



**Republic v Cheren (Criminal Case E038 of 2023)
[2024] KEHC 5374 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E038 OF 2023**

**DK KEMEL, J
MAY 17, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DANIEL KIBET CHEREN ALIAS AYEUSI ACCUSED

RULING

1. The accused herein Daniel Kibet Cheren alias Nyeusi has been charged with an offence of murder contrary to Section 203 as read with section 204 of the Penal Code. The particulars are that on the 14th day of September, 2023 at Chesikum village Chepwek sub – location Cheptais sub County within Bungoma County jointly with otherwise not before the court murdered Fred Barakacha Cheren.
2. The prosecution called eight (8) witnesses in support of its case.
3. The Prosecution’s case is that on the material date at 9.00 pm the deceased was at his house with his wife taking tea when the accused in company of others stormed the house and stabbed him with a sword. The wife of the deceased raised alarm attracting the villagers who rushed to the scene and rushed the deceased to hospital but unfortunately he passed on while undergoing treatment. Police visited the scene and conducted investigations. The accused was apprehended by members of public and handed over to the police at Chepkube police station. The murder weapon was recovered. An autopsy was later conducted on the body of the deceased by Dr. Elly Kiplimo Kosegy (PW8) who formed the opinion that the cause of death was respiratory arrest from penetrating stab wounds. He produced the post mortem report as exhibit 2.
4. At the close of prosecution’s case learned counsel for defence filed submissions dated May 16, 2024 while the counsel for the prosecution opted to rely on the evidence so far tendered at this stage of the proceedings.



5. I have considered no evidence presented by the prosecution at this stage of the proceedings as well as the submissions tendered. I find the only issue for determination is whether the prosecution has established a *prima facie* case against the accused herein to warrant him to be called upon to make a defence. It is trite law that prior to placing an accused on his /her defence, the prosecution is required to have established a *prima facie* case against such accused person. A *prima facie* case is established when the evidence adduced is such that a reasonable tribunal properly directing its mind to the law and evidence placed before it can convict an accused if no explanation is offered by the defence to the control. See *Bhatt v Republic* (195) EA.
6. The prosecution in order to sustain a conviction in a charge of murder must prove the ingredient of the offence which are inter alia; that there was death; that the death was unlawfully caused and with malice aforethought; that the accused directly or indirectly participated in the commission of the crime.
7. As to the fact of death, the death evidence of the pathologist (PW8) is quite sufficient and that the cause of death was established to be respiratory arrest from penetrating stab wound.
8. As to the unlawful nature of the death, it is trite that all homicides are deemed unlawful unless caused accidentally or authorized by law. The deceased then aged 43 years was in good health and did not in any way contribute to his own death and thus the death was unlawful.
9. As to the issue of malice, the injuries found in the body of the deceased and the cause of death left no doubt that the assailant desired the death of the deceased or that the injuries would lead to his death. Clearly malice aforethought (*mens rea*, had been formed or configured up in the mind of the assailant prior to the incident.
10. As regards the identity of the perpetrator. It is noted from the evidence of PW1 that the deceased was in his house around 9.00 pm with his wife and taking when the accused herein while in company of Protus stormed into their house and seized the deceased and then the accused stabbed him with a knife. An alarm was raised which forced the accused and his companion flee from the scene. The accused was later apprehended at Kipsigon area and handed over to Chepkube police station. The knife which was the murder weapon was recovered and positively identified by PW1. It transpired from the evidence that the accused had been a neighbour to the deceased and the witnesses and hence he was not a stranger to them. The accused was thus placed at the scene of crime and must now offer an explanation as to how the deceased met his death.
11. In view of the foregoing, I find that in the absence of any explanation to the contrary from the defence the evidence so far tendered by the prosecution has placed the accused at the scene of crime and that he had an opportunity to harm the deceased and that there is reason to believe that he had a hand in the death of the deceased. Hence were the accused to elect to remain silent in defence the evidence tendered at this stage is sufficient to sustain a conviction against him. Having established that the accused was placed at the scene of crime, I find that he must now offer an explanation as to how the deceased met his death.
12. In the result, it is my finding that the prosecution has established a *prima facie* case against the accused herein to warrant him to be called upon to make a defence. I find the accused Daniel Kibet Cheren alias Nyeusi has a case to answer and is now called upon to elect to conduct his defence in accordance with the provisions of Section 306 (2) of the [Criminal Procedure Code](#).

DATED AND DELIVERED AT BUNGOMA THIS 17TH DAY OF MAY 2024.

D KEMEI

JUDGE



In the presence of :-

Daniel Kibeti For accused

Wekesa for Muyala for accused

Miss Kibet for prosecution

Kizito Court Assistant

