



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Rapemo (Criminal Case E033 of 2022)
[2024] KEHC 10148 (KLR) (7 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10148 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE E033 OF 2022**

KW KIARIE, J

AUGUST 7, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

CHARLES OKOTH RAPEMO ALIAS JONAH OKEKE KAJWANG ACCUSED

JUDGMENT

1. Charles Okoth Rapemo alias Jonah Okeke Kajwang is charged with an 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 15th day of October 2022, at the Nyaingu village, Sino Kagola location, in Rachuonyo South Sub County of Homa Bay County, he murdered Patrick Ndula.
3. The prosecution contends that while the accused was ferrying the deceased home on his motorcycle, he fatally attacked him.
4. On his part, the accused contended that he left the deceased and Tobias near the latter's home. He denied the offence.
5. The issues for determination are:
 - a. Whether the accused inflicted fatal injuries on the deceased and
 - b. Whether the offence of murder was proved against any or all the accused.
6. Tobias Ochieng Onuonga (PW2) testified that on the material day, he was with the deceased, taking alcohol. The accused was also taking chang'aa at the same venue. At about 9 p.m., he asked the accused to ferry them home on his motorcycle. They embarked on the journey home. However, at Nyaingu junction, he asked the accused to drop him there because he wanted to go and buy cigarettes. He left the accused to proceed with the deceased, whom they used to call Omwami.



7. After buying cigarettes, he set for his home. On the way, he found the accused's motorcycle parked near a house, and after walking for about forty metres, he saw the accused beating the deceased. When he intervened, the accused pushed him to a fence. He ran away and went to report the matter.
8. In his defence, the accused said that when he ferried Tobias (PW2) and the deceased, the duo asked to descend before they reached their destination. He complied and dropped them off. He then proceeded home.
9. The evidence of a single witness implicates the accused. In the case of *Abdullah Bin Wendo v Rex* 20 EACA 166, the Judges of Appeal emphasized the need to scrutinize the identification evidence, especially by a single witness, before basing any conviction on it. The Court held as follows: Subject to certain well-known exceptions it is trite law that a fact may be proved by a testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a Judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error.
10. Amos Booker Odera (DW2) testified that he met with Tobias (PW2) near Nyaingu junction, heading towards the Centre. The deceased was sitting down. Though this witness tended to exonerate the accused, he confirmed that Tobias (PW2) was going to the Centre.
11. The deceased sustained fractures on the left 3rd 4th and the 5th ribs while the 2nd to the 8th ribs had echymosis. This corroborates the evidence of Tobias, who testified that he saw the accused stepping on the abdomen of the deceased. The abdomen and the stomach are close. Although the accused denied to have been the one who inflicted the fatal injuries to the deceased, I have no reasons on record to disbelieve the evidence of Tobias (PW2).
12. I am satisfied beyond any reasonable doubt that the accused inflicted fatal injuries on the deceased.
13. To base a conviction on the evidence on record, the prosecution must prove the existence of malice aforethought. In *Black's Law Dictionary*, 10th Edition, malice aforethought is defined as: The requisite mental state for common-law murder, encompassing any one of the following:
 - (1) the intent to kill,
 - (2) the intent to inflict grievous bodily harm,
 - (3) extremely reckless indifference to the value of human life (the so-called "abandoned and malignant heart"), or
 - (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).
14. Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:

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.

15. After considering the lack of evidence regarding the events leading up to the fatal injuries inflicted by the accused upon the deceased, I find that the prosecution has not proven the charge of murder. However, the prosecution has established beyond a reasonable doubt the lesser offence of manslaughter. As a result, I am reducing the charge from murder to manslaughter and acquitting the accused of murder. I find the accused guilty and convict him of the offence of manslaughter under Section 202, read with Section 205 of the *Penal Code*.

DELIVERED AND SIGNED AT HOMA BAY THIS 7TH DAY OF AUGUST 2024

SIGNED BY: HON JUSTICE W. KIARIE

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