



**Republic v Kiblion (Criminal Case 65 of 2015)  
[2023] KEHC 19077 (KLR) (21 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19077 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 65 OF 2015  
HK CHEMITEI, J  
JUNE 21, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**KIBON KIBELION ..... ACCUSED**

**JUDGMENT**

1. The accused herein was charged with the offence of Murder contrary to Section 203 as read with section 204 of the *Penal code*. The particulars of the charge were that on the 14<sup>th</sup> day of November 2015 at Bomasite village in Mochongoi division Marigat sub county Baringo county murdered James Chirchir.
2. The accused denied the offence and the state called 8 witnesses to establish its case. Their evidence can be summarised as hereunder.
3. PW1 Michael Kiplagat Chirchir testified that the deceased was his brother and on the material day at around 10am he met the accused who was armed with a panga. The accused told him to warn the deceased over the land dispute they had otherwise he was going to kill him. The witness thereafter left for his duties and at around 4pm he heard from her sister Ruth about the incident which had taken place at the trading centre.
4. He rushed to the scene and saw the deceased body and the police were called who came and took it away. He said that the cause of the dispute between the two was land which had been simmering for a long time.
5. When cross examined he said that he did not witness the incident.
6. PW2 Philip Kipkemoi Cheboi testified that he was at Bomasite hotel around 3pm where both the accused and the deceased were sitting next to each other. A quarrel then ensued and the two began



- to fight. It was his evidence that the accused began the fight and overpowered the deceased whom he proceeded to strangle.
7. He said that the issue at hand was a land dispute between them. He also said that he saw the accused hit the deceased with a stone.
  8. PW3 Bismarck Koech testified that he went to the scene where he saw the two fighting and the accused was holding a panga. That the accused hit the deceased with a stick and he fell down. He then proceeded to strangle him while he was on the ground.
  9. He said on cross examination that both the accused and the deceased had pangas and they were trying to cut each other.
  10. PW4 Chief Inspector Patrick Libole from Mochongoi police station went to the scene after being called by the Assistant Chief. He found the deceased body lying down with injuries but the accused was not at the scene. The police processed the scene and thereafter took the body to Nyahururu mortuary.
  11. He was later informed that the accused had surrendered himself at the police station.
  12. Pw 5 and 6 evidence was found to be wanting after a trial within trial and thus this court sees no reason to consider the same.
  13. PW7 Dr Kirimi Joseph Kinyua produced the post mortem report on behalf of Dr Julius Mwangi who had since retired and he concluded that the cause of deceased death was lack of oxygen in the body as a result of rib and haematoma within the brain.
  14. PW8 Corporal Nyangwe Sylvester was the investigation officer in the matter who recorded statements from the witnesses and preferred charges against the accused.
  15. When cross examined he said that he was not very sure of who started the fight between the accused and the deceased and both were armed. He relied on the witnesses' evidence to charge the accused.
  16. When placed on his defence the accused gave sworn evidence denying the charge. He said that the deceased attacked him from behind and that he was defending himself in the process. That the deceased fell into the ditch and that he did not know that he killed him.
  17. His witness Margaret Kipchumba testified that it was the deceased who attacked the accused from behind and the latter attempted to defend himself. She said that the deceased was armed with a panga.
  18. When the matter was closed the parties were granted the opportunity to file their written submissions which they have complied.
  19. The prosecution submitted that all the ingredients of the offence were satisfied, namely that malice aforethought was proved against the accused person. That he was the one who instigated the fight and thus fatally injured the deceased and this was exemplified by his surrender to the police.
  20. The learned state counsel went on to submit that the accused strangled the deceased and left the scene. That the accused's intention was purely to kill the deceased as evidenced by the testimony of the witnesses. In view of these the state submitted that they had established motive against the accused and that he ought to be convicted of the offence.
  21. The defence in their submissions denied that the state had established a case against the accused. That the case by the prosecution witnesses was not proved beyond the shadow of doubt and fell short of the principles laid down in the case of *Woolmington v DPP* (1935) AC 462.



22. That the state did not establish malice on the part of the accused as envisaged under the provisions of Section 206 of the Penal code. The sum total of the submissions is that the accused be set free.

### **Analysis and Determination**

23. The court having the general perspective of this matter clearly shows that the deceased and the accused knew each other and they had a long standing dispute over a parcel of land. Secondly the incident occurred at Bomasite trading centre around 4pm on the material day and there were many people there.
24. The central witness in the prosecution case is PW2 who was at the Bomasite hotel where the two persons met who told the court that;
- “...the accused asked deceased what interest he had in his shamba. The deceased did not respond. He first jumped up. A fight arose each had a panga in the hand. Both accused and deceased were trying to cut each other. Then accused had a stick. He hit the deceased while they were fighting. The accused had a stick and a panga. He hit the deceased on the left side with her(sic) stick...”
25. Thereafter the deceased felt down and the accused proceeded to strangle him. He went on to state that when the deceased attempted to rise up he came back and strangled him again and left him to die. He was adamant that it was the deceased who started the fight.
26. Pw 3 repeated the same story as pw2 especially the fact that when the accused realised that the deceased was trying to stand up he came back and strangled him again.
27. This line of evidence was corroborated by the post mortem evidence which found the cause of death to be due to lack of oxygen.
28. Taking the totality of the above evidence, i do not find the evidence of the accused and his witness convincing enough. I doubt whether indeed he was simply attacked from behind as he seemed to suggest and that he was alerted by the screams from the children.
29. The evidence presented so far shows that the offence was premeditated. This is for the simple reasons that as early as 10am that morning he had warned pw1 to tell his brother the deceased about the land and he was very furious, shaking and annoyed. It is evident that this land issue had been fought for a long time and the matter was pending before the police and the court.
30. Secondly, even if the fight was spontaneous or was started by the deceased, the act of coming back to strangle him was to ensure that he never woke up again. Evidence was led to show that he was even boasting that he had killed a witch and he warned the onlookers of dire consequences if they testify of what they had seen.
31. In the premises, and as found in *Republic v Gideon Wambua Koko & 2 Others* (2019) eKLR, the prosecution had proved malice aforethought elements, namely, proof of death and cause of death of the deceased; that the accused caused the death through an unlawful act or omission and; the accused possessed the intention to cause harm or kill or had malice aforethought.
32. There is no evidence that the deceased began the fight and or provoked the accused. If anything in my view the deceased was attempting to save himself from the attacks by the accused herein. It was self-defence. There was no evidence of injuries sustained by the accused or at all leading this court to conclude that the deceased was not able to defend himself.



33. The act of surrendering to the police was not rebutted by the accused. He did not explain the reasons why he did so on his own volition. There was no evidence that the crowd was baying for his blood or at all. This in my finding was a guilty conscience at work hence the only place to seek refuge was the police.
34. Consequently, the accused is hereby found guilty of the offence under the provisions of Section 203 of the [Penal code](#) as read with section 215 of the [Criminal Procedure Code](#).
35. Orders accordingly.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 21ST DAY OF JUNE 2023.**

**H. K. CHEMITEI**

**JUDGE**

