 06 OF 2018
PJO OTIENO, J
MARCH 12, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

BENJAMIN ESHITETI ACCUSED

RULING

1. The Accused faces the charge of murder contrary to Section 203 as read with 204 of the [Penal Code](#). The particulars of the offence were given to be that on the 24.10.2017 at an unknown time, at Matioli Location, Lurambi Division of Kakamega Central District within Kakamega County, he murdered Rayson Okinda Alias Uppepo.
2. When the charges were read out to him he denied the charges and a trial ensued at which the Prosecution called six witnesses towards the discharge of its duty to prove a prima facie case against the Accused.
3. PW1, PW2 & PW3 were sisters and son to the deceased. The three received telephone calls and a text message, at different time, with information from the named callers, that the deceased had died. They later visited Kakamega General Hospital mortuary and observed the body of the deceased which had visible injuries including broken limbs. None of the three was able to say how the deceased died but alluded to the existence of bad blood between the deceased and the Accused over a piece of land.
4. PW6, was a neighbor to the deceased and said that the deceased and Accused lived in the same compound. On the material day 23.10.2017 he was called by one, Emmanuel Mavani a son to the Accused, who told him that the deceased wanted to see him. He went with the said Emmanuel to the house of the deceased and found the deceased on the floor dead, with blood on his body and a panga besides the body. The Accused was however not there. The witness did not know when and how the deceased died.



5. To the Court, the evidence of PW1, 2, 3 & 6 presents no iota of evidence to connect the Accused with the death of the deceased.
6. The evidence of the PW4, the Pathologist show that the deceased died as a result of multiple injuries following blunt force trauma following assault. His evidence demonstrate, on prima facie basis that the deceased died out of an unlawful act of assault.
7. The other witness, PW5 was the investigating officer. His evidence besides picking the body, taking it to the mortuary, arranging for post-mortem examination and recording statement, was that the Accused had been reported to have issued death threats to the deceased and his children and that the manner the Accused reported the death was suspect. He added that after the report and recording of statement, the Accused was uncooperative and that as no neighbor was willing to record statement and give evidence. He conceded that there was no eye witness to the death of the deceased but urged the Court to consider the fact that after the death of the deceased and even before burial the Accused destroyed the house of the deceased's son.
8. Having anxiously examined and appraised the evidence by prosecution given by the six witnesses, the Court is clear in its mind that there is no direct evidence connecting the Accused to the offence. That leaves the Court with possibilities surrounding circumstances and to be convinced that in totality, the circumstances, point unerringly to the connection and guilt of the Accused over the death with no other explanation. In law, it is trite that from the prosecution to successfully rely on circumstantial evidence to achieve a conviction, the evidence must be so tight as to leave no other explanation but the guilt of the Accused.
9. At the close of the Prosecution's case, the Court is duty bound to analyse the entire evidence presented and to determine whether or not the Prosecution has established a case that would entitle it to enter a conviction even if the Accused elected to remain silent without offering any evidence on his defence. The kind of evidence that suffices as prima facie in criminal trial must be the kind that proves all the ingredients of the offence charged.
10. Being murder in this case, it was thus imperative and a legal duty that at the close of the prosecution's case, there be proof that the deceased is dead; that his death was out of the unlawful acts or omissions by the Accused and that the Accused in causing the death was accentuated by malice aforethought.
11. In this case, there being no direct evidence, the evidence to suffice for a prima facie case must be the kind that brings all the surrounding circumstances to unerringly point to the guilt of the Accused with no other possibilities or explanations. The evidence led to qualify as reliable circumstantial evidence must exclude possibilities of a fabrication to cast suspicion upon the Accused¹.
12. Circumstantial evidence must be evidence as contradistinguished for mere suspicion. The Court of Appeal in a very long line of decision has established that for circumstantial evidence to be relied upon to support conviction, it must be cogent, firm, unerringly point to the guilt of the Accused and leaving no co-existing circumstances which will work to weaken the conclusion of guilt².
13. In this matter, it coming from the Investigating Officer that the only reason the Accused was charged was the previous reports of threat by the Accused against the family of the deceased fall too far short of the level expected of circumstantial evidence. Suspicion however strong and grave cannot be the basis for a conviction in a criminal trial.

¹ *Tepe v Republic* [1952] AC at P. 489

² *Mwangi v Republic* [1983] KLR, *Musoke Simon v Republic* [1958] EA 715 and *Mary Wanjiku Gichira v Republic* CA.CRA. No. 17 of 1998



14. The Court thus find that the Prosecution has not established a prima facie case against the Accused to merit him being put on his defence. It is thus found and held that there is no evidence that the Accused murdered the deceased and the Court thus adjudge him not guilty. He is acquitted under Section 306 of the *Criminal Procedure Code*.

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 12TH DAY OF MARCH, 2024.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Ms. Chala for the Prosecution

Mr. Mbaka for the Accused

Court Assistant: Polycap Mukabwa

