



**Republic v Sululia & 3 others (Criminal Case 11 of 2020)
[2024] KEHC 9072 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9072 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 11 OF 2020
RB NGETICH, J
JULY 25, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

STEPHEN SULULIA 1ST ACCUSED

CHRISTOPHER MEGIRI 2ND ACCUSED

ROBINSON SULULIA 3RD ACCUSED

MICHAEL KONOSEI 4TH ACCUSED

JUDGMENT

1. The accused persons Stephen Sululia, Christopher Ngeiya Megiri, Robinson Sululia and Michael Konosei were jointly charged with the Offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars were that the accused persons on the 2nd day of July, 2020 at Ndebe village, Kailer Sub-location in Baringo South Sub-County, within Baringo County jointly murdered Peter Tenges.
2. The accused persons pleaded not guilty to the charge and the matter was set down for hearing. When the matter came up on the 20th April, 2023, the state informed the court that they were yet to consider plea bargain for 1st Accused. They sought to file Nolle Prosecue in respect of the 1st to the 3rd Accused which the court permitted the state to enter the Nolle Prosecue in respect to accused 1-3 hence discharging them from the case. The case proceeded for hearing against the 4th accused with the prosecution availing 7 witnesses to prove the charge against accused 4.



Prosecution's Case

3. PW1 Lepelianin Tom Sigenge the area Assistant Chief Kaille Sub-Location testified that on 2nd July, 2022 at about 1.00 a.m, he was on duty when he received a call from the Assistant Chief Solian Sub-Location one John Boswon informing him of an incident which had occurred the previous evening between their Sub-locations. The Assistant chief requested him to join him so that they could address the issue. He proceeded to the scene where there was a land dispute. He was informed that Stephen was charged as accused 1, was complaining that a young man called Cheptuk had gone to cut a tree in the farm. On arrival at the scene, they found a tree had been cut and while going back to the meeting point, they found cactus had been planted. He stated that the Senior Chief Mr. Chepkuto, Mzee Kitilit, Stephen and two other elders were present and he was informed that the two elders were Police Officers from Lobo Police Post.
4. He said a young man had been assaulted the previous day and he had been taken to hospital and the incident reported. He said that before proceeding with the meeting, they heard screams and saw children running away from Stephen's homestead. He said young men arrived whom he recognised as coming from his area and he tried to stop them. He said the young men were Christopher, Robinson and Michael. He said village elders of Keber village and Peter Tenges the deceased herein tried to block them but they did not listen to them but started attacking them. He said that Accused 4 Michael Konosei had a bow and arrow and a knife and Christopher Maegiri had a whip while Robinson Sululia had a panga and a whip.
5. He stated that the Assistant Chief, Senior Chief, the two police officers ran away and the elders also ran away. That the three young men chased Kitilit and he went and blocked them. He said that he remained with Peter Tenges (deceased) and that as he was holding Robinson, Christopher and Michael went after Peter Tenges. That the old man asked them whether they wanted to beat him. He said that Michael who had a bow and arrows asked Christopher to move aside so that he could shoot Tenges with an arrow and Michael released the arrow which hit the left side of the chest of Tenges (deceased). He asked them what they were doing but they turned to him and Christopher asked Michael to give him a knife so that he could remove the arrow that was stuck on Tenges and that Christopher cut out the arrow. He said Michael turned towards him and ran away.
6. He testified that Christopher threw the arrow at Michael (Accused 4) and he started removing the flesh. PW1 said he got opportunity to leave and took off in his motor bike registration number GKV 564N and went to Marigat Police Station. He said he had already called Chief Kiptagut seeking reinforcement. He later went back to the scene with Police Officers and found many people there and they found the village elder Peter Tenges already dead. He said the body was taken to Kabarnet Referral Hospital mortuary. He said Stephen who was the first accused was the complainant and that he called his sons who were Accused 2 and 3 and Michael who is accused 4 and is the only remaining accused person now. He said Accused 4 Michael Konosei is the one who shot the deceased with an arrow.
7. PW1 further stated that they went back to the scene and found Stephen while Michael (accused 4) disappeared from the area and Christopher and Robinson went into hiding. He said he talked to the family members and informed them that the lives of the suspects were in danger. Robinson surrendered himself to pw1 who took him to Marigat Police Station. He tracked Christopher and arrested him as he was going to Margiat on a motor bike and took him to Marigat Police Station and Michael (Accused 4) was later arrested at Isageri and taken to Mogotio Police Station.
8. PW2 John Boswony the Assistant Chief of Sandai Sub-Location, testified that on 2nd July, 2020 at about 10.00 am, he received a call from Joseph Chemoswo, the village elder of Tembererew village



- informing him of an incident at Tembererew. He was informed that one Cheputuk had been assaulted at about 7.00 p.m. on 1st July, 2020 and on 2nd July, 2022 Evans Cheronu and Arap Chesang had been assaulted in the morning. He called the Chief and passed the information to him. He said he called Assistant Chief of Kailel, Tom Sigenge but could not reach him. He called the Chief from Ilchamus who suggested to him that they should go and check what was happening.
9. He said he went there and found Peter Tenges the deceased herein with his children. He said there was a tree had been cut and cactus planted. He said while he was talking to peter Tenges and his children, the area chief Michael Chepkuto arrived with two police officers who were in civilian from Lomoi and shortly three people who had sticks and pangas arrived while making a lot of noise and started attacking them.
 10. He said they had gone to find out why people had been assaulted but the people attacked them and they separated each one of them going his way and after one hour, he called the Taille Assistant Chief who informed him that he was going Marigat as things were bad. After two hours, the Assistant chief informed him that Peter Tenges had been killed and they were going to collect the body. He said the people who attacked them were the 4 accused persons who were in court and that accused 4 had a bow and arrows while the accused 2 and 3 had rungus and a panga and Accused 1 had no weapon.
 11. He said before he left, he saw Accused 4 who is the remaining accused person herein hold an arrow to the bow string ready to release the arrow.
 12. PW3 Michael Chepkuto, the Chief of Sandai Location testified that on 2nd July,2020 at about 9.00 am he received report from Wilson Tangar that a resident of Tembererew had been attacked by Ilchamus. He called John Boswony his Assistant Chief and village elder and he decided to visit the scene with a police officer one Ole Ngetuny attached to his office. He said they did not get direction to the area. They went back to the office then proceeded to the D. O's office at Marigat. While on the way, he saw elders and also found his Assistant Chief, John Boswony, the village elder Joseph Chemoswo and many elders. He feared tension could arise between the two communities and decided to tell some elders to go so that they could remain with a few and he requested the Assistant Chief to call the Assistant Chief of that area Kailel Sub-Location.
 13. He said the village elder Peter Tenges who is the deceased herein was also at the meeting. He proceeded to a nearby home where one Cheputuk had been attacked and found the wife at home who informed him that her husband had been attacked by Ilchamus at night and she was not able to identify the attackers. He said he realized the issue was serious and proceeded to Marigat to report the matter to the OCS at Marigat Police Station and asked for police officers to accompany him to the scene but he was informed there was no vehicle. He eventually got two police officers from Lobo Police Post who had a motor bike. He also had a motor bike and they went back to where elders were and found them concluding discussions.
 14. He said the Assistant Chief of Kailel, Tom Singenge had arrived at the scene and he showed them where the dispute had occurred and he photographed the cactus that had been planted and as they were about to leave, they heard screams and saw children running away from the house. He stated that when the people reached where they were, the Assistant Chief of Kailel realised they were Ilchamus who then advised them not to run away because he knew what to do. He said the people started attacking them with rungus and one of them had a bow and arrows while another one had a panga.
 15. He further stated that the Assistant Chief of Kailel and Peter Tenges (deceased) who was the village elder of Kailel advised them to leave as they tried calming down their people and each one of them took off in different directions. He said he went to the road where they had left their motor bikes with the police officers and he gave a lift to two elders and went to Sandai to monitor the situation. He



- stated that they could not reach the others on phone; At 4.00 p.m. when John Boswony called him informing him that things had gone bad as Peter Tenges had been shot with an arrow and Tom had gone to Marigat to get a vehicle. He said the deceased Peter Tenges was trying to block the young men from attacking them. He said the young men had pangas, sticks and arrows.
16. Pw3 said he called the Chief of Ilchamus who stated that he had arrived at the scene and Peter Tenges had passed on. He called Assistant County Commissioner and he also reported to report of the incident to the D.C.C and after two days he was called to Marigat police station where he recorded his statement.
 17. PW4 Willy Tangar testified that on 2nd July, 2020, at 8p.m he received a call from his daughter Chelagat who informed him that some people had gone to his homestead and chased her together with other family forcing them to spend the night with neighbours. He said in the morning they found their goats and chicken missing and that they did not see the people who chased them away. He said at 10:00 am he went to the homestead of his wife Kimoi and while on the way, he met the Assistant Chief Baskwony and joined him to the home of Kokoyo – where the fight had started and on reaching there, three people who had arrows arrived. He said they were Logesho, Losingele and Ngenya.
 18. That Logesho, Losingele had panga and knife and Ngenya had stick. He stated that they were beaten and before they were beaten, police arrived and that the two police officers ran away too as they also ran away.
 19. He said his brother Wilson called him and he boarded the chief's motor bike and left. He stated that before the three men came, they were 9 and the deceased Peter Tenges was among the 9 present. That his brother boarded the Chief's motor bike and he did not know what happened. He said at 5.00 pm they met Kitilit who informed them that Tenges had been shot with an arrow. He said Logesho (Lokesho) was among the people who attacked them and he had an arrow.
 20. PW5 Wilson Tangare testified that the night before 2nd July, 2020, his brother Willy Tangar's home was attacked and he went to his brother's house upon being informed by Peter Tenges the deceased herein and met the neighbours, chief- Cheminargai, John Boskwony and Peter Tenges, Motorosiat, Kitilit, Seng'enge (Chief) Chief Koile and people from the area. He said the late Peter Tenges arrived and as they discussed boundary dispute, three people arrived. That one had stick and panga, the other had arrows and another had a stick.
 21. He said the chief tried to turn them back but they began to attack them with their weapons forcing them to run away. He said he left Peter Tenges (deceased) with the attackers and he later learnt that he died after being beaten. He said Accused 1 was the owner of the land and Accused 2, Accused 3 and Accused 4 went to the scene with weapons and attacked them. He said one of them had arrows.
 22. PW6 Dr. Lenny Kamau Gitunda testified that he conducted postmortem on the body of Peter Tenges on 8th July, 2022 after the body was identified by Thomas Ole Tenges and Ismael Lerupai and formed opinion that the Cause of death was penetrating chest injury on the left side. He produced in court as exhibit 1.
 23. PW7 No.252845 PC. Yetkei Sammy testified that on 2nd July, 2020 at around 12.40 p.m. OCS Marigat Police Station called him together with police officer Kipkoech Cheburet to his office and instructed then to accompany Chief Sandai Location to Sindai there were chaos the previous day. That on reaching there, they found village elders and 2 Assistant chiefs and shortly they saw 2 people screaming as they came to where they were. That one was carrying bow and arrows while the other two had pangas and sticks. That the one with arrows directed it towards them without releasing and the ones with sticks and pangas started beating people. That him and his colleague Kipkoech Cheburet left the place to a secure place. That they later called OCS and informed him what happened and they later learnt



that someone was shot with an arrow and had died. He said the person who had carried bow and arrow is accused 4 herein.

Defence Case

24. The accused testified as Dw1 and stated that on 2nd July, 2020 at 9:00 a.m., he took cattle to graze in llebe village and found other people grazing their cattle there. He said while there, the chief called him and informed him that the situation was not good as there was conflict between Tugen and Njempes over grazing field. He said he was informed that if the situation became bad, he should return the cattle. After a short while, he heard screams. He said he run from there and he did not know what happened as the crowd were a bit far from him.

Submissions

25. Both prosecution and accused did not file written submissions. They opted to rely on evidence on record.

Analysis and Determination

26. I have considered evidence adduced by prosecution witnesses and accused's defence. Section 203 of the penal code under which accused has been charged defines the offence of murder and ingredients required to be proved by the prosecution beyond reasonable doubt are as follows: -

- a. proof of death,
- b. the cause of that death, proof that the death was due to an unlawful act or omission, that the unlawful act or omission was on the part of the suspect and
- c. that the unlawful killing was with malice aforethought.

- (a) Proof of death

27. It is not in dispute that the deceased died, all the prosecution witnesses testified that the deceased died on 2nd July, 2020 after being shot with an arrow. This was confirmed by PW6 Dr. Lenny Kamau Gitunda who conducted post mortem on the body of deceased peter Tenges on 8th July, 2022 and formed opinion that the cause of death was penetrating chest injury on the left side. He produced mortem report in court as exhibit 1.

- (b) Proof whether it is the accused who unlawfully by act or omission caused the death of the deceased.

28. From the evidence tendered by the prosecution, there were eye witness account as to what transpired or how the injury on the deceased was inflicted. Pw1 to Pw5 were present at the scene and they saw accused 4 Michael Konosei inflicting fatal injuries on the deceased. There is therefore no doubt that it is accused who inflicted fatal injury on the deceased Peter Tenges.

- (c) Whether the prosecution proved malice aforethought against the accused

29. Malice aforethought is defined under Section 206 of the Penal Code as follows:-

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances –

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;



- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

30. The section provides for circumstances which constitute malice aforethought. The offence of murder is committed when one unlawfully causes the death of another by an unlawful act or omission with malice aforethought. The prosecution must prove that when the accused assaulted the deceased, he had formed the necessary motive to cause death of grievous harm to the deceased.

31. From evidence adduced, the injuries inflicted on the deceased were so serious, the accused knew that the injuries would lead to death. Besides shooting the deceased, the accused further inflicted more injuries on the deceased by causing the arrow to be removed from the deceased body and the deceased must have suffered intense forced pain as the arrow came out with flesh upon being forcefully removed from his body. Upon removing the arrow, Accused 4 asked for a knife to remove flesh from the arrow before taking it. The act was done in a very inhuman way without remorse and empathy on part of the accused. There is no doubt that evidence adduced point at malice aforethought in the mind of the accused herein. From the foregoing I find that the prosecution proved the three ingredients of murder against the accused. I proceed to find accused guilty of the offence of murder and convict him accordingly under Section 203 as read with Section 204 of Penal Code.

Final Orders: -

1. I hereby find accused Michael Konosei guilty and convict him of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. Right of appeal 14 days.

Judgment delivered, dated and signed Virtually at Kabarnet
 this 25th Day of July 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Elvis & Komen – Court Assistants.

Ms. Ratemo for State.

Accused Present.

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Judgment

