



**Republic v Ponoto (Criminal Case 17 of 2020)
[2023] KEHC 18704 (KLR) (21 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18704 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 17 OF 2020
HK CHEMITEI, J
JUNE 21, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

NJIGE SANGAU OLE PONOTO 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 March 31, 2020 at Songoroi B village, Gilgil sub county within Nakuru county jointly with another not before court murdered Ledemu Neshami.
2. The accused denied the charge and the prosecution called 5 witnesses to establish its case against the accused. After the prosecution case the accused was found to have a case to answer and was placed on his defence where he gave sworn evidence but did not call any witness. Before looking at the merits or otherwise of the case it is necessary to summarise the evidence as presented during trial.
3. PW1 Rose Lesau testified that she sales miraa and on the material day the accused and others came to her house to buy and chew the said miraa. After a while the deceased who was as well in the company of the accused and others decided to leave. The deceased and one Leshau followed the deceased.
4. She went on to state that she then received a call from her husband and because the network was not very good she decided to look for a better place. Her dogs barked and she instructed her children to check. They came back and told her that the deceased had died.
5. The accused and his accomplice who had come back to the house left immediately and in a hurry. The police were called and arrived at the scene where the deceased body was lying headless. The members of the public began searching for the head. She said on cross examination that she was not able to establish who killed the deceased.



6. PW2 Joseph Senea Lokina testified that he was called that night concerning the incident. He proceeded with his uncles to the scene where they found the deceased headless body and blood was everywhere. They recovered several items including voters card belonging to one Peter ole Sapuki who was with the accused. They also recovered hats and two rungu. The red cap was said to belong to the accused as well as the sharp rungu and both rungu were bloodstained.
7. Francis Mityaki testified that he received a call around 2.30 am from Elijah concerning the incident. They went to the scene which was not far from pw1 house where they saw deceased headless body. They identified the deceased rungu as well as the other which belonged to the accused. The red hat found at the scene as well belonged to the accused.
8. PW4 Dr Biketi performed the post mortem exercise on the deceased body and concluded that the cause of death was haemorrhage shock due to massive blood loss as a result of decapitation of the head.
9. PW5 Inspector Nathaniel Nyanya Mwita, the investigating officer went to the scene after the information was received at the police station. They collected the body from the scene and took it to the mortuary. He said that they also recovered assorted items namely two rungu, three hats as well as phone without a sim card and voters card belonging to one Peter ole Sapuki as well as a sale agreement.
10. He went ahead and produced the said exhibits. One of the rungu with both heads sharpened belonged to the accused as well as one of the hats. The villagers lynched Peter and the accused was rescued and taken into the police custody.
11. As indicated above when placed on his defence the accused gave sworn evidence where he explained that they sold some potatoes and were paid Kshs,500. A sum of Kshs 1000 was given to the deceased and Sapuki to share but Sapuki did not bring the change he had been told to get. A fight ensued between the deceased and the said Sapuki and he was cut on the face.
12. He said that the incident took place inside pw1's premises or the bar and not outside. He laid blame on the late ole Sapuki who was as stated earlier lynched by the members of the public.
13. The parties were directed to file written submissions which has been filed by the learned state counsel alone. At the time of writing this judgement the defence had not filed any.
14. The learned state counsel basically summarised the facts of the case and submitted that this matter is purely circumstantial in nature as there was no eye witness to the incident. The items collected at the scene belonged to the accused and the late ole Sapuki. They were the last persons to be seen with the deceased.

Analysis and determination

15. The court having perused the entire proceedings is of the considered opinion and indeed agrees with the learned state counsel that since there was no eye witness to the incident the same has to be decided purely on circumstantial evidence.
16. There are myriad of authorities which covers this element of the law. Such evidence has to meet three tests as was stated in the case of *Abanga Alias Onyango – Vs- Republic, Cr Appeal No 32 of 1990 (UR)*, that: -

1. The circumstances from which an interference of guilt is sought to be drawn, must be cogently and firmly established;



2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
 3. The circumstances taken circumstantively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.'
17. In the case herein, there is no doubt that the accused and the witnesses especially pw1 were known to each other. In other words, they are from the same village. They were on the material day chewing miraa in the house of pw1 and there was further evidence that they were drinking traditional alcohol.
 18. It was pw1 evidence that the deceased left and was thereafter followed by the accused and one ole Sapuki. After some time as she went to receive a call from her husband she heard the dogs barking. The accused and his accomplice arrived and when they heard that the deceased had died they left immediately, hurriedly and in a suspicious manner.
 19. The witnesses were able to collect from the scene several assorted items which belonged to the accused and ole Sapuki. One of the hats belonged to the accused. He did not raise much during cross examination to deny this evidence by the prosecution witnesses. The said hat was collected the same night and later handed over to the police.
 20. The same goes with the rungu with both ends sharpened. The witnesses said that it belonged to the accused. Again not much evidence was adduced by the accused in rebuttal. As much as the accused suggested that the Maasai community are known to carry the same as part of their regalia, there was no doubt that his fellow villagers knew that it was his.
 21. The other items including the voters card and the sale agreements and the phone belonged to ole Sapuki who was together with the accused that particular night.
 22. It could be true that ole Sapuki differed with the deceased over the potatoes cash but what role did the accused play in the whole incident. More importantly he testified in his defence that the deceased was assaulted by the said ole Sapuki inside pw1 house or bar. That line of evidence was not raised when she testified. There was no evidence even by the investigating officer that bloodstains were seen inside pw1 house or the bar.
 23. In the premises, this court circumstantially reaches a conclusion that the accused participated in the deceased death. The evidence by the prosecution witnesses clearly places him at the scene of the crime. There is no evidence presented as to why the deceased was killed in such heinous manner by the accused and the late ole Sapuki. The blame he is heaping on his accomplice is clearly misplaced as he is no longer with us to explain his part.
 24. Consequently, the accused is hereby convicted for the murder of the deceased herein under the provisions of Section 215 as read with Section 322 of the [Criminal Procedure Code](#).

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

H. K. CHEMITEI

JUDGE

