



**Republic v Langat (Criminal Case E002 of 2021)
[2024] KEHC 9677 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9677 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE E002 OF 2021
SN MUTUKU, J
JULY 24, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

CYRUS MOKUA LANGAT ACCUSED

RULING

1. Cyrus Moku Langat, the accused, is charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on the 29th day of January 2021 at Ongata Rongai area in Kajiado North Sub-County within Kajiado County, jointly with another not before the court, he murdered Benson Oroko.
2. The accused pleaded not guilty to the charge.
3. The prosecution called four witnesses to testify against the accused. George Njoroge, PW3, a caretaker at the building at the scene of this crime testified that on 29th January 2021 at 9.30pm he was going to close the gate at the building where he worked. He went outside to tell the residents to get in so that he could close the gate. He saw someone lying on the ground bleeding on the stomach. In an attempt to look for help, he pushed the alarm of the building and neighbours came out.
4. The victim was asked who had stabbed him. He was not able to talk. Instead, he pointed at one person who denied stabbing the victim. Pw3 and other members of the public decided to take the person the victim pointed at to the police station. The victim was taken to hospital.
5. PW3 was not able to identify the accused before the court as the person pointed at by the deceased.
6. James Amwayi, PW1, told the court that he was inside his house on 29th January 2021 when he heard the sound of the alarm at the building where he lived. He said the time was between 11.00pm and midnight. He went out to find out what was going on. Other neighbours also went out. He found



- people gathered outside and one person lying on the ground. He said he also found the accused before the court at the place. PW1 told the court that it was the caretaker who had pushed the alarm.
7. Further evidence by PW1 is that the person on the ground was bleeding on the stomach. He was crying and saying that he had been stabbed. He was asked who had stabbed him and he pointed at the accused.
 8. The evidence from Dr. Bernard Midia, PW2, shows that the deceased had extensive injuries on the chest and the stomach including perforated right diaphragm, deep incised wound on the right kidney, incised wound on the liver which cut through the liver and incised wound on the right colon. The cause of death was excessive bleeding due to the stab wound that went through the chest and abdomen.
 9. The last witness to testify is CPL Josephine Baraza, PW4, the Investigating Officer. She told the court that she found the accused in custody on allegations of attempted murder. After she completed her investigations she decided to treat the accused as a witness. She termed the accused as a good Samaritan.
 10. It is the duty of this court to determine whether the evidence adduced in this case is sufficient to warrant the accused being placed on his defence. The question is whether the prosecution, at the close of its case, has established a prima facie case to warrant the accused to be called upon to defend himself. Has the prosecution made out a case on which this court, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence?
 11. Why I have no doubt that the Benson Oroko died from stab wounds inflicted on him and that this death was due to an unlawful act, the evidence touching on the identity of the perpetrator is wanting. The only two witnesses at the scene gave evidence that is contradictory and that does is insufficient to conclude that the accused is the one who stabbed the deceased.
 12. According to PW1 during cross examination, he told the court as follows:

“I found one five (5) people standing at the scene. I found one person lying on the ground and another person holding accused told me that the person on the ground was stabbed by the accused and another person who had escaped.”
 13. PW1’s evidence in chief was different from what he told the court on cross-examination. He testified in chief that:

“I found one young man on the ground. He was called Makori and accused in the dock. There was a caretaker Brian who had pushed the alarm button. The people wanted to beat the accused saying he was a thief. I told them to stop so that we could find out what was going on. The person on the ground was bleeding on the stomach. He was crying saying he had been stabbed. I asked him what had happened and he pointed at accused and said he had stabbed him.”
 14. PW3 gave a different narration of what had happened. He testified that:

“I went out and checked everywhere. I wanted to tell residents outside to come in so that I could close the gate. They were students from Multimedia University. I saw someone on the ground bleeding on the stomach. I found two students outside and someone on the ground. I called Kamau of Nyumba Kumi to ask him if he had police contact. He did not have the number. I went and pushed alarm. Neighbours came out. We asked the victim if he knew who had stabbed him. He could not talk. He pointed at one person who denied he was the one. We decided to take the person pointed at to the police station.”



15. It is clear that the two accounts differ. PW1 changed his evidence on cross examination to say that he found five people at the scene and one person was holding the accused. He also said that the deceased pointed at the accused and said it was him who had stabbed him. PW3 does not mention the five people mentioned by PW1 nor does he mention anyone holding the accused or that the deceased talked and said it was the accused who had stabbed him. PW3 did not identify the accused in the dock and the Investigation Officer did not think the accused had committed any offence to recommend that he should be charged.
16. It has not been explained who decided to charge the accused if the investigations decided he was a good Samaritan who did not deserve to be charged but to be treated as a witness?
17. After my careful consideration, it is my finding and I so hold, that the evidence presented to this court does not establish a case on which this court, properly directing its mind to the law and evidence, could convict if no explanation is offered by the defence.
18. The burden of proof placed on the prosecution is a heavy one. Having closed its case, the prosecution is not expected to adduce any further evidence. Their own investigating officer did not think that the accused ought to be charged. The other witnesses contradicted themselves on what happened at the scene.
19. Consequently, and basing my reliance on section 306(1) of the *Criminal Procedure Code*, I find that the accused person has no case to answer. I return a verdict of not guilty and hereby acquit him. He is free to go home unless for any other lawful reason he is held in custody.
20. Order accordingly.

DATED, SIGNED AND DELIVERED THIS 24TH JULY 2024.

S. N. MUTUKU

JUDGE

