



**Republic v Rotich (Criminal Case 11 of 2019)  
[2023] KEHC 753 (KLR) (13 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 753 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CRIMINAL CASE 11 OF 2019  
F GIKONYO, J  
FEBRUARY 13, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ISAIAH KIPKORIR ROTICH ..... ACCUSED**

**JUDGMENT**

1. The accused is charged with the murder of Mathias Korir contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars are that the accused committed the offence on May 13, 2019 at Simatwet village in Narok North South sub-county within Narok county.
2. He pleaded not guilty to the charge.

**Prosecution's Case**

3. To prove the case against him, the prosecution called and examined a total of nine (9) witnesses.
4. PW1, Milka Kosgei, sister to the deceased in her testimony stated that on May 13, 2019 at around noon she was in her kitchen resting since she had given birth. She heard a commotion of her chairs in the big house. She went out and opened the door. She saw the accused and the deceased. She saw blood oozing from the neck at the chest area of the deceased. She was shocked, and as a result, she fell down and collapsed. She saw the accused with a knife in his hands. She regained consciousness and found herself at her mother-in-law's house which was about half a kilometer from her house. She was told that the deceased had been taken to the hospital though she later learned that the deceased had died.
5. PW2-Wesley Kipkori Bett. He testified that on May 13, 2019 at around noon, he heard people screaming from the triangle side of the home of the deceased. He saw the deceased and the accused quarreling over a land dispute. The deceased was asking the accused why he was trespassing over his land. PW2 was about 500 metres from where the two were. The deceased started running followed



- by the accused with a 'fimbo'. The deceased was not armed. The deceased ran towards the house of PW1. The accused followed the deceased to the house of PW1. PW1 screamed for help to assist prevent the two from fighting. He met the deceased who was lying face upward inside the house of PW1. The deceased had an injury in the front part of the lower neck. The deceased was bleeding profusely from the said injury. They tried to rush him to the hospital but 100 meters from that house they discovered that the deceased had died. The accused had escaped from the scene to his house which was about 50 meters.
6. PW3-Cheruiyot Ngetich. He recalled that on May 13, 2019 at 12 noon, he was at home sitting under a shade. He heard a lady screaming for assistance. The screams were from Milka's house. He ran to her house and upon arrival, he found PW1 had fainted. He entered the main house. He saw the deceased next to the wall and he was not talking. He led his hand and got him out of the house. The deceased fell down and a lot of blood was coming out of his neck. Together with other neighbours they tried to perform first aid on the deceased but to no avail. They tried to rush him to the nearest clinic but before they reached there the deceased died. They then returned the body to the house of PW1. PW3, the father of the accused, and the village elder went to report to an AP camp at Torokiat. At 7.00 pm police from Oloulunga arrived at the scene and took the body to the mortuary at Narok referral hospital.
  7. PW4- Richard Kimutai Korir. He testified that on May 20, 2019 at 11 am he went to the mortuary at Narok referral hospital where he identified the body of the deceased to the doctor who performed the postmortem. PW5- Elijah Kimngetich Sigei. His evidence was similar to that of PW4 hence the prosecution applied to discharge him.
  8. PW6- Dr Yegon Stanley. He testified that he conducted a postmortem at Narok county referral hospital on the body of the deceased on May 20, 2019. He observed that the deceased had a deep cut on the right anterior neck. The wound was about 6 cm and a deep cut of 7 cm. the windpipe had been severed and so was the carotid artery that supplies the head and neck with blood. The other observations of the general body were normal. He opined that the cause of death was hemorrhage secondary to stab wounds on the anterior neck. In layman's language, he had bled to death. He produced the postmortem report signed and stamped on May 23, 2019 as P Exh 2.
  9. PW7-CPL Evans Mose. He testified that he is a gazette as a scene of crime officer. On November 6, 2019 he received an exhibit memo that accompanied a CD compact from PC Daniel Owuor who was attached to DCIO's office in Narok south. The request was for the analysis and processing of photographs. 8 photos were printed and revealed a body of a male adult lying in a pool of blood with a fresh stab wound on the neck. He wrote a certificate on December 9, 2019 on the analysis and processing of the photos. The exhibit memo shows when the offence was committed. They were taken on May 13, 2019. He processed the 8 photos. he produced an exhibit memo, 8 photographs, and a certificate dated December 9, 2019 as P Exh 3, P Exh 4 (a-h), and P Exh 5.
  10. PW8- PC Evans Nyambura testified that on May 15, 2019, the accused was accompanied by members of the public and confessed to having committed murder at the mara triangle area. That he had stabbed the deceased with a knife on May 13, 2019. That he was trespassing through the deceased land and they wrestled. PW8 arrested him and informed DCIO Ololulunga to come for the suspect.
  11. PW9- PC Paul Kabuchi testified that while in their office, the in-charge DCIO told them that there was a murder report at the Simatwet area had been made. They visited the scene and found the body of the deceased at PW1's house. PW1 narrated to them how the deceased had been stabbed. The deceased had sustained a deep cut on the front side of the neck as a result of which he died. They recorded statements from all the witnesses. Later on, May 15, 2019, they received a call from the Chebunyo police station that the suspect had surrendered himself at their station. They went and picked the accused. they



interrogated him and he told them that he had stabbed the deceased. They did not retrieve the knife as the accused told them he had thrown it at Mau forest.

### **Defence Case**

12. The defence called one witness; the accused.
13. DW1- Isaiah Kipkorir Rotich. He gave unsworn testimony. he testified that on May 13, 2019, he was at home. At 1.00 am he left his workplace. He heard screams. He looked and saw Mathew Korir shouting asking him why he was trespassing upon his land. He replied that he was going home. He told him to go back. It was his testimony that the deceased was armed with a post and the deceased hit the accused with the post. A fight ensued. They fought until they arrived at PW1's house. The deceased took a knife. DW1 tried to take the knife from him but by bad luck, the knife stabbed the deceased. He left the scene and was later informed that the deceased had died. On May 15, 2019, he went to the police station and reported the incident. The police immediately arrested him and placed him in custody. He concluded that the deceased was his friend and they did not have a quarrel before the incident. He feels heavy as he did not anticipate that it would end as it did.
14. At the close of the hearing, both the prosecution and the defence opted to file written submissions as to whether the prosecution had proved their case beyond a reasonable doubt.

### **Prosecution's Submissions**

15. The prosecution's submissions are considered in detail in the analysis. I record also that the prosecution relied on the following authorities;
  - i. *Ramanlal Trambaklal Bhatt v R* [1957] EA 332
  - ii. Section 107(1) of the *Evidence Act*
  - iii. Sections 203 and 206 of the *Penal Code*
  - iv. *Republic v Mohammed Dadi Kokanee & 7 others* [2014] eKLR
  - v. *Republic v Susan Kabindi*[2010] eKLR which quoted the case of *Daniel Muthee v R* Ca No 218 of 2005(UR).

### **Defense Submissions**

16. The defense submissions are considered in detail in the analysis. I record also that the defense relied on the following authorities;
  - i. *Woolmington v DPP* [1935] Ac 462, *Miller v Minister of Pensions* [1947] All Er 373.
  - ii. Section 203 and 204 of the *Penal Code*.
  - iii. Section 107 of the *Evidence Act*.
  - iv. Article 50(2) (a) of the *Constitution*.
  - v. Criminal Appeal *Mungai v Republic* [1984] eKLR.

### **Analysis And Determination**

17. The central issue for my determination in this trial is whether the accused person murdered of the deceased.



## Elements Of Murder

18. According to section 203 of the [Penal Code](#):

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

19. Therefore, the prosecution must prove beyond reasonable doubt:

- i. The fact of death;
- ii. The cause of death;
- iii. That the death was caused by the unlawful act or omission of the accused; and
- iv. That there was malice aforethought.

## The Fact And Cause Of Death

20. The fact and cause of death could be handled together for their inextricable connection.

21. The body of the deceased was identified by Richard Kimutai Korir (PW4) and Elijah Kimngetich Sigei on May 20, 2019 for purposes of a postmortem examination.

22. Dr Yegon Stanley (PW6) examined the body on May 20, 2019 and filled in his findings in a post-mortem form on May 23, 2019. He signed the report. He observed that the deceased had a deep cut on the right anterior neck. The wound was about 6 cm and a deep cut of 7 cm. the windpipe had been severed and so was the carotid artery that supplies the head and neck with blood. The other observations of the general body were normal. He opined that the cause of death was hemorrhage secondary to stab wounds on the anterior neck. This corroborates the testimony of other witnesses that there was a deep-cut wound on the front of the neck area of the deceased.

23. The medical evidence as well as that of those who identified the body of the deceased proves the death of the deceased beyond reasonable doubt.

## Was Death Due To An Unlawful Act Or Omission Of The Accused?

24. The prosecution submitted that the offence happened at noon, at broad daylight and the accused was positively identified as the one who stabbed the deceased.

25. The prosecution further submitted that the accused gave an unsworn statement; the same has no value and has not discredited the prosecution's case. To them, the accused has not denied a confrontation with the deceased and that the deceased was cut by a knife.

26. The defense submitted that no one saw the accused with a knife.

27. What story does the evidence tell?

28. PW1 testified that she heard a commotion of chairs in her main house while she was in her kitchen. She came out and found the accused with a knife. Blood was oozing out from the neck of the deceased.

29. PW2 and PW3 were neighbours of the accused and the deceased. PW2 in his testimony stated that he saw the deceased and the accused having a confrontation. The two were about 500 metres from where he was. The deceased started running followed by the accused with a 'fimbo'. The deceased was not armed. The deceased ran towards the house of PW1. The accused followed the deceased to the house



- of PW1. PW1 screamed for help to assist prevent the two from fighting. He saw the deceased who was lying face upward inside the house of PW1. The deceased had an injury in the front part of the lower neck. The deceased was bleeding profusely from the said injury. They tried to rush him to the hospital but 100 meters from that house they discovered that the deceased had died. The accused had escaped from the scene to his house which was about 50 meters.
30. PW3 testified that he heard a lady screaming for assistance. The screams were from PW1's house. He ran to her house and upon arrival, he found PW1 had fainted. He entered the main house. He saw the deceased next to the wall and he was not talking. He led his hand and got him out of the house. The deceased fell down and a lot of blood was coming out of his neck. Together with other neighbours they tried to perform first aid on the deceased but to no avail. They tried to rush him to the nearest clinic but before they reached there the deceased died. They then returned the body to the house of PW1. PW3, the father of the accused, and the village elder went to report to an AP camp at Torokiat. At 7.00 p.m police from Oloulunga arrived at the scene and took the body to the mortuary at Narok referral hospital.
  31. According to PW8, the accused confessed to having committed murder at the mara triangle area. That he had stabbed the deceased with a knife on May 13, 2019. That he was trespassing through the deceased land and they wrestled. PW8 arrested him and informed DCIO Ololulunga to come for the suspect.
  32. PW7, a scene of crime officer analyzed and processed 8 photos. The 8 photos were printed and revealed a body of a male adult lying in a pool of blood with a fresh stab wound on the neck. He produced an exhibit memo, 8 photographs, and a certificate dated December 9, 2019 as P Exh 3, P Exh 4 (a-h), and P Exh 5.
  33. PW9 testified that he visited the scene and found the body of the deceased at PW1's house. PW1 narrated to them how the deceased had been stabbed. The deceased had sustained a deep cut on the front side of the neck as a result of which he died. They recorded statements from all the witnesses. Later on, May 15, 2019, they received a call from the Chebunyo police station that the suspect had surrendered himself at their station. They went and picked the accused. they interrogated him and he told them that he had stabbed the deceased. They did not retrieve the knife as the accused told them he had thrown it at Mau Forest.
  34. In his defense, DW1 testified that on May 13, 2019, he had a confrontation with the deceased. It was his testimony that the deceased was armed with a post and the deceased hit him with the post. A fight ensued. They fought until they arrived at PW1's house. The deceased took a knife. DW1 tried to take the knife from him but by bad luck, the knife stabbed the deceased. He left the scene and was later informed that the deceased had died. On May 15, 2019, he went to the police station and reported the incident. The police immediately arrested him and placed him in custody. He concluded that the deceased was his friend and they did not have a quarrel before the incident. He feels heavy as he did not anticipate that it would end as it did.
  35. There are succinct pieces of evidence which should be set out here. First, the accused was the last person to be seen with the deceased alive. The evidence show that the accused and the deceased entered into the house of PW1; at the time, the accused was in hot pursuit of the deceased.
  36. Second, contrary to the submission by the accused, PW1 opened the door of her main house where she had heard a commotion and saw the accused with a knife; she also saw blood oozing out profusely from the neck of the deceased. These events made her collapse.



37. The other witnesses corroborated the fact that the accused had a confrontation with, and pursued the deceased with a fimbo only to be found later, his body in a pool of blood inside the house of PW1. The deceased was not armed at all.
38. In his defence, the accused alleged that it is the deceased who had the knife. He also admitted that he was trying to take the knife away from the deceased but by bad luck the deceased got stabbed. Let me gauge this against the medical evidence and other witnesses' evidence.
39. PW6- Dr Yegon Stanley who conducted a postmortem at Narok county referral hospital on the body of the deceased on May 20, 2019 stated that the deceased had a deep cut on the right anterior neck. He said the wound was about 6 cm and a deep cut of 7 cm, the windpipe had been severed and so was the carotid artery that supplies the head and neck with blood.
40. The medical evidence does not support the claim by the accused that he merely tried to snatch the knife from the deceased but by bad luck got stabbed. The medical evidence established that brutal force was used; the stab was deep, the windpipe was severed and so was the carotid artery that supplies the head and neck with blood. Also, the manner the stabbing was done shows the stabbing was not accidental but calculated and intended. To me this was like a slaughter.
41. I should also note that the evidence shows that the deceased was not armed; he was being pursued; and was running away from his attacker; and the accused was the aggressor here.
42. The investigations carried out by PW9 put together evidence in a manner that shows the accused stabbed the deceased. Accordingly, the investigations and testimonies of PW1, PW2, and PW3, connected the accused to the death of, and established he stabbed the deceased.
43. In sum, the chain of events, the subtleties of evidence and the circumstances of the case paints a picturesque that there is no any other hypothesis other than that the accused stabbed the deceased. The evidence is largely circumstantial but meets the threshold of the law. I find on the basis of circumstantial evidence an inescapable inference arising therefrom points to the guilt of the accused.

### **Of Malice Aforethought**

44. Section 206 of the [Penal Code](#), provides circumstances in which malice aforethought is established when there is evidence of;
  - i. Intention to cause death of or grievous harm to any person whether that person is the one who actually died or not;
  - ii. 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;
  - iii. Intent to commit a felony; or
  - iv. 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.
45. The prosecution submitted that it had proved malice aforethought. The accused knew very well that stabbing the deceased in the neck with a knife would cause death or grievous harm.
46. The prosecution further submitted that the accused chose to inflict serious injuries on the neck region which shows that the accused knew that assaulting the deceased on these parts of the body would cause grievous harm or death as these are the most delicate parts of the human body. The choice of weapon by the accused also indicates that he wanted to murder the deceased as it was a dangerous weapon, a knife.



47. The defense submitted that no evidence was adduced to the effect that the actions of the accused were premeditated. That the two met by coincidence and the deceased provoked the accused. And, urged that, in fact, the accused acted in self-defense upon the provoking.
48. What does the evidence reveal?
49. Arising out of the evidence is that the deceased died of hemorrhage secondary to a stab wound on the anterior neck. The accused applied brutal force upon the deceased by stabbing him in the neck and severing his windpipe and carotid artery. This was a kind of slaughter the way we know it of animals. Such an act is intended to produce death or grievous harm. Evidence adduced completely unravels self-defence; it established intention to murder the deceased by stabbing him in most sensitive place and with such brutal force in order to murder him. By literally slitting his throat, the intention was to murder him. it bears repeating that, the manner the injury was inflicted shows that the accused did not intend to leave the deceased alive or with remotest chance of survival. Accordingly, I find that there was malice aforethought in the killing of the deceased by the accused.
50. In the upshot, the accused is convicted for the murder of Mathias Korir on May 13, 2019 at Simotwet village Narok South sub county within Narok county, contrary to section 203 as read with section 204 of the [Penal Code](#).
51. Right of appeal explained.

**DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION. THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**F. Gikonyo M.**

**Judge**

**In the presence of:**

- 1. Mr. Kasaso – CA**
- 2. Ondimu for DPP**
- 3. Okinyi for accused**
- 4. Accused person**

