



Republic v Chesire (Criminal Case 56 of 2019) [2024] KEHC 5171 (KLR) (17 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 56 OF 2019**

HI ONG'UDI, J

MAY 17, 2024

BETWEEN

REPUBLIC STATE

AND

CLEMENT KIPROP CHESIRE ACCUSED

RULING

1. Clement Kiprop Chesire the accused herein stands charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that the accused on the night of 25th and 26th day of November, 2019 at Kaptembwo Location, Kaptembwo sub-location, Nakuru West sub-county within Nakuru County, murdered Bernard Kibet Bii.
2. The accused denied the charge and the matter proceeded to full hearing with the prosecution calling five witnesses. From the evidence on record this incident occurred at night.
3. PW2 No. 91331 CPL Bernard Kirui then attached to DCI Nakuru testified that on 26/11/2019, he was on duty when he received a call of a murder incident from the OCS Kaptembwo police station. He went with an Inspector Musila. Reaching the scene, they found one person injured and there was a dead body of one Bernard Kibet who was a KDF officer. They arrested the accused, from a bar in Nakuru town after seeing his photo on the CCTV. He confirmed attending the Post-mortem.
4. PW3 Dr. Sila Kisingu a consultant pathologist did the Post-mortem on 3/12/2019. It was his evidence that the deceased had several injuries all over his body. The cause of death was cardiopulmonary arrest due to severe asphyxia with severe airway inlet injuries, severe head injuries and multiple blunt force trauma. The Post-mortem report was produced as PEXB1.
5. PW1 Eric Kiprotich Langat was at Evans bar drinking from 7.00pm upto 11pm on 25/11/2019. When the said bar closed he went to Kaptembwe bar where he drank until the bar closed. He witnessed a fight after a certain lady came to the bar. The security man came and removed the fighters. He never identified those who were fighting.



6. PW4 Simon Kipchirchir Korir runs Kaptembwa Inn. On 25/11/2019 between 8pm – 9pm he was at the business place, he left the hotel at 9pm and went home, leaving 3 employees there. On 26/11/2019 morning he passed at the business place and all was well and he left for his work place. While at the office at 2 pm a customer told him of a fracas at his business the previous night.
7. He inquired from his employee Mitchel who informed him of a report from the police of a person who had been killed. Shortly thereafter, the police from Kaptembwa police station came to interview him. He gave them the names of his employees whom the police wanted. They were interrogated save for Rono (security man) who only appeared after months. He denied that the deceased died at the club.
8. PW5 Dorcas Chepchumba one of PW4's employees said she was at the club on 25/11/2019 from 4pm – 11pm. On that night she said there were male customers who were joined by one lady. Later two of the men started fighting. She called Rono (security man) who came and removed the two fighters and they left. The lady took off when the two men started fighting.
9. She said she did not know the customers who were at the club that night. She however identified the accused as one of the first three (3) customers to come to the club. The two who fought had found the first three (3) customers there. She knew the accused's name as Chesire at the police post. While at the club he had been slapped on the cheeks but he did nothing. After the customers left they locked the place.
10. In cross examination she said she only learnt of the death on 27/11/2019. She added that the deceased had come to the club with his friend with whom he left. He never left with the accused. She did not see in court the person who left with the deceased. She also did not see the accused do anything wrong at the club.
11. From the evidence adduced I find that the fact and cause of death have been established.
12. What remains hanging is who committed the heinous killing. None of the witnesses has identified the accused as the killer or the role he played in the killing. Even PW2 who arrested the accused did not explain to the court why he arrested him. All he says is that he saw the accused's photos in the CCTV. He does not say what he saw the accused doing from the CCTV The said photos were not produced as evidence before the court.
13. The prosecution has failed to prove to this court why the accused was arrested and charged. If he were placed on his defence and he elected to remain silent, the evidence before this court would not sustain a conviction against him.
14. For my part, I find no Prima Facie case established against the accused. I therefore dismiss the charge against him and acquit him under section 306 (1) of the [Criminal Procedure Code](#). He shall be released unless otherwise lawfully held under a separate warrant.
15. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 17TH DAY OF MAY, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI
JUDGE

