



**Director of Public Prosecutions v Kirimi (Criminal Case
E018 of 2020) [2024] KEHC 4739 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4739 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E018 OF 2020
TW CHERERE, J
APRIL 18, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

PETER KIRIMI ACCUSED

JUDGMENT

1. On the night of 11th October, 2020, David Baariu’s body was found lying in a pool of blood on a farm next to Accused’s home. When Andriano Mwenda, Francis Matheta Rukunga and Jeremiah Karimi arrived at the scene at about 10.30 pm, they found a large crowd among them Accused herein. Both stated that there was a panga lying next Baariu’s body that had numerous cut injuries.
2. Baariu’s wife stated that she parted ways with her husband at about 06.00 pm on 11th October, 2020. At about 10.30 pm, she received information that Baariu had been attacked by Accused. She went to Accused’s farm about 2 km from their home and identified her husband’s body.
3. CPL Thomas Muli and his colleagues visited the scene of crime on the material night, arrested Accused and removed Baariu’s body to the mortuary. He recovered a panga and a stick which were suspected to have been the murder weapons.
4. A postmortem dated 22nd October, 2020 reveals that Baariu suffered cuts wound through nasal bridge involving both eyes and exposing the nasal pharynx, multiple cut wounds on the scalp, left ear, right temporal region, deep cuts on skull bone with multiple compound fractures depressed into the brain and cut brain tissue with extensive hemorrhage from which Dr. Kaberia formed an opinion that Baariu died of exsanguination secondary to multiple cut wounds.
5. Accused denied committing the offence and stated that three men attempted to break into his house. He raised an alarm and neighbours went to his rescue. Baariu’s body was later found on his farm. He stated that he suspected that the rescuers beat up and killed Baariu.



Analysis and Determination

6. Our Criminal Law recognizes the sanctity of life by prohibiting the unlawful killing of another human being. The right to life is entrenched in Article 26 of the Constitution.
7. At the trial, the burden is on the prosecution to prove that Accused was a significant contributing factor of the deceased death. It is trite law that the burden to prove the guilty of an accused person lies throughout on the prosecution. The standard of proof is guilt beyond reasonable doubt. An accused person assumes no burden to prove his innocence. Whatever defence he may raise to the criminal charge through sworn evidence, or unsworn statement in the dock, or through the cross examination of prosecution witnesses, is to be considered only on a balance of probabilities, and if it is found to be probably true, then the benefit of doubt raised is to be given to that accused, who shall then be acquitted. It is only when the accused's defence is rejected, and when the prosecution has proved the guilt of that accused, beyond reasonable doubt that he shall be convicted.
8. I have considered the evidence on record and the issues for determination is whether the DPP has proved the three main ingredients of murder i.e the death, that Accused person/s committed the murder and that they were actuated by malice. (See Anthony Ndegwa Ngari v Republic [2014] eKLR).

Death

9. That Baariu died was confirmed by a postmortem form PEXH. 1 which reveals that he died of exsanguination secondary to multiple cut wounds.

Proof that accused person committed the unlawful act which caused the death of the deceased

10. The onus to adduce evidence under Section 107 (1) of the Evidence Act to establish the guilt of the accused remains on the prosecution throughout the trial. The degree of proof is one that is beyond reasonable doubt within the scope of the principles in Woolmington v DPP (1935) AC 485 and as stated by Lord Denning J in Miller v Minister of Pensions (1947) 2 ALL ER 372

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability proof of beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Law would fail to protect the community if it admitted fanciful possibilities to defect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not in the least probable, then the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

11. None of the prosecution witnesses stated that they saw Accused or anyone else kill Baariu. From the evidence by the prosecution witnesses, I gathered that Accused was suspected to have killed Baariu for the reason that his body was found on his farm.
12. Accused stated that Baariu might have been killed by the people that went to his rescue when he raised an alarm after some people attempted to break into his house. The panga that was alleged to have been recovered from Accused but which he denied was not subjected to scientific analysis to determine that it was the murder weapon. Accused having denied killing Baariu, he cast doubt on the prosecution case that was mainly based on suspicion.
13. Whereas there is strong suspicion against the Accused, suspicion alone, however strong, cannot be a basis for a conviction. The prosecution has to prove its case against the accused beyond any reasonable



doubt. I should conclude this judgment by citing the holding of the Court of Appeal in *Erickson Chengoli Wanyonyi v Republic* (2018) eKLR, where the court said: -

“We find that there was no circumstantial evidence adduced against the appellant that could lead to the inescapable conclusion that he was guilty of the murder of the deceased. All there was, was suspicion, but a court of law cannot act on mere suspicion no matter how strong. The appellant’s conviction was therefore not safe.”

14. The prosecution having failed to prove actus reus’, it would be futile for this court to delve into the issue of malice aforethought.
15. From the foregoing analysis, I find that Accused not guilty of the offence of murder Contrary to Section 203 as read with Section 204 of the *Penal Code* and hereby acquit him. He shall be set at liberty unless otherwise lawfully held.

DELIVERED AT MERU THIS 18TH DAY OF APRIL 2024.

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For the Accused persons - Ms. Kerubu hb for Mr. Ngugi Advocate

For DPP - Ms. Rita Rotich (PC-1)

