



REPUBLIC OF KENYA



**KENYA LAW**  
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**Director of Public Prosecutions v Kobia & another (Criminal Case  
44 of 2018) [2024] KEHC 4881 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4881 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 44 OF 2018  
TW CHERERE, J  
MAY 9, 2024**

**BETWEEN**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... PROSECUTOR**

**AND**

**GEROBACIO MATHETA KOBIA ..... 1<sup>ST</sup> ACCUSED**

**WILLIAM MURIKI MUREFU ..... 2<sup>ND</sup> ACCUSED**

**JUDGMENT**

1. Gerobacio Matheta Kobia and William Muriuki Murefu (Accused 1 and 2 respectively) were charged with others not before the court with the offence of Murder Contrary to section 203 as read with section 204 of the *Penal Code* in that on 11<sup>th</sup> March, 2018, they murdered one Julius Kirimi.

**Prosecution case**

2. PWI Johana Matheta testified that on 11<sup>th</sup> March, 2018 about 09:00 pm four men namely Raphael Angaine, Mwenda Angaine, Kariki Mwiraria and Matheta Gerbasio whom he knew well because they were his neighbours went to his house in company of Julius Kirimi (Kirimi) and informed him that they had been sent by the clan to arrest him. He stated that after they tied his hand with ropes, they passed by Kirimi's house where his hands were also tied in the presence of his wife and children. That together with Kirimi they were escorted to the forest and beaten up being left for dead. That at some point during the incident, Kirimi was taken away from where the witness was and after the witness was released, he learnt that Kirimi had died. The witness stated he identified Raphael Angaine, Mwenda Angaine, Karii Mwiraria and Matheta Gerbasio because there was electric lighting outside his house where they stood when they picked him from his house. He stated that Accused 2 was also known as Kiriaki.



3. PW2 Agnes Kambura w/o Kirimi stated that her husband was picked from home by Matheta, Mwenda, Raphael and Kirianki in the presence of Johana Matheta on the night of 11<sup>th</sup> March, 2018. Later that night, Johana Matheta who was injured was rescued and he directed her to the place Kirimi had been left and she found him seriously injured. She organized for Kirimi to be taken to hospital where he died while receiving treatment. The witness stated she identified Accused persons and others that picked Kirimi from home because they were her neighbours and there was solar lighting outside his house where they stood when they picked Kirimi from his house.
4. Accused persons were subsequently arrested and charged. A postmortem tendered as PEXH. 1 revealed that Kirimi suffered massive bruising and swelling of legs and died of cardiopulmonary arrest due to pulmonary thrombosis due to blunt heavy trauma of both legs with resultant oedema.

#### **Defence case**

5. In his sworn defence, Accused 1 stated that Kirimi was known to him. He recalled that on 11<sup>th</sup> March, 2018 about 06:00pm, Raphael Angaine and Mwenda Angaine went to his home and requested him to accompany them. That they walked about 8km to a place called Kwa DC and found Kirimi whose hands were tied surrounded by about 60 people. That Raphael and Mwenda again escorted him and Kirimi to the home of Kirimi where Raphael informed the wife of Kirimi that he would see Kirimi for the last time. That when his pleas for Kirimi's release were not headed, he went away and later learnt Kirimi had died.
6. In his sworn defence, Accused 2 confirmed that Kirimi was known to him but denied having been at the scene that Kirimi was picked from his home or at the place that he was subsequently killed.

#### **Analysis And Determination**

7. I have considered the evidence for the prosecution and for the defence. At the trial, the burden is always on the prosecution to prove that Accused was a significant contributing factor of the deceased's death and an accused person assumes no burden to prove his innocence. Any doubt raised by an accused person is to be given to that accused.
8. In *Republic v Andrew Muecha Omwenga*, Maraga J (as he then was) considered the provisions of section 203 of the *Penal Code* and expressed himself as follows with respect to what the prosecution must prove to establish the offence of murder:

“It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission. There are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought.”

#### **a.The death of the Kirimi**

9. That Kirimi suffered massive bruising and swelling of legs and died of cardiopulmonary arrest due to pulmonary thrombosis due to blunt heavy trauma of both legs with resultant edema was confirmed the postmortem form PEXH. 1.

#### **b.Proof that Accused persons committed the unlawful act which caused the death of the Kirimi**

10. In order to establish the accused's culpability, the prosecution relied on the evidence by PW1 and PW2.



1. The degree of proof in criminal cases was properly established in the classicus English case of *Woolmington v DPP* 1935 A C 462. Similarly, in *Bakare v State* 1985 2NWLR, Lord Oputa of the Supreme Court of Nigeria adopted the principle as follows at page 465: -

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability”. (Emphasis added).
12. Concerning Accused 1, the two main prosecution witnesses identified him as one of the persons that picked Kirimi from his house on the material night. Although Accused 1 denied that he was present when Kirimi was picked from his home, he confirmed that he was in company of persons that escorted Kirimi to his house to bid his wife and children goodbye on the material night and that was the last time Kirimi was seen alive.
13. Accused 1 placed himself squarely at the scene of crime thereby corroborating the evidence by the two main prosecution witnesses that he was one of the persons who was last seen with deceased alive. Additionally, Accused 1 was identified by the 1<sup>st</sup> prosecution witness as one of the persons that assaulted him and Kirimi subsequent to which Kirimi died.
14. From the foregoing, I am satisfied that the prosecution case that Accused 1 was among the persons that assaulted Kirimi out of which he died has been proved beyond reasonable doubt.
15. Having considered all the evidence in this case, I find that the defence by Accused 1 does not raise any doubt on the well corroborated prosecution case. Accused 1’s defence is considered and rejected.
16. Concerning Accused 2, the two main witnesses did not name him as having been among the persons that picked Kirimi from home or among those that assaulted him. Evidence that he was also known as Kirianki or Kililiki who one of the suspects was not proved and his defence of alibi cast a reasonable doubt on the prosecution case.

### **Malice aforethought**

17. In *Morris Aluoch v Republic* Cr. Appeal No. 47 of 1996 [1997] eKLR), the Court of Appeal cited the case of *Rex v Tubere S/o Ochen* (1945) 12 EACA 63 with approval where it was stated as follows:

“If repeated blows inflicted the injury, then malice aforethought could well be presumed.....”.
18. In this case, medical evidence on record demonstrates repeated heavy blows on Kirimi’s legs leading to bruising and swelling as a result of which he died of cardiopulmonary arrest due to pulmonary thrombosis (coagulation of blood).
19. The injuries inflicted on Kirimi were severe and this leads the court to the conclusion that Accused 1 and others that assaulted Kirimi were actuated by malice for Accused ought to have known that such grave injuries could possibly cause grievous harm or the death of Kirimi.



20. Right to life is protected by article 26 of the Constitution and can only be taken away under the circumstances provided therein. It therefore means that every homicide is unlawful unless authorized by law or excusable under the law. (See *Guzambizi Wesonga v Republic* [1948] 15 EACA 63). The death of Marangu was in the circumstances of this case intentional and unlawful.
21. In the end, Accused 1 is found guilty of murder Murder Contrary to section 203 as read with section 204 of the Penal Code and he is convicted under section 322 (2) of the Criminal Procedure Code.
22. Under the provisions of section 322 (1) of the Criminal Procedure Code, Accused 2 is found not guilty. He shall be set at liberty unless otherwise lawfully held.

**DELIVERED IN MERU THIS 09TH DAY OF MAY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

Accused 1 - Present

Accused 1 - Present

For the Accused persons - Ms. Thuo Advocate

**For the DPP - Ms. Rotich (PC -1)**

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