



**Republic v Nyagakwa (Criminal Case 6 of 2015)  
[2023] KEHC 1332 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1332 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE 6 OF 2015  
AN ONGERI, J  
FEBRUARY 16, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**STEPHEN MARANGA NYAGAKWA ..... RESPONDENT**

**JUDGMENT**

1. The Accused Person in this case Stephen Maranga Nyagakwa was charged with Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the charge are that on 23/2/2015 at Kapsongoi Tea Estate in Kericho County the Accused Person murdered Linda Chemutai Keter.
3. The Accused Person pleaded not guilty to the charge. The Prosecution called a total of ten witnesses whose evidence was as follows:-
4. PW.1 – Richard Kipkoeh Keter who lives in Kaptembwo Sikowet Location said he attended the post mortem of the deceased at Kericho District Hospital Mortuary on 25/2/2015 and identified the body of the deceased. He said the deceased Linda Chemutai Keter was a daughter to his brother.
5. PW.2 – Patrick Kirato said on 22/2/2015, he received a complaint from the Accused Person in this case. He said the Accused Person reported to him that the deceased had his money kshs.165,000/=
6. PW.2 went with Richard Rugut to the house of the deceased and found the deceased with her husband having late lunch. The deceased and her husband accompanied him to the house of Judy where they discussed the matter with village elders but the deceased denied that she had the Accused Person’s money. The Accused Person snatched a phone from the deceased and he said he had bought it for her.
7. PW.2 said the matter was referred to the James Finleys Human Resource Office but before the said office could handle the issue, the deceased was killed.



8. PW.3, Cleophas Kipngetchi Kitur who was the husband to the deceased said he got married to the deceased in 2001 under Kipsigis customary Law and they had two children.
9. PW.3 said he was staying at Nyeri where he was working as a Lecturer at Kimathi University. He said on 14/2/2015 he travelled from Nyeri to Kericho where the deceased was working as a teacher at James Finleys Flowers Primary School at a Teacher.
10. PW.3 said he first saw the Accused Person in December, 2014 when the Accused Person took the deceased's academic certificates and the matter was reported to Kericho Police Station.
11. PW.3 said on 16/2/2015, he went to his rural home at Cheptenye. It was a Monday. He said on Thursday that week, he received a call that there was an academic day at his son's school at Kokonya Boys High School.
12. On Friday, PW.3 said he took a stroll to the deceased's school where he met the Accused Person who told him that he was interested in his wife and that he did not know that she was married.
13. PW.3 said there was a white saloon car parked near the school gate. After talking to him, the Accused Person went to the car and he left and went into the tea plantation where he had appeared from.
14. PW.3 said that evening after super, he escorted his wife to take a bus to Busia to attend their son's academic day. On Saturday, she was in Busia and he even talked with their son through her phone.
15. He said at 10 pm on Saturday, the deceased's phone went off together with the tablet she was using. She returned on Sunday at 6 a.m. He said he saw the Accused Person moving around the Estate. He called PW.3 at Midday and told him that the deceased had his money – Kshs.165,000/=.
16. PW.3 told the Accused Person that he did not know about it. He said that they were called to discuss the matter at the house of Judy with the village elders and the matter was referred to the Human Resource Manager for a resolution.
17. PW.3 said while in the meeting at Judy's with the Accused person and 5 or 6 Village Elders, the Accused Person snatched the deceased's phone and said he had bought it for her. The elders told the Accused person to give the deceased her sim card.
18. He said he inquired about the deceased's relationship with the Accused Person and she admitted they were lovers. She said they used to make love at the tea plantations.
19. The following day, PW.3 said he woke up and had breakfast with the deceased. They left to go to her school where she was going to ask for permission to sort out the issue concerning the Accused Person's claim. They discussed the issue the whole night and agreed that the deceased would go on transfer.
20. While on the way before they reached the school, the Accused Person emerged from the Tea Plantation with a slasher and he first hit PW.3 with it. PW.3 said he screamed and ran away.
21. He said he looked back and saw the deceased holding up her hands. He saw the accused Person cutting the deceased with the slasher. He screamed and some people came to the scene.
22. PW.3 said the Accused Person left the slasher at the scene and ran away. He later called PW.3 and told him he was going to surrender to the Police.
23. PW.3 said he ran away when he saw the Accused Person cutting the deceased. He said there was a person pruning tea near the scene. After the Accused Person ran away, PW.3 went to the scene and saw the deceased had been cut several times and one hand was completely cut off. She had a deep wound on the nose, and both legs had deep cut wounds.



24. PW.5 said the deceased told him to take her to Hospital. The person who was pruning tea came with an overall and they used it to tie the deceased and they took her to Kericho Hospital. The deceased was pronounced dead at 4 pm that day.
25. PW.3 also said the slasher was recovered near the body of the deceased. he said after the debt discussion, the previous day, he had called the deceased's sister Gladys and she had come to his house with Korir and they had agreed that the deceased would get a transfer from Kericho.
26. In cross-examination, PW.3 admitted that he was upset to discover that the deceased had a love affair with the Accused Person.
27. He denied that he is the one who killed his wife because he discovered she had a love affair with the Accused Person. He said he saw the Accused Person attack his wife with a slasher.
28. PW.4 – Richard Kipngetich Rugut said he was working as a security officer at the material time. He said on 22/2/2015, he was among the elders who discussed the debt which the Accused alleged that the deceased owed him.
29. PW.4 said the following day, PW.3 called him and told him the deceased had been killed. He went to the scene and saw a slasher and a Tecno Phone box. He saw the deceased lying down with injuries on the nose, hand and legs.
30. PW.5 – Jonathan Terer who was also working as a security officer at James Finleys – Kericho said he was called to go to the scene by the Security manager. At the scene, he saw the deceased who had been assaulted, he saw Tecno Phone box, sun glasses and a slasher at the scene.
31. PW.5 said he took the deceased to Kericho Hospital where she was taken to Theatre. He went to the Police Station and took Police Officers to the scene.
32. PW.6 – Boniface Naliaka who works at James Finleys Flower as a security supervisor said on 23/2/2015 at 8 a.m. a driver went and took him to the scene of crime.
33. PW.6 said he saw the body of a woman lying down facing up with blood scattered around the scene. He saw a slasher at the scene next to the woman and a tecno phone box and also sunglasses.
34. PW.6 said the woman was taken to Kericho Hospital while he remained at the scene and cordoned the scene until police arrived and took photographs at the scene.
35. PW.6 said he knew the deceased was a teacher. He used to see her. He did not know the Accused Person.
36. PW.7 – Gladys Chepngeno said she went to the deceased's house to visit her child who was staying with the deceased. The following day, PW.3 called her and told her that her sister (the deceased) had been cut by a Kisii.
37. I took over the hearing of this case at this stage and after complying with Section 200 of the [CPC](#), I took the evidence of PW.8, Winrose Chebet, who investigated this case.
38. PW.8 said she recovered the slasher, sun glasses and tecno phone box and recorded the statements of the witnesses and also took samples to the government chemist for analysis.
39. PW.8 said the Accused Person was arrested at Kitengela in Kajiado district on the night of 23<sup>rd</sup> February, 2015. He said upon completing investigations, she charged the Accused Person with this offence.
40. PW.9 – Dr. Cheronio Siele produced the Post Mortem Report on account of the deceased herein on behalf of Dr. Dorcas BundI who conducted the Post Mortem.



41. According to the Post Mortem Report, the cause of death was loss of blood as a result of multiple cut wounds.
42. The Post Mortem also revealed that the body had several wounds as follows:-
  - i. Midface wound extending from right cheek to the left cheek measuring 14 by 3 cm.
  - ii. Right anterior forearm wound measuring 3 by 13 cm.
  - iii. Right lateral thigh wound 11 cm long
  - iv. Right knee joint wound 14 cm long
  - v. Right anterior leg upper 11 cm long.
  - vi. Left hand – 2 cut wounds on rear dosum – 10 cm by 3 cm long.
43. The body had fractures of the nasal bone, right radius simple fracture and on the upper 1/3 right tibia.
44. PW.10 – Elizabeth Waithira Oyiengo the Government Chemist at Kisumu said she received the following items from Jonathan Kiplangat of CID Kericho,A1 – A white spaghetti top.A2 – A beige blouseA3 – A beige coat.  
 These items were in a carton indicated they belonged to the deceased Linda Chemutai Keter.
45. PW.10 also received the followingB1 – A brown stoneB2 – Another brown stoneB3 – Another brown stoneC1 – A piece of wood wrapped in a khaki paperD1 – A blue jeansD2 – A Jacket (blue)  
 Items D1 and D2 were in a carton indicated they belonged to the Accused Person Stephen Maranga.
46. PW.10 also received the following items E1 and E2 – Blood Samples from the deceased Linda Chemutai Keter.  
 F1 and F2 – Blood Samples in a bottle indicated they belonged to the Accused Person Stephen Maranga and G1 – a sword.
47. Upon analysis, PW.10 said her findings were as follows:-
  - i. The Sparagetti top (A1), the blouse (A2) and the Court (A3) were heavily stained with human blood.
  - ii. The stones (B1, B2 and B3) and wood (C1) and the sworn (G1) were lightly stained with human blood.
  - iii. The Jacket (D2) was not stained with blood.
  - iv. The Coat (A3) and the trouser (D1) did not generate a DNA profile.
  - v. The DNA profile that was generated from A1 (the spaghetti top) and blouse (A2), stones (B1, B2 and B3) and wood (C1) and sword (G1) was one profile that matched the DNA profile E1 and E2 (the blood sample of the deceased Linda Chemutai Keter).
48. In Cross-Examination, PW.10 said the Accused Person's clothes D1 and D2 did not generate any DNA profile because it had been interfered with.
49. The Court found that the prosecution had established a prima facie case to warrant the Accused Person to be placed on his defence.



50. The Accused person gave a sworn statement. He said that he works with the British Training Unit in Kenya (BATU) since August, 2022,
51. The Accused Person said that on 23/2/2015, he was working at Kapsongoi Tea Estate while working at James Finley as a seasonal employee.
52. The Accused Person said while at the Barrier Camp at James Finleys a tailor went and told him that there was an incident at James Finley and he had been mentioned.
53. The tailor told him that a lady who was his lover called Linda Chemutai had been attacked. The Accused Person said he decided to run away.
54. He went to his Auntie's place at Kitengela where he was arrested. He said Linda was his lover for 1 ½ years. He met her at Sunrise SDA Church where they both attended Church.
55. The Accused Person said the deceased told him she was separated from her husband. He said the deceased owed him money. He said he had reported the incident to the village elders before the deceased died. He said that was the time he learnt she was married to PW.3.
56. The Accused Person denied that he was involved in the murder of the deceased. He said he had gone with the deceased to visit her son at school.
57. In Cross-Examination, the Accused Person said that the deceased was his lover and further that he reported her to Milimani Village elders because he wanted the deceased to refund his money.
58. I have considered the evidence adduced by the prosecution in this case. It is the duty of the prosecution to prove the guilt of the Accused Person.
59. The degree of proof required is beyond reasonable doubt.
60. Section 203 of the [Penal Code](#) defines murder in the following terms:

“ Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”
61. Thus, the central ingredients of the offence of murder are
  - a) malice aforethought;
  - b) an unlawful act or omission on the part of the accused; and
  - c) death and these are the three elements the prosecution has to prove in a case of murder.
62. The Court of Appeal in the case of [Joseph Kimani Njau v R](#) (2014) eKLR, held as follows: “

“ Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

  - i. The intention to cause death;
  - ii. The intention to cause grievous bodily harm;
  - iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and



without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

- iv. It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed...”

63. In the current case, I find that the prosecution has proved the elements of murder.
64. The incident occurred in broad daylight at 8 a.m. in the morning and PW.3 (the deceased’s husband) witnessed the incident.
65. The nature of injuries inflicted upon the Accused person clearly shows that the deceased had an intention of terminating the life of the deceased.
66. The Accused person inflicted the following injuries on the deceased;
  - i. Midface wound extending from right cheek to the left cheek measuring 14 by 3 cm.
  - ii. Right anterior forearm wound measuring 3 by 13 cm.
  - iii. Right lateral thigh wound 11 cm long
  - iv. Right knee joint wound 14 cm long
  - v. Right anterior leg upper 11 cm long.
  - vi. Left hand – 2 cut wounds on rear dosum – 10 cm by 3 cm long.
67. The motive of the murder was money (Kshs.165,000/=,) the Accused Person had given the deceased which she refused to refund.
68. The Accused Person snatched a phone which he said he had bought the deceased in the presence of the village elders who were trying to resolve the dispute.
69. The Accused Person said the deceased who was his lover had told him she was separated from her husband. He had discovered that she was married to PW.3.
70. I find that the prosecution has proved the guilt of the Accused Person to the required standard.
71. The defence by the Accused Person was that PW.3 said the deceased was attacked by a person known to him (PW.3).
72. I find that there is evidence that it is the Accused Person who inflicted the fatal injuries on the deceased.
73. The defence by the Accused Person is a mere denial.
74. I find the Accused Person guilty as charged and I accordingly convict him with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**A. N. ONGERI**

**JUDGE**

