



**Republic v Njoroge & 2 others (Criminal Case 52 of 2016)  
[2024] KEHC 5081 (KLR) (Crim) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5081 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL CASE 52 OF 2016**

**LN MUTENDE, J**

**MAY 6, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**PETER NJOROGE ..... 1<sup>ST</sup> ACCUSED**

**HARUN MUNGAI WANGARE ..... 2<sup>ND</sup> ACCUSED**

**HURN MUNGAI KANGETHE ..... 3<sup>RD</sup> ACCUSED**

**JUDGMENT**

1. Peter Njoroge, the 1<sup>st</sup> Accused; Harun Mungai Wangare, the 2<sup>nd</sup> Accused; and Harun Mungai Kangethe, the 3<sup>rd</sup> Accused, are charged with murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars of the offence are that on 24<sup>th</sup> June, 2016 at Karinde Centre along Dagoretti Road within Nairobi County jointly murdered Charles Mukundi Mwaniki (Deceased)
2. The deceased herein was a suspect, booked at Karen Police Station for the offence of Burglary and stealing. Following interrogation, he mentioned names of his alleged accomplices and led the police to where they could be found. Having identified three (3) of them the accused herein, they were handcuffed in pairs and led to their areas of residence so that a search could be carried out. While at one of their houses there was an altercation and the deceased was injured. Subsequently the deceased was rushed to hospital and pronounced dead. The accused herein were stated to have been the culprits hence indicted for the offence.
3. To prove the charge the prosecution called eleven (11) witnesses.
4. PW1 Amos Njoroge Kimani stated that a thief broke into his brother, Nicholas Kinyanjui's house and stole some items. The suspect was arrested on 24<sup>th</sup> June, 2016, the following day and taken to Karen



Police Station. The suspect was interrogated and he mentioned his accomplices who were arrested and led to the house of the first suspect. The search carried out materialized into the recovery of a DVD player. That he was inside the house when he heard noise outside. He went out to find one youth having been beaten such that he could not even walk.

5. PW2 Linda Achieng Nyabionga who lived in a rental house at Karinge returned home at 8.00 pm and noted her neighbour Erick Okoth Oketch's curtain hanging outside while lights were off. This being unusual she went to knock at the door and on pushing the door, a certain man with short dreadlocks came out and said his pump was spoiled and asked if she could be having one but she answered in the negative. She had her own doubt as she knew the owner of the house therefore she called to find out if he had a visitor. She also notified the landlord (Baba Njoroge) and his son. They confronted the individual who claimed to be Erick's cousin. Erick denied having had a visitor.

There was a gas cylinder near the door and a black bag. The man escaped but was recognized by Njoroge. The landlord locked the door with a padlock. That the following day the landlord told her that the person who had attempted to steal from Erick's house was dead. She went as required by the police and she confirmed that he was the one.

6. PW4 No. xxxx P.C Joseph Njuguna one of the officers assigned to arrest the accomplices of the deceased who was already under their custody at Karen Police Station stated that upon arrival at Rhino Park Matatu stage, Kamau, identified the 3<sup>rd</sup> Accused whom they arrested. After a while other officers went with the deceased who identified the 1<sup>st</sup> Accused who was arrested and the 2<sup>nd</sup> Accused who attempted to escape but was followed and arrested. The suspects were handcuffed in pairs, the deceased with the 2<sup>nd</sup> Accused while the 1<sup>st</sup> and 3<sup>rd</sup> Accused were handcuffed together. That the deceased had been arrested at night and had a bruise on the head.
7. That the deceased led them where a recovery could be made. Three officers entered the house while three (3) others remained outside and, in the meantime, people crowded. After the recovery was made he heard an officer shout and on turning he saw the 2<sup>nd</sup> accused hitting the deceased with his left hand and both fell down. The other suspects joined the 2<sup>nd</sup> Accused in stepping on the deceased and were separated by the police. That they were separated and the deceased was seriously injured on the head. He could not stand on his own and was bleeding from the mouth. They took other suspects to Karen and since Karen Dispensary was closed they took him to Ngong Hospital where he was pronounced dead. On cross-examination he denied the allegation that the deceased was assaulted by those who had crowded.
8. PW5 No. xxxx Corporal Martin Khaemba said that prior to leaving the Police Station the suspect (deceased) had some minor injuries on the face but was stable. That after arrest of three other suspects the 2<sup>nd</sup> Accused was handcuffed with the deceased. That he remained at the gate as he used the land rover to block the gate. Upon recovery of the DVD other suspects reacted and he heard the police stopping them from beating their friend. The deceased was already down and corporal Cheruiyot was assisting to remove handcuffs from the deceased. Nothing was recovered from the house of the other accused. Thereafter they took the deceased to Ngong Hospital but he was pronounced dead.
9. PW6 Nicholas Kinyanjui Kimani the landlord upon being informed by Linda (PW2) a tenant and his son Njoroge about an intruder in the house of Erick, his tenant, he went to the house where they found an individual with rasta who claimed to be Erick's cousin. They called Erick who denied having such a cousin hence pushed the door and found a gas cylinder by the door. Some items had been wrapped in a bed sheet and the house was disturbed and/or interfered with and the person escaped. His son knew the person hence he caused him to be arrested. Subsequently the person identified other people who were arrested. He joined them as they went to recover the stolen items and a DVD player was



- recovered. That the three other suspects wanted to beat the deceased for framing them, as the police tried to stop them while controlling the crowd. That the 2<sup>nd</sup> accused who had been handcuffed with the deceased hit him with the hand on the head and he fell down. Hence they all assaulted him using hands that were free. The police went to assist the deceased who was unconscious and was bleeding. The four suspects were taken away by the police. But, later at night he got a telephone call from Karen notifying him of the deceased demise. On cross examination he denied the allegation that the deceased was beaten by his brother.
10. PW7 Erick Okoth Oketch, confirmed having received a call from PW2 regarding a person who was at his house and he asked the landlord to deal with the issue as he was at work. The following day when the suspect was taken by the police for purposes of his house being searched he recognized him as a Technician who would do repair going by the name Alex who had deadlocks and he noted his face had bruises. They moved to Karen Police Station where he recorded statements.
  11. Thereafter he went along when the suspect identified three (3) other suspects and when the police went to search for stolen items. That he witnessed as the accused asked the deceased why he mentioned them and they started beating him up. That the 2<sup>nd</sup> Accused slapped and hit him with the head on his forehead an act that made him loose balance and he fell down and became unconscious. In the meantime a DVD player was recovered. That the deceased bled from the mouth and nose. A search carried out at the house owned by the accused did not materialize into anything. That they took the deceased to Karen dispensary and he was declared dead.
  12. PW8 P.C. Isaac Wachira testified to have been assigned reinforcement duties on 24<sup>th</sup> June, 2016. He boarded the police Land cruiser with other police officers under the command of Corporal Cheruiyot. That there was a suspect handcuffed. He had bruises on the mouth which was bleeding and an injury on the face that was reddish and bleeding. He was told that the suspect had been taken to the Police Station by members of the public on allegations of having stolen hence they were to make recoveries and arrest more suspects. The suspect that he referred to as Mukundi (Deceased) took them to Rhino-Karinde area where he identified other suspects. The 2<sup>nd</sup> Accused herein and the deceased were handcuffed together.
  13. The deceased volunteered to take them to his house where some stolen items were. That a crowd surged and became violent wanting to lynch the deceased. A DVD player was recovered and the accused became violent. The 2<sup>nd</sup> Accused used his left leg to tackle the deceased to the ground and hit him with his head while the other accused hit him while on the ground. However, they were separated. After failing to recover anything from the house of the accused they took the deceased who was bleeding from the mouth and nose to Karen Health Centre which was closed and they took him to Ngong District Hospital where he was pronounced death.
  14. PW9 Jane Wanjiru Kimani, got information about the burglary that occurred at her son's tenant's house. She was not present when the search was carried out.
  15. PW10 Peter Muriuki Ndegwa, the pathologist who performed a post mortem on the body of the deceased found subcutaneous bruises on both sides of the head, the temporal side and massive haematoma on the surface of the brain. In the result he concluded that the cause of death was head injury due to blunt force trauma.
  16. PW11 No. xxxx Corporal Richard Limo. the Investigating Officer visited the scene where the crime was committed and drew a sketch plan. The information he gathered was that after the recovery of the DVD player there was an altercation where after the deceased who was injured was taken to hospital but he succumbed. On cross examination he stated that there were thirteen houses at the homestead and



- he recorded statements from people who lived at the homestead where the stolen item was recovered. Regarding Peter Muthee being the assailant of the deceased the witness said he did not know.
17. Upon being placed on his defence the 1<sup>st</sup> accused stated that after their arrest they were taken to the home of the deceased who was alive. That the search carried out materialized into the recovery of a DVD player. On coming out of the house the deceased was kicked by an officer from the armed forces one Peter Muthee. He fell down and he did not stand again. That on being taken to the house before the search he had an injury on the face. After being assaulted the deceased was placed on the Landcruiser. They proceeded to search his(1<sup>st</sup> accused) house but no recovery was made. They took the deceased to a certain hospital but were referred Ngong Hospital hence the police opted to take them to custody at the Police Station as they took the deceased to another hospital. At 7.00 pm they got information that the deceased had passed on.
  18. The 2<sup>nd</sup> accused stated that at the time of his arrest the deceased was on the Landcruiser already with injuries on the face but he was jointly handcuffed with him. That a DVD player was recovered from the house of the deceased. The complainant asked the deceased where he got the items from but he could not answer, he was just crying but, the individual kicked him on the abdomen and he fell down and did not stand again. The police carried him to the vehicle. They proceeded to search the houses of his co-accused but nothing was recovered. Since the deceased was bleeding they decided to take him to hospital which was closed hence they took him and his co-accused to the Police Station then left taking the deceased to hospital. The following morning, they were told that they were now murder suspects.
  19. The 3<sup>rd</sup> Accused reiterated in material particulars what his co-accused stated.
  20. Parties were given an opportunity to submit but they failed to do so.
  21. Section 203 of the *Penal Code* provides that:

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
  22. Issues for determination are therefore:
    - a. Proof of death having occurred.
    - b. Whether it was due to an unlawful act or omission
    - c. whether it was caused by the accused herein,
    - d. Whether it was with malice aforethought.
  23. All witnesses called by the prosecution testified to the deceased having been injured. This fact is not disputed by the accused. The Doctor who performed the autopsy confirmed occurrence of the death.
  24. PW10 the pathologist found that the deceased had bruising under the skin on both sides of the head that was subcutaneous in nature and massive haematoma on the surface of the brain. The cause of subcutaneous haematoma as stated by the Doctor could be any physical impact that is blunt. Both the State/Prosecution are in agreement that the deceased was attacked physically hence sustaining an injury and had to be rushed to hospital. It is argued by the State that the injury was occasioned by the three (3) accused, while the defence argue that prior to reaching the scene where the deceased was physically attacked in the presence of people, the deceased already had bruises on his forehead and in their presence he was attacked by a member of the armed forces who was with the complainant to the act of theft.



25. The burden of proof for criminal responsibility is solely on the prosecution. The standard of proof is beyond reasonable doubt.
26. In the case of *Republic v Andrew Omwenga* (2009) eKLR the court held that:
- “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 afterthought by an unlawful act or omission-there are therefore three ingredients of murder which must be proved beyond reasonable doubt in order to secure a conviction. They are:
- (a) The death of the accused and the cause of death
  - (b) That the Accused committed the unlawful act which caused the death of the deceased and
  - (c) That the accused had malice aforethought.”
27. Circumstances under which the deceased was arrested were not clear. PW1 stated that he was told by his brother that they found the thief (deceased) arrested and he was already at Karen. PW4 saw the deceased bruised on the head prior to going to identify the accused. PW5 alluded to the suspect having had some minor injuries on the face but was stable prior to leading them to the arrest of the accused. PW7 also noted the deceased having bruises on the face before the accused were arrested. PW8 stated that prior to the deceased being taken to where he identified the accused he had bruises on the mouth and an injury on the face that was reddish and bleeding. According to him the suspect had been taken to the Police Station by members of public.
28. The accused denied having assaulted the deceased arguing that the assault was occasioned by someone else who was not considered a witness. It is questionable that the Investigating Officer did not find it necessary to have independent people who were present during the arrest and/or recovery of the DVD player testify in the matter as to what happened. It can therefore not be said with certainty whether the haematoma resulted from the injury occasioned by members of the public who arrested the deceased or at the Police Station after the arrest or by the accused after the recovery of the DVD player or the other person alleged by the accused.
29. This was a doubt that could only go to the benefit of the accused, the duty having been on the prosecution to prove the case beyond reasonable doubt.
30. Following insufficient evidence adduced, the case against the accused is not proved to the required standard hence they are all acquitted of the charge of murder. I therefore direct that they be at liberty.
31. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 6<sup>TH</sup> DAY OF MAY, 2024.**

**L. N. MUTENDE**  
**JUDGE**

