



REPUBLIC OF KENYA



**Republic v Wanjala (Criminal Case E023 of 2022)
[2023] KEHC 3080 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3080 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E023 OF 2022**

DK KEMEL, J

APRIL 13, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

ERICK LUBAO WANJALA ACCUSED

RULING

1. The accused herein Erick Lubao Wanjala has been charged with an offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The particulars are that on the July 20, 2022 at Namilama Village, Mihuu Sub-Location, and Chetambe location in Webuye East Sub-County within Bungoma County, he murdered Amos Munialo Biketi.
2. The accused denied the charge and thus a trial commenced wherein the prosecution called six witnesses in support of its case. A recap of the evidence was as follows;
3. PW1 was Leonard Wafula who testified that he decided to pass by the home of the deceased who had leased him a sugarcane farm only to find him lying down with a huge stone lying on top of him. He rushed to the deceased's brother but did not find him and thus alerted other relatives who accompanied him to the scene. He added that the deceased used to live with the accused in the past before the accused demolished his house. He also stated that blood oozed from the deceased's mouth and nose.
4. On cross examination, he stated that he did not find the accused at the scene that the accused had lived with the deceased for three years. He also stated that he had heard rumors that the deceased had a love affair with the accused's wife prompting him to demolish the deceased's house as well as his and thereafter relocating elsewhere. On re-examination, he stated there were claims that the deceased was having an affair with the wife of the accused.
5. PW2 was Mary Makuti John who is the village elder for Namilango village. She stated that on the maternal date at around 9:00am, she enquired from the accused as to the welfare of his wife and



children since his wife had deserted him to which the accused confirmed the same but promised to bring them back but will rent them a place as he did not want to see his grandfather near them as he used to make love to his wife whenever he was out of his home. She testified that she later learnt that the deceased had been killed. She further stated that the accused had earlier demolished the deceased's house over the love affair allegations. She identified the flat stone found on the chest of the deceased. On cross-examination, she stated that she met the accused around 9:00am on the maternal date and had a chat with him and that he informed her that he did not wish to live with the deceased or even see him again. She added that she was present during the arrest of the accused and that she is the one who pointed him out to the police officers and that he did not resist the arrest. On re-examination, she stated that she apprehended the accused before the police arrived.

6. PW3 was Wekesa Biketi, a brother to the deceased and who testified that the accused used to live in the same compound with the deceased but he later demolished his house as well as that of the deceased following claims that the deceased was having a love affair with accused's wife and then relocated elsewhere. He stated that he rushed to the scene and found the deceased lying down with a huge stone on his chest. He maintained that the accused and his son had earlier in the day had passed near his house. He led in the arrest of the accused. On cross examination, he stated that the accused informed him that the deceased was having an affair with his wife. He also confirmed having not heard of any commotion at the deceased's compound. He confirmed having seen the accused passing by his compound around 9:00am.

7. PW4 was Caren Wanyama who testified that the accused is her grandson while the deceased was her brother in law. She stated that the accused sometimes in May 2022 called her and informed her that the deceased was having a love affair with his (accused's) wife and that he threatened to cut the deceased into pieces and throw them into River Nzoia. She stated that soon thereafter, the accused demolished his house as well as that of the deceased and relocated elsewhere. She stated that after a while in June 2022, she heard somebody screaming that he was being killed and that he was being killed and that she rushed to the deceased's compound and met the accused herein armed with a metal rod. She found the deceased had been injured on the waist but that the deceased did not go to hospital as they managed the injured part by washing it with warm water since there was no money with which to take him to hospital. She added that on July 20, 2022 she was alerted by one of the grandchildren of the incident and she visited the house of the deceased and found that he had been killed.

On cross examination, she stated that she had heard about the love affair between deceased and accused's wife and that accused's wife did confirm that the deceased had seduced her only once. She finally stated that she did not witness the incident.

8. PW5 was Dr Edward Wafula Simiyu based at Webuye District Hospital. He produced a postmortem report form regarding an autopsy conducted on the body of the deceased by his colleague Dr Brian Inima who no longer worked at the hospital facility. On external appearance, there were bruises on the chest wall (anterior) and that there were signs of air on the skin. There were fractured ribs on both sides of the chest cavity (numbers 6-10 on both sides). There was a collapsed left lung. There was massive hematoma on the head with fractured parietal skull. There was also bleeding on top of the brain. The other systems were normal. The cause of the death was severe head injury with respiratory failure due to blunt trauma with a heavy object. The postmortem report dated July 27, 2022 was produced as exhibit 2.

9. PW6 was No 236144 IP Patrick Wafula testified that he was the investigating officer in the case. He stated that he visited the scene and found the body of the deceased lying on the floor with huge flat stone lying on his chest. He also saw injuries on the head. He picked up the body and later arrested the accused herein. After recording statements of witnesses he established that the accused had been



having quarrels with the deceased over claims that the deceased had been having a love affair with the wife of the accused and that the accused had threatened to finish the deceased. He also established that the accused had been seen emerging from the house of the deceased. He produced the recovered flat store as exhibit 1. On cross examination, he stated that the accused had earlier issued threats to finish the deceased and that he was spotted emerging from the deceased house. He also confirmed that none of the witnesses saw the accused hitting the deceased with a stone. He also confirmed that upon interviewing accused's wife, she confirmed having a love affair with the deceased.

10. At the close of the prosecution case, learned counsels for prosecution and defense opted to rely on the evidence so far tendered. At this stage of the proceedings, prosecution is under a duty to establish a prima facie case against the accused so as to warrant him to be called upon to make a defense. A prima facie case is one in which a reasonable tribunal directing it's mind to the law and evidence placed before it can convict an accused if no evidence is offered by the defense to the contrary. In a nutshell, what this means is that from the evidence tendered so far, the same should be sufficient to sustain a conviction against the accused if he elects to remain silent in defense. See *Bhat v Republic*[1957] EA332
11. The issue for determination at this stage of the proceedings is whether the prosecution as established a prima facie case against the accused to warrant him to be called upon to make a defense. Indeed, the accused faces a charge of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The prosecution in charge of murder must establish the essential ingredients of the offense namely;
 - i. That there was death,
 - ii. That the death was caused due to malice a fore thought,
 - iii. That accused is the one who caused the death,
12. On whether there was death, the evidence of the doctor (PW5) who produced the postmortem report confirms the same. The doctor's opinion is that the cause of death was severe head injury with respiratory failure due to blunt trauma with heavy object.
13. On whether there was a malice a fore thought, it transpired from the evidence that the accused and deceased had a frosty relationship following evidence that the deceased had been having secret love affair with accused's wife and that the accused had earlier in June 2022 assaulted the deceased as well as demolishing his house. It also transpired from the evidence that the accused had threatened to finish off the deceased and dump his body parts into River Nzoia and further that the accused was spotted within the deceased's compound earlier in the day before the body was discovered in the afternoon. The evidence of the doctor's autopsy confirms injuries on the head as well as broken ribs. The investigating officer found the body lying on the floor with the huge stone on the chest. It is obvious the huge stone on the chest must have crushed and broken the ribs. On the whole, the injuries left no doubt that perpetrator intended the injuries sustained to do grievous harm leading to the death of the deceased.
14. On whether the accused caused the death of the deceased or was behind the death of the deceased, the evidence of PW1, PW2, PW3 and PW4 placed him at the scene of crime and further singled him out as the person who had a motive to eliminate the deceased. Even though none of the witnesses saw the accused killing the deceased, the circumstantial evidence available placed him at the scene of the crime and singled him out as person who had a motive to kill the deceased. The evidence laid bare the accused's frosty relationship with the deceased following credible evidence that the deceased has been having a secret love affair with the accused wife. One of the witnesses stated that the accused had earlier informed her that he would cut the deceased into pieces and throw them into the River Nzoia. I am satisfied that circumstantial evidence availed has placed the accused at the scene of the crime and that he must now render and explanation as to how the deceased met his death.



15. From the foregoing analysis, it is my finding that the prosecution has established a *prima facie* case against the accused to require him to be called upon to make a defense. Consequently, I find that the accused has a case o answer and his now called upon to elect to conduct his defense in accordance with the provisions of section 306(2) of the *Criminal Procedure Code*.

DATED AND DELIVERED AT BUNGOMA THIS 13TH DAY OF APRIL 2023

D.KEMEI

JUDGE

In the presence of :

Eric Lubao Wanjala - Accused

Miss Lunani for Accused

Miss Mukangu for Prosecution

Kizito Court Assistant

