



**Republic v Chepchirchir (Criminal Case 36 of 2019)
[2024] KEHC 7249 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 36 OF 2019**

**JK SERGON, J
JUNE 20, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MERCY CHEPCHIRCHIR ACCUSED

JUDGMENT

1. The accused person herein was charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of the offence are that on the 6th day of August 2019 at around 1200 Hrs at Sitotwet Village in Kericho East Sub-County within Kericho County, murdered Rebecca Keter.
3. When the case came up for hearing, the prosecution called eight witnesses to prove its case.
4. Nancy Chepkirui (PW1) testified that on the material day she could not trace the whereabouts of her mother Rebecca Keter (the deceased herein). PW1 stated that she was at home in the evening when one Mercy Chesang told her to go to the shamba and check for her mother. PW1 stated that she proceeded to the shamba where her mother was cutting grass and found that she had died. PW1 stated that her mother was in good health and had no visible injuries when she left home on the material day. PW1 testified that she screamed, relatives came to the crime scene and the police came to the crime scene to investigate and collect witness statements. The police moved the body to Siloam Hospital Mortuary. PW1 stated that the accused was to blame for the demise of her mother, as she (the accused) and the deceased had an acrimonious relationship. On cross examination PW1 stated that she did not see Mercy Chepchirchir (the accused person) killing her mother.
5. Robert Kipsang Ngetich (PW2) stated that on the material day while running some errands for his stepfather, he heard some screams from their homestead. PW2 stated that he went back home where he found several people in their homestead and was informed that his mother Rebecca Keter (the



- deceased) had succumbed after hot water was poured on her. PW2 stated that he went to hospital and identified the body of the deceased. PW2 stated that the deceased was not sick rather she had succumbed after hot water was poured on her back. PW2 stated that they suspected the accused person who had an acrimonious relationship with the deceased. PW2 testified that the police came and collected their statements and the accused was arrested soon thereafter. On cross examination, PW2 stated that on the material day he did not see the accused kill his mother and that his mother went to look for grass for the cows whereas he took the cows for grazing about 400-500 metres away.
6. Simon Kipkorir Keter (PW3) stated that on the material day he heard screams from the homestead of the deceased. He said that he went to the homestead where he found many people and stumbled upon the body of the deceased. PW3 said that he was informed that the deceased had succumbed after hot water was poured on her back. PW3 testified that the police came to conduct investigations and moved the body of the deceased to Siloam Hospital. On cross examination PW3 confirmed that he did not witness the incident. PW3 confirmed that he responded to screams from the homestead of the deceased as his home was 300 metres away.
 7. Dr. Wesley Ngetich (PW4) testified that on 11/8/2019 he conducted a post mortem on the body of the deceased and prepared the post mortem report which he produced in court and marked as PExh.2. PW4 formed the opinion that the cause of death was hypovolemic shock due to extensive 2nd and 3rd degree burns caused by hot liquids. On cross examination, PW4 confirmed that there was no indication as to what kind of liquid was used.
 8. Mercy Chesang Ngetich (PW5) stated that on the material day she could to trace the whereabouts of her mother-in-law Rebecca Keter (the deceased herein). PW5 stated that she went to fetch the cows that were grazing in the shamba when she stumbled upon the body of the deceased. PW5 said that she screamed and people came to the scene and thereafter the body was taken to the mortuary. PW5 said that when they went to the mortuary they were informed that the deceased had been burnt with a hot liquid on the back as they did not know the cause of death. PW5 said that she attended the post mortem and saw burns on the deceased's body. On cross examination, PW5 confirmed that she did not witness the incident and that the accused was merely a suspect.
 9. Sergeant Mlongo Tali (PW6) police force number 61384 a gazetted crime scenes officer, he stated that on 11/8/2019 he visited Siloam Hospital Mortuary at the request of P.C John Owino to take photographs of the deceased, who was lying on a slab. PW6 stated that after the body of the deceased was identified, he proceeded to take photographs and that the body appeared to have been scalded with hot water. PW6 stated that after taking the photographs they proceeded to the homestead where the body was found to take more photographs. PW6 said that after processing the photographs of the deceased and the scene of crime, he prepared a certificate and a report. PW6 produced the photographs in court as PExh. 1 (a) and (b) and the report as PExh. 3. On cross examination PW6 stated that he visited the crime scene a few days after and the body of the deceased had already been removed.
 10. Corporal Dismus Mwinga (PW7) police force number 73592 stated that on the material day he went to the crime scene to carry out investigations whereby they interrogated several family members and discovered that the accused and the deceased were not in good terms.
 11. PW7 stated that while investigations were ongoing they learned that Desmond Kipngeno (a minor) a son to the accused had information on the circumstances that led to the demise of the deceased, the minor had since relocated to live with his grandmother in the village. PW7 stated that he interviewed the minor who stated that on the material day his mother (the accused) boiled water in a sufuria claiming that she was preparing lunch, after the water boiled, the accused removed the water, went out and returned a few minutes later with an empty sufuria, soon thereafter the accused took another



small sufuria and prepared ugali for her children, but fed them chapati, beans and left overs from the previous night. PW7 stated that after they recorded the minors statement, the minor took them to the homestead of the accused and pointed out the sufuria the accused had used to boil water. PW7 produced the sufuria as PExh. 4. PW7 stated that soon thereafter they arrested the accused and charged her with the instant offence.

12. On cross examination, PW7 confirmed that the testimony of the minor corroborated the findings by the doctor who conducted an autopsy which revealed that the deceased succumbed to the burn injuries she sustained on the material day. PW7 also confirmed that he is the current investigating officer in the matter as the initial investigating officer is now deceased.
13. Erick Keter (PW8) stated that on the material day, he reported the incident at Kapsoit Police Station and the police came soon thereafter and took the body to Siloam Hospital. PW8 stated that he attended the post mortem on 11/8/2019 whereby the doctor informed them that the deceased had succumbed to burn injuries. On cross examination, PW8 confirmed that he did not witness the demise of the deceased. PW8 confirmed that the accused was merely a suspect and that she was with the deceased on the material day.
14. When placed on her defence, Mercy Chepchirchir (DW1) opted to give an unsworn testimony, and stated that she knows the deceased, who was her mother-in-law and that she is aware that she was being accused of murdering her mother-in-law.
15. DW1 narrated that on the material day, she spent the day in the family homestead with her children doing various house chores.
16. DW1 also stated that on the material day she prepared some chapati and beans for lunch then left for the garden to get some vegetables. DW1 stated that soon after they had lunch she continued with the house chores in the afternoon.
17. DW1 further stated that she heard some screams and proceeded to the garden alongside her sister-in-law, where she and her sister-in-law (PW1) stumbled upon the body of the deceased. DW1 stated that soon thereafter the police came and took the body away.
18. DW1 further stated that a few days after the funeral, they went to the police station to record statements and after everyone left, she was left at the police station for further interrogation. DW1 stated that the area chief accused her for committing the instant offence. DW1 said that at the time she vehemently denied committing the offence. DW1 maintained that she did not know who murdered the deceased.
19. At the time of writing this judgement the defence had not yet filed their submissions.
20. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.
21. The offence of murder is provided for in section 203 of the *Penal Code* that provides as follows; “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.” In *Republic v Andrew Omwenga* [2009] eKLR the court held: “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 the 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.”



22. The accused person in this case was charged with the offence of murder contrary to section 203 of the penal code which defines murder as the unlawful killing of a person or persons with malice aforethought.

(a) Death and Cause of Death

23. In this case the death of the deceased person is not disputed, several prosecution witnesses testified that on the material they were unable to account for the whereabouts of the deceased during the day. PW5 narrated how she went to fetch the cows that were grazing in the shamba when she stumbled upon the body of the deceased. PW4 a medical doctor testified that on 11/8/2019 he conducted a post mortem on the body of the deceased and prepared the post mortem report which he produced in court and marked as PExh. 2, which report was admitted by this Court. PW4 formed the opinion that the cause of death was hypovolemic shock due to extensive 2nd and 3rd degree burns caused by hot liquids.

(b) Whether the accused committed the unlawful act which caused the death of the deceased

24. This court noted that most of the prosecution witnesses did not witness the assault on the deceased and were not aware of the circumstances that led to the demise of the deceased. PW7 stated that she recorded a statement of a minor called Desmond Kipngeno who was aged 7 years old. The minor is a son to the Accused and a grandson of the deceased. PW7 merely narrated what he recorded from the minor. He did not produce the written statement and instead opted to give oral evidence. The Prosecution for unexplained reasons did not summon Desmond Kipngeno to testify to shed light on the role the Accused played in the demise of the deceased. The evidence of PW7 is purely hearsay evidence in the absence of any written witness statement by the minor.

25. It is apparent from the evidence of PW7 that the minor merely saw his mother (Accused) take hot water out of their house and came back with an empty sufuria. The minor did not witness that his mother (Accused) poured the hot on the deceased. There was no direct evidence. The circumstantial evidence is largely hearsay which cannot be used to sustain a conviction.

26. In the end, I find that the prosecution failed to establish the case against the Accused beyond reasonable doubt. I find the Accused not guilty for the offence by murder. She is hereby acquitted. The accused person namely Mercy Chepchirchir is hereby set free forthwith.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 20TH DAY OF JUNE, 2024.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Ruttoh

Prosecutor - Taslima

Accused – Present in Person

Miss Koech holding brief for Koko for the Accused

