



**Republic v Njeru & another (Criminal Case 15 of 2016)
[2023] KEHC 895 (KLR) (10 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 15 OF 2016
AN ONGERI, J
FEBRUARY 10, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

MICHAEL NJERU ALIAS KECHA 1ST ACCUSED

JULIUS KIPKOSKEI YEGON ALIAS KIPYEGEN 2ND ACCUSED

JUDGMENT

1. The two accused persons in this case Michael Njeru alias Kecha and Julius Kipkoskei Yegon alias Kipyegen are facing a charge of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The particulars of the charge are that on the night of May 9, 2016 and May 10, 2016 at an unknown time at Fort Tenan trading centre at Kipkelion District at Kericho County, the two accused persons jointly killed Andrew Cheruiyot Rotich.
3. The accused persons pleaded not guilty to the charge and they were represented by Motanya Advocate during the trial. The prosecution called a total of seven witnesses whose evidence in summary was as follows
4. Pw1 Anne Anyango Owuor who lives at Fort Tenan and works as a house cleaner said on May 10, 2016 she woke up and went to clean Classic Pub.
5. Pw1 said after cleaning one room, she was told to stop since a body had been found near the bar. She said she was arrested with the 1st accused person and she stayed at the police station for two days.
6. Pw2 Peter Njoroge the owner of the bar said he owned a bar and a shop at Fort Tenan. He said on 9/5/2016, he closed his shop at 10p.m and he went home and slept.



7. PW2 said he went to open his shop in the morning and found it was dirty. He went to Classis bar to get a broom when he saw a man lying at the verandah of the shop next to the bar.
8. PW2 called the 1st accused person who was working for him as a watchman at the bar and asked him what had happened. The 1st accused person told him the man had been drinking at the bar and he fell down when he was leaving and some people took him and placed him at the verandah. He called police and the accused person was arrested.
9. Pw3 Simon Kipkemoi Cheruiyot said on 10/5/2016 at 7a.m he received a call from his brother Philip Cheruiyot who told him to go to Classic Bar at Fort Tenan where his brother was in a critical condition.
10. PW3 went to the scene with his mother Esther Rotich and his brother Samwel Cheruiyot. At the scene they saw the body of the deceased with injuries and bleeding from the nose.
11. Pw4 Dennis Kipkorir Chepkwony said on 9/5/2016 he was at 9p.m he went to drink at the bar. He bought a bottle of beer and started drinking.
12. PW4 said while drinking Mzee Kipyegon entered the bar with a girl called Chemalel and they sat opposite him and they continued drinking. There was a driver called Ngeiywa who was there. They drank for a while when a student called Patrick Kimutai joined them and he bought a soda.
13. PW4 said he went and closed his business and returned. The deceased joined them and he started quarelling with Mzee Kipyegon. The deceased took a glass and hit Kipyegon and PW4 separated them.
14. Pw5 Patrick Kimutai said he was at the Classic bar when the deceased hit Kipyegon with a glass. He saw Kipyegon hit the deceased with a fist on the head. PW5 did not see accused the 1st hit the deceased.
15. Pw6 Dr Victor Rono produced a post Mortem Report conducted by Dr. Gilbert Langat as an exhibit in this case. According to the post mortem, the cause of death was severe head injury secondary to blunt trauma.
16. Pw7 is the investigating officer who said he was called to the scene at 7.30 am where he found the body of the deceased outside Classic Bar, PW7 did investigations and he charged the two accused persons with this offence.
17. The two accused persons were placed on their defence. Accused 1 – Michael Njeru alias Kecha said he was working at Classic Bar as a watchman. He said on 9/5/2016 was on duty arranging boxes of beer in the store.
18. While in the store he heard the bar maid Mercy Nashipae shouting. He went to the bar and saw a lot of people shouting. He did not hear what they were saying since he does not understand the local language.
19. The 1st accused Person said he asked one customer called Deno what was happening and he was told the people were fighting. He asked Mercy if he could call the bar owner and she told him it was time to close the bar.
20. The 1st accused said he returned to the store, finished arranging boxes of beer and he took supper and went to sleep at the store. Later Mercy told him she had seen an old man who had fallen down at the bar outside the bar.
21. The following morning the owner of the bar found the body of the man lying outside the bar. The man was dead and the owner called police.



22. The 1st accused said he was arrested with Mercy Nashipae. The 1st accused said he was not involved in the murder.
23. The 2nd accused person Julius Kipkoskey Yegon alias Kipyegen also said he used to work as a watchman in a different bar. He said on that day he closed his bar and went to relax at Classic Bar after work.
24. The 2nd accused person said he ordered for a beer and started drinking. He said he was seated next to Chemalel and Denis was next to him when a lot of people entered the bar with the deceased.
25. The 2nd accused said the deceased started causing disturbance. He started pouring people's beer. He was with a group of 6 people. He poured his beer. The 1st accused asked the deceased why he had poured his drink. The 1st accused person came and told accused 2 that he knew what he would do so that the deceased goes away.
26. The 2nd accused said he left the deceased quarrelling at the bar and he decided to go to his slaughter house. He said while leaving he saw the deceased lying at the entrance of the bar and the following day he learnt that the deceased had died.
27. In cross-examination he said the deceased started pouring customer's drinks and he was pushed out of the bar. He said the deceased was demanding for his change when he entered the bar.
28. 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 persons and the standard is beyond reasonable doubt.
29. In order for the prosecution to secure a conviction on the charge of murder, it has to prove three ingredients against the accused persons.
30. In the case of *Anthony Ndegwa Ngari v Republic* [2014] eKLR, the elements of the offence of murder were listed as follows;
 - (a) that the death of the deceased occurred;
 - (b) that the accused committed the unlawful act which caused the death of the deceased; and
 - (c) that the accused had malice aforethought.
31. In the current case, PW4 and PW5 saw the 2nd accused person hit the deceased with a fist after the deceased hit him with a glass.
32. The Doctor who produced the post mortem said the cause of death was severe head injury secondary to blunt trauma.
33. There is no evidence that it is the Accused persons who inflicted the fatal injuries on the deceased.
34. I find that Mercy Nashipae who was initially charged with accused 1 was not called as a witness. I also find that Chemalel was also not called as a witness.
35. I find that the prosecution has not established that the cause of death was as a result of the fight at the bar.
36. The body of the deceased was discovered the day after the skirmishes at the bar and it not clear who inflicted the fatal injuries on the deceased.
37. It is also not clear what time the deceased died since he left the bar after the skirmishes.



38. I find that the prosecution has not proved the guilt of both accused persons to the required standard in criminal cases.

39. I associate myself with the sentiments of Mrima, J in [JOO v Republic](#) [2015] eKLR when he held thus:

“It is not lost to this court that the offence which the appellant faced was such a serious one and ought to be denounced in the strongest terms possible. However, it also remains a cardinal duty on the prosecution to ensure that that adequate evidence is adduced against a suspect so as to uphold any conviction. The standard of proof required in criminal cases is well settled, proof beyond reasonable doubt hence this case cannot be an exception. This court holds the view that it is better to acquit ten guilty persons than to convict one innocent person.”

40. I accordingly acquit Both accused persons under section 215 of the [CPC](#) and direct that The two be set free forthwith unless lawfully held for any other reason.

41. Their sureties if any are also discharged forthwith.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 10TH DAY OF FEBRUARY, 2023.

AN ONGERI

JUDGE

