



**Republic v Samoei & another (Criminal Case 18 of 2023)
[2024] KEHC 3766 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 18 OF 2023**

**RB NGETICH, J
APRIL 18, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JIM KIPNGETICH SAMOEI 1ST ACCUSED

FAITH JEBET TOO ALIAS EMMY 2ND ACCUSED

JUDGMENT

1. The accused persons have been jointly charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars were that accused persons between the 8th and 9th day of March, 2018 at unknown time at Chemogoch Sub-location in Mogotio South Sub- County within Baringo County jointly murdered Erick Ngetich Kipkoech.
2. The accused persons pleaded not guilty to the charge and the matter was set down for hearing. The prosecution availed 7 witnesses to prove the charge against the accused. Upon the close of the prosecution’s case the court found that a prima facie case had been established against the accused and proceeded to place them on their defence.

Prosecution’s Case

3. PW 1 to testify Leah Chepkemboi Ngetich testified that on 24th February,2018 at about midday, she was at home when the deceased Erick Kipkoech Ngetich who was his brother was passing by the road. She invited him for lunch. They took lunch together then he left and when he reached the gate, he went back and told her that there was something he wanted to tell her. She said the deceased told her that if she heard that he had died, she should look for Jim Samoei. When she wanted to get clarification, the deceased waved at her and took off. She said she went to talk to her other Joseph Ngetich who told her he would look for the deceased.



4. She said on 2nd March,2018, she talked to the deceased and tried asking for clarification on what he had said but the deceased said what he had said was true. on 10th March, 2018 the village elder, a teacher and a security officer went to inform her that the deceased Erick had been killed and his body had been found in Jim's farm. She later recorded her statement. She said the deceased used to be a drunkard.
5. PW2 Jennifer Chemolel Koech stated that on 27th March,2018 at about 7:00 am Emily Jebet left in her house a green jacket which she said she had picked. She later learnt the jacket belonged to the deceased and Emmy Jebet was later arrested. She however said the jacket was not any of the two jackets she was shown in court. She said Emmy jebet is Accused 2 herein.
6. PW3 Joseph Ngetich testified that on 5th March,2018 at about 7:30 am, he was at home when his deceased brother Erick Kipkoech Ngetich arrived and asked how their mother was doing then asked him to look after his children and when asked why, he said he did not know whether he would come back and declined to explain why. He said on 7th March,2018, he went to his mother's place but did not find the deceased and on 10th March,2018 at about midday, the Assistant Chief and two others informed him that his brother Erick had died and asked them to go and see the body.
7. He said the doctor informed them that he had been strangled. He said Erick and Jim Samoei were great friends; that they used to walk together. He said the day the deceased went to see him, he had a green jacket. PW4 Kiptim Kiprotich testified that the deceased Erick went to ask for payment for casual work he had done for him and he was wearing a green jacket and green trouser. He said the jacket was big and it is not the one he was shown in court. That the trouser was also green. He said he was a bit drunk and that he never saw him again until he learned that he had died.
8. PW5 Lawrence Cheburet who was the area senior Assistant Chief testified that on 10th March,2018 at around 12 noon, he was at Mogotio when he received a call from a resident of his location informing him that Erick Ngetich was found dead. He went to the scene to confirm and called OCS Mogotio who went to the scene with police. He said the deceased's body had bruises on the stomach and the ear. He said the scene appeared like there was struggle. He later learnt that the jacket the deceased's jacket was wearing that day was worn by A1's wife Emmy Jebet. He positively identified the green jacket in court. He said on 16th March 2018 he accompanied 4 police officer to go and arrest accused 1.
9. Pw6 Daniel Kibichi Tanui said on 9th March, 2018 at around 9:00 he his son aged 8 years went and informed him that there was a person lying about 300 metres from his house. He went there and identified him as his neighbour Erick Ngetich and he informed his brother who called the chief who visited the scene with police the same day. He said there was a carrier bag for flour and safari boot at the scene but he did not know where they were taken. He said he was not present when accused persons were arrested.
10. Pw7 No. 240078 IP Sarah Bogosh who was the investigating officer said the deceased informed his sister and brother Joseph Ngetich pw3 and Leah Ngetich that his life was in danger and if he died, they take care of his children and from the information he mentioned Accused 1. He said the deceased was last seen alive in Accused 1's house. She further said Accused 2 was wearing a jacket the deceased been seen wearing. She identified a faded green jacket in court.
11. She stated that she arrested Accused 1 and Accused 2 but there was no much evidence to link Accused 2 to the murder and they released her on 21st march 2018. she said A2 used to work in the farm and she went through Sila's home and asked for the jacket to be kept for her.



12. That Silas identified the faded green jacket as belonging to deceased. That they recovered the missing jacket from Accused's 2 home and she was not able to explain how she got the jacket. That accused 2 is a wife to Accused 1.
13. She testified that she relied on information from brother and sister of deceased who said deceased informed them the 1st accused had threatened to kill him. She stated that Faith was in the home when the jacket was recovered and Accused 1 had been arrested. That accused 2 never explained how she came to be in possession of the jacket and 3 people identified the jacket as belonging to the deceased. She said Post mortem was done on 14th March, 2018 by doctor Arafa.

Defence Evidence

14. DW1 Jim Kipngetich Samoei testified that on 8th March, 2018, he was on duty herding carmels for a Somali. He stated that Erick Kipngetich Kipkoech the deceased herein was his neighbour. He said he used to herd carmels and arrive home in the evening. He said he worked about 2 km away and did not know anything until when police went to arrest him around 10th or 11th March 2018. He stated that he did not know there was someone killed near their farm.
15. He stated that the body was at the end of their land and it was found on 8th March 2018 when it had already decomposed. He said on Saturday 9/10th March 2018, he was on duty in the land owned by his Somali employer and said he did not have any problem or conflict with the deceased. He said he later asked why they suspected him and the chief informed him that it is because the body was found in their land. He admitted that the land where the deceased's body was found in was his. He testified that the green jacket was taken from his wife's grandmother not his house and that he is not allowed to enter/ go where he married from unless he is invited.
16. Accused 2 Faith Chebet Too said she worked in a company owned by European person managed by Gideon. She stated that she was not at home on the day Erick died although he knew him well since he was their neighbour. She confirmed that Accused 1 is her husband. She stated that she used to leave at 6 p.m before her husband left and sometimes, she would arrive earlier than him and there are times he would wait for her on the road. She stated that she did not have a child with Accused 1 and that she left her child at her home. That she started living with Accused 1 from 2018 and on the 14th March, 2018, she was arrested and taken to police station with Accused 1 and on Friday she was released. After being released, she went to her home and in on Tuesday morning, she took her child's jacket. She said she was given the jacket by his uncle's child. She stated that she left it at Sila's place and collected it in the evening; and in the evening chief and 2 police officers went to ask her about the jacket. She said she told police about the jacket and they said the deceased had a jacket like that one. She said she told police the jacket was for a child but she was not asked to take the child to police.

Analysis And Determination

17. I have considered evidence adduced. For the offence of murder, the prosecution is required to prove that the deceased died, whether the accused caused the death and whether there was malice aforethought.
18. The prosecution witness Testified that they found the deceased lying dead at the scene. Postmortem report was produced by consent and from the report, doctor Arafa upon performing post mortem formed an opinion that the cause of death was strangulation and severe head injury possibly due to blunt object.



19. From evidence adduced, no one witnessed the killing of the deceased. He was found lying dead. Pw3 testified that the scene was disturbed evidence of struggle. The doctor's opinion that the deceased died of strangulation and evidence of struggle at the scene confirm that the deceased was killed. The question is whether there is circumstantial evidence linking the accused persons to the death of the deceased. From evidence adduced, the deceased had fears that he would die. His sister Pw1 and his brother Pw3 said the deceased asked them to take care of his children. On being probed to explain why, the deceased did not explain. The investigating officer Pw7 said Accused 1 was mentioned as a person who the deceased had mentioned to Pw1 as a person who was likely to kill him. However, besides the mention of Accused 1's there is no other tangible evidence linking Accused 1 to the killing of the deceased.
20. In respect to accused 2, she was arrested because of a jacket alleged to have been worn by the deceased. Pw2 a neighbour to deceased's family and accused persons said accused left a green jacket in her place in the morning and later collected. However, while testifying in court she said the jacket A2 gave her was none of the two jackets shown to her in court. On the other hand, A2 in her defence said the jacket was for a child. It seems the police did go further in investigations to establish ownership of the jacket. Identification of the jacket raised doubt as to whether it was the jacket the deceased was seen wearing before he was found dead. The doubt on ownership of the jacket was not erased and in my view, the doubt should go to benefit Accused 2. The other evidence adduced was that the body was found in Accused 1's land near the boundary but besides that, there is no tangible evidence on A1's involvement in the death of the deceased's herein.
21. From the foregoing, no sufficient evidence was adduced to link the accused persons who lived as husband and wife to the death of the deceased's herein.

Final Orders: -

22. Accused 1 and Accused 2 are hereby acquitted under section 215 of the [Criminal Procedure Code](#).

JUDGMENT DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 18TH DAY OF APRIL 2024.

.....

RACHEL NGETICH

JUDGE

In the presence of:

CA Karanja.

Ms. Ratemo for state.

Accused 1 present.

Accused 2 present.

