



**Republic v John (Criminal Case E017 of 2021)  
[2024] KEHC 10078 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 10078 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CRIMINAL CASE E017 OF 2021  
SN MUTUKU, J  
JUNE 10, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MOSON MURINGE JOHN ..... ACCUSED**

**RULING**

1. The accused was charged with the murder of Muriat Ole Mairo contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars of the offence are that on 27<sup>th</sup> day of July, 2021 at Olgira Market area in Rombo Kajiado South Sub-County within Kajiado County, jointly with others not before court murdered of Muriat Ole Mairo.
2. He pleaded not guilty to the charge and the hearing proceeded with the prosecution calling 8 witnesses to testify against the accused person. At the close of the case by the prosecution, it is upon this court to determine whether the evidence adduced supports a prima facie case against the accused person for this court to place him on his defence.
3. The evidence, as testified by the witnesses, is that following what was thought to be an attempted breaking in at a shop in Olgira Market on the night of 13<sup>th</sup> July, 2021 by the deceased, he was assaulted and set ablaze as a result of which he lost his life. From the evidence of PW2 Simon Mashakuro Kamau, he has a shop at Olgira Market. He resided behind the shop. On a date he could not remember he went to the home at around 6:30pm. He found a stranger sitting near the kiosk. At around 9:00pm he heard noises outside and when he went out, he found that it was the stranger hitting the door with stones. He stated that the stranger did not look normal and that he looked drunk. He was hitting the shop belonging to Timo.
4. PW2 testified, further, that at around 10:00pm he heard noises like someone was being beaten. He went outside and found two people beating the stranger with masaii rungu while his hands and legs



- were tied up. He stated that he saw the two people by security lights. He interacted with the two persons when they asked him for the telephone number of the company dealing with wildlife and he gave them. While one of the persons was making a call, the other person poured some liquid on the victim and lit him up. He identified the accused as the person who lit the deceased.
5. On cross examination he stated that he did not know the accused by name. It was his case that he heard the name Solonika and Joshua mentioned by the neighbours. He stated that Olgira village is small and has few people. That there are security lights and he reiterated that he saw the accused assaulting the deceased.
  6. PW3, Ignatius Kariuki Bernabas, testified that he is a farmer at Olgira; that the area is small and has 8 shops built of iron sheets; that on 13<sup>th</sup> July, 2021 at 11:00pm he was at his farm and on crossing the road he saw someone burning; that together with PW2 they put out the fire using soil. He stated that there was an elderly man who was quarrelling with the 2 people who had set the deceased on fire. He stated that Joshua was the one who was quarrelling the 2 persons and that he used to see him on Fridays at Rombo Market. It was his testimony that one person was a shop helper who moved after the incident and the other used to operate a tractor. He stated that he heard the name Solonka being mentioned but did not know who he was among the 2. On cross examination he stated that he did not see who set the victim on fire.
  7. PW4, Fanuel Makonga Ojiambo, stated that he used to live in Olgira behind the chief's shop. That on 13<sup>th</sup> July, 2021 at around 10:00pm he heard someone knocking at the door. That he did not hear anyone screaming and went back to the house after a short call. That in about one hour he heard police outside and he went out. He found someone tied up. That he was a stranger to him. That he found many people there. That there was PW2, PW3, and Soloinka, a neighbor who operated a shop. That there was also an elder who was speaking in masai. He stated that he was told that the deceased had been set on fire. He stated that the elder man was quarreling with Soloinka and the tractor conductor.
  8. PW8, No 237670 CIP Henry Mwititi, testified that in 2021 he was the DCI at Kajjado south Illasit Police Station. On 14<sup>th</sup> July, 2021 he received information from DCIO that there was a case of mob justice. That in the company of the OCS they went to the scene. On the way, they met a group of people escorting the deceased to hospital. The deceased had injuries on his body. He directed the people to take him to Rombo Mission Hospital.
  9. At the scene, they collected evidence from eyewitnesses. They established that the deceased was mentally challenged. On 13<sup>th</sup> July, 2021 at 11:00pm the deceased tried to break into one of the shops belonging to PW1. That the neighbour to PW1 noticed and tried to stop him. He raised the alarm and people gathered. The neighbor went and bought paraffin. The victim was tied, and paraffin poured on him and lit him up.
  10. On cross examination he stated it was mob- justice case. That he didn't check if town had electricity that it was a remote area. That Soloinka is the one who bought fuel. That he didn't confirm what type of fuel. That the gas light came from Moson who set the deceased ablaze. He testified that they did not have the gas lighter or fuel container as evidence.
  11. I have considered this evidence. I have subjected this evidence to Section 306 (2) of the [\*Criminal Procedure Code\*](#). This section provides that:

“When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf,



or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.”

12. I find the evidence implicates the accused person before the court. As required under the above section it is my finding that the accused has a case to answer. He is hereby informed of his right to give evidence in his defence and to call witnesses to testify in his defence. He can testify under oath or without taking oath, as he may choose.
13. Orders to issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 10<sup>TH</sup> JUNE 2024.**

**S. N. MUTUKU**

**JUDGE**

