



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Mwangi (Criminal Case 24 of 2019)  
[2023] KEHC 18573 (KLR) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18573 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL CASE 24 OF 2019**

**RL KORIR, J  
JUNE 15, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SOSPETER MUCHIRI MWANGI ..... ACCUSED**

**JUDGMENT**

**The Charge**

1. Sospeter Muchiri Mwangi (accused) was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*, Cap 63 Laws of Kenya. The particulars of the offence as recorded in the information were that on the October 5, 2019, at Mulot Sunset Trading Centre, within Bomet county, murdered Samuel Ndungu Njunge.
2. The accused was arraigned before Dulu J on October 15, 2019 and he pleaded not guilty. His trial, commenced on May 4, 2021 in which the prosecution called 6 witnesses.

**The Prosecution case**

3. The prosecution case was that the accused stabbed the deceased and caused his death. Wesley Langat the Nyumba Kumi security heard screams emanating from Chemaluk Bar and on responding learnt that a person had been stabbed. He was shown a suspect who was running away. They gave chase and arrested him. The suspect (now accused) had a knife and also an injury on his head and mouth. They escorted him to Mulot Police Station.
4. No 2xxx5 Cpl Ogega of Mulot Police Station testified that the suspect (now accused) named Muchiri was presented to him at the report office on October 5, 2019 by two nyumba kumi Collins Koech and Wesley Langat. They reported that he had stabbed a person and they had rescued him from a lynch



mob. That the suspect was drunk at the time and did not have any weapon on him but had blood stained clothes.

5. Caroline Wawira Muriuki (PW3) a businesswoman within Mulot testified that she met the Samuel Njunge (now deceased) outside her wine and spirits shop on October 5, 2019. They exchanged greetings and Sospeter (accused) joined them. Both men were wearing gum boots. That Njunge asked about his Kshs1000/= which Sospeter owed him. That she left them talking and shortly she heard a commotion and on opening the door found the two men fighting with someone trying to separate them. That Ndungu had a wooden rungu with which he hit Sospeter (accused). PW3 said that she saw Sospeter remove a knife from his gumboots and stab Njunge (deceased). That Sospeter removed 2 knives from his gum boots dropped them on the ground and ran away towards the river from where he was arrested by Nyumba Kumi.
6. An autopsy on the deceased's body was conducted by Dr Mutai Nickson Kiplangat at Longisa Referral County Hospital on October 6, 2019. His finding was that the deceased died of severe chest and abdominal injuries due to assault.
7. Government analyst Richard Kimutai Langat (PW5) examined exhibits presented by the Bomet East DCI. He produced the Government Analyst Report [exhibit 5 (a)] with the finding that the DNA extracted from the knife with black handle (item A2) and jeans trouser (item A3) stated to belong to the deceased all matched the blood sample of the deceased Samuel Ndungu Njunge.
8. No 8xxx1 Sgt Fredrick Muyoti of DCI Bomet East was the investigating officer (PW6). He was informed that the deceased had succumbed to injuries after being attacked at Mulot Sunset near a building called Murkusiot Manor. He visited the mortuary and saw the body which had a stab wound on the left thorax and a slight cut on the left side of the neck, and also interviewed witnesses. That PW3 informed him that she had witnessed the fight outside her business premises and screamed attracting members of the public who pursued and arrested the accused. According to the investigating officer, the key witness PW3 told him that the accused dropped 3 knives and ran away. The investigating officer produced the 3 knives as respectively exhibits 1,2(a) and (b). He also produced clothes identified as belonging to the deceased exhibits 6(a) and those belonging to the accused (exhibits 7(a) (b) and (c).
9. At the close of the prosecution case, the prosecution and the defence filed submissions.
10. Upon consideration of the evidence and the submissions, this court found that the prosecution had established a *prima facie* case against the accused and put him on his defence.

### **The Defence Case**

11. The accused gave unsworn testimony in which he stated that his home was in Kiambu and that he was a butcher. He stated that he knew Samuel Njunge (deceased) and they had worked together at Mulot butchery since 2014. That he owed Njunge some money which Njunge asked him to pay but he did not have the money. He stated that Njunge stabbed him and he (accused) pushed Njunge aside. That Njunge fell while he (accused) proceeded to his house. That as he was going away a crowd confronted him saying that he had stabbed somebody and wanted to lynch him but one person said that he should be arrested and taken to the police.
12. The accused ended his statement by stating that the deceased removed his rungu to hit him (accused) and also his knife to stab him (accused) and that he (accused) responded by pushing him and he fell.



## The Law

13. The accused is charged with the offence of murder. section 203 of the [Penal Code](#) provides as follows:-  
203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
14. In the case of [Republic v Mohammed Dadi Kokane & 7 others](#) [2014] eKLR, Odero J. outlined the ingredients of the offence of murder as follows:-
  1. The fact of the death of the deceased.
  2. The cause of such death.
  3. Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly
  4. Proof that said unlawful act or omission was committed with malice aforethought.
15. The burden proof of lies with the prosecution and such burden bears the standard of beyond reasonable doubt. The Court of Appeal in the case of [John Mutua Munyoki v Republic](#) [2017] eKLR stated in this regard thus: -

“...in all criminal cases, the prosecution has the task of proving its case against an accused person beyond reasonable doubt and it is a burden the prosecution must discharge in relation to each and every ingredient of the particular offence charged.”

  - i. Death of the deceased and cause thereof.
16. The fact of death of the deceased in this case was not disputed at all. The prosecution presented an eye witness PW3 Caroline Wawire Muriuki who testified that she saw the accused and the deceased fight outside her premises and during which fight the accused stabbed the deceased with a knife. It was also the evidence of PW1 that the deceased was rushed to hospital at Longisa. The investigating officer testified that the deceased succumbed while in hospital. He visited the mortuary and saw the body of the deceased.
17. The pathologist PW4 testified that he conducted an autopsy on the body of the deceased and exhibited the post-mortem report (exhibit 4.)
18. From the foregoing evidence I find the fact of death proven to the required legal standard.
19. With respect to the cause of death, I observe that the deceased succumbed while undergoing treatment. It was the evidence of the investigating officer that the accused had initially been charged with assault and that the charge of murder was preferred when the deceased succumbed.
20. PW3 testified that she saw the deceased being stabbed. The pathologist Dr Mutai Nickson Kiplangat (PW4) conducted the post-mortem on the deceased’s body on October 6, 2019 at Longisa Referral hospital. He observed that the deceased who was aged 27 years had a cut wound on the lateral chest and another cut wound on the side of the neck. That the stab wound penetrated the left lung leading to its collapse. He further observed that the stab ruptured the diaphragm and duodenum and parts of small and large intestine were found in the lungs. That there was bleeding into the abdomen. The pathologist formed the opinion that the cause of death was severe chest and abdominal injuries secondary to assault.



21. I considered the pathologist's evidence contained both in the post-mortem report (exhibit 4) and his oral testimony in court. It was expert evidence which accorded with the oral evidence of the witnesses that the deceased was stabbed. I accepted the expert evidence on the cause of death. The same was not challenged by the defence and I have no reason not to accept it.
22. Following the above, I find that the prosecution proved the cause of death to the required legal standard. It is my finding that the deceased died of severe chest and abdominal injuries secondary to assault. Clearly, his death was unlawful.
  - ii. Whether the accused was the person who caused the unlawful death of the deceased.
23. It is trite that no one can be convicted unless there was evidence clearly linking them to the offence in question. In the often-cited case of *R v Turnbull* (1977 QB 224, the English court stated with respect to identifying evidence thus: -

“If the quality (of identification evidence) is good and remains good at the close of the accused's case, the danger of mistaken identification is lessened; but the poorer the quality, the greater the danger. In our judgment when the quality is good, as for example when the identification is made after a long period of observation, or in satisfactory conditions by a relative, a neighbour, a close friend, a workmate and the like, the jury can safely be left to assess the value of the identifying evidence even though there is no other evidence to support it; provided always, however that an adequate warning has been given about the special need for caution”.
24. In this case PW3 Caroline Wawira Muriuki testified that she was in her house in Mulot when one of her employees called her to go and open the business premises for cleaning. She had a wine and spirits shop and as she walked towards the shop, she met Sospeter and were shortly joined by Ndungu. It was her evidence that the two began quarrelling over money and she went away only to overhear a commotion and on returning, witnessed a fight between the two in which Sospeter (accused) removed a knife from his gumboots and stabbed Ndungu (deceased).
25. I have keenly considered PW3's evidence. She told the court that she knew both the accused and the deceased and referred to each by name. The accused was therefore not a stranger to her. She knew them as friends who worked as butchers in Mulot where her wine and spirits business was. In addition, I have considered that the incident happened at 8am in the morning in broad daylight. The conditions of identification were therefore favourable. I am persuaded that she did not make a mistake in identifying the accused.
26. The identifying evidence given by PW3 was corroborated by the circumstances of the arrest of the accused. PW1 Wesley Langat popularly referred to as Nyumba Kumi because of the security role he played in the locality, testified that he responded to the screams and on reaching the scene, PW3 pointed to the accused who was then running away as the person who had just stabbed the deceased. Together with his colleague Collins, they gave chase, and arrested him and escorted him to the police station. PW1 said that the accused has a knife when they arrested him.
27. The fact that the accused was the person who fought with and stabbed the deceased was further proved through forensic evidence. The investigating officer (PW6) testified that he PC Nicholas Kiptanui of Longisa Police Station handed to him 3 knives which were collected from the scene by PW3 and handed over to the Police at Mulot Police Station. The 3 knives were described as one with a black handle which was heavily stained with blood (exhibit 1) one with a white handle (exhibit 2 (a)), and one without a handle (exhibit 2b).



28. The investigating officer also collected clothing items belonging to the accused and the deceased respectively. These items were forwarded *vide* exhibit memo dated December 17, 2019 (exhibit 5b) to the Government analyst. They were listed as: -
- i. Exhibit marked A1 containing deceased's blood sample in a khaki envelope.
  - ii. Exhibit marked A2 blood-stained green pullover worn by the deceased, in a khaki envelope.
  - iii. Exhibit marked A3 blood-stained blue jeans trouser worn by the deceased, in khaki envelope.
  - iv. Exhibit marked A4 blood stained green nylon trouser worn by the deceased, in khaki envelope.
  - v. Exhibit marked B1 containing accused's blood sample in a khaki envelope.
  - vi. Exhibit marked B2 blood stained pink jacket worn by the accused person, in a khaki envelope.
  - vii. Exhibit marked B3 blood stained green trouser worn by the accused person, in a khaki envelope.
  - viii. Exhibit marked B4 blood stained blue t-shirt worn by the accused person, in a khaki envelope.
  - ix. Exhibit marked C1 blood-stained knife with black handle in khaki envelope recovered at scene of crime.
  - x. Exhibit marked C2 knife with white handle in khaki envelope recovered at scene of crime
  - xi. Exhibit marked C3 knife without handle in khaki envelope recovered at scene of crime.
29. The items listed above were examined by Government Analyst Richard Kimutai Langat (PW5). He confirmed receipt of the exhibits and the forwarding exhibit memo which requested the Government Chemist to determine origin of blood stains.
30. PW5 testified that the examination showed that green pullover (A2) blue jeans (A3), green trouser (A4) pink jacket (B2) and green trouser B3 blue t shirt (B4) and knife with black handle (C1) were heavily stained with blood of human origin. Knife (C2) was lightly stained. Knife (C3) was not blood stained. He stated that the DNA generated profiles should (as tabulated) at the back of the report. His findings were that blood stains from green pull over (Item A2) jeans (A3) and knife with black handle (C1) matched the blood sample of Samuel Ndungu (deceased). DNA from green jacket (B2) green trouser (B3) and blue T-Shirt (B4) matched the DNA profile of Sospeter Mwangi (accused). DNA from the knife with white handle gave a partial DNA profile of a male person not related to either the accused's or deceased's DNA.
- PW5 produced the government analyst report [exhibit 5(a)] and exhibit memo [ exhibit 5(b).]
31. In cross -examination by the defence counsel, PW5 clarified that the clothing items belonging to the accused and the deceased respectively bore their respective DNA and that the exhibits show that the accused also sustained some injuries. He stated that the knives did not bear DNA of the accused and that the 2<sup>nd</sup> knife did not generate any DNA profile while the 3<sup>rd</sup> knife bore a partial DNA of an unknown male. He further clarified that there was no match between the partial profile generated from the stains in the 3<sup>rd</sup> knife with that of the accused or deceased.
32. The forensic evidence given above showed that the knife with a black handle (C1) was the murder weapon. It generated a DNA profile which matched the DNA obtained from the blood sample of the deceased. This knife was collected at the scene of crime by PW3 who testified that she saw the accused stab the deceased and thereafter remove two knives from his gumboot which he dropped at the scene.



33. The eye witness account of PW3 that the accused stabbed the deceased with a black handled knife, which she identified to the court, and the forensic evidence which showed a matching between the deceased's blood and the DNA extracted from the blood stains on the black handled knife not only confirm the knife (exhibit 1) as the murder weapon but directly links the accused to the unlawful killing of the deceased.
34. The defence disputed through cross-examination and in submissions dated and filed on April 25, 2023 that the black handled knife did not belong to the accused. They submitted that the knife belonged to the deceased. The prosecution on the other hand submitted that they had proved that the black handled knife was the murder weapon and belonged to the accused as testified by PW3. I find the submission that the knife (exhibit 1) belonged to the deceased unconvincing. PW3 clearly saw the accused removing it from his gum boot. Further, it is not possible that the deceased stabbed himself otherwise the accused would have had no reason to run away.
35. I have considered the accused's defence. The accused stated that the deceased removed a rungu to hit him and also a knife to stab him. That the accused pushed the deceased and he (deceased) fell. In his defence, the accused did not state that the deceased stabbed himself. Since they were the two people fighting, it is reasonable to dismiss the accused's defence as lacking in logic.
36. It is my finding from my analysis and appreciation of the evidence that the accused was clearly linked to the offence. He is the one who stabbed the deceased leading to his unlawful death.
- (iii) Whether the accused acted with malice aforethought
37. I have already found that the accused caused the unlawful death of the deceased. This begs the question whether in stabbing the deceased he acted with malice aforethought. section 206 of the [Penal Code](#) provides that: -
- malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—
- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
  - (b) 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, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
  - (c) an intent to commit a felony;
  - (d) an 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.”
38. In this case the prosecution urged the court to find that the accused intended to kill or cause grievous harm to the deceased. They submitted that the accused was the aggressor and used excessive force and thereafter ran away after stabbing the deceased leaving him to die.
39. The defence on the other hand submitted that none of the witnesses proved an intention to kill. They submitted that the accused and the deceased were known to each other and had worked together for many years. That there was no evidence of bad blood between them.



40. I have considered the prosecution evidence. The only witness who testified on the fight was PW3. She told the court that she overheard the deceased demanding his money from the accused and a quarrel erupted which quickly degenerated into a fight. According to her evidence, the deceased hit the accused with a rungu and the accused stabbed the deceased. There was no evidence on any planning, intention or motive by the accused to murder the deceased. The prosecution's own witness told the court that the two were friends and worked together as butchers in Mulot and Sotik. The knives that he had were his tools of trade.
41. I have already dismissed the accused's defence that he did not stab the deceased. As earlier stated, the evidence firmly established that he stabbed the deceased, causing his death. I have however not found sufficient evidence to prove that the accused had the requisite mensrea. The prosecution's own witness PW3 told the court that the accused and the deceased were friends and worked together as butchers in Mulot and Sotik. It was clear to the court therefore that being butchers, knives were their tools of trade which would create doubt in the mind of the court as to whether or not the accused had armed himself in preparation to kill the deceased. PW3 further testified that she overheard a quarrel about money and that the two fought with the deceased hitting the accused with a rungu and the accused stabbing the deceased. The Government Analyst PW5 stated that his findings suggested that both were injured as their clothes bore their own respective DNA. Considered together, this evidence does not disclose any premeditation or planning.
42. The evidence above on the aspect of mensrea does not meet the required legal standard. In defining the standard of proof, the Supreme Court of Canada in *R v Lifchus* (1997) 3 SCR 320 held as follows: -
- “The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the crown has on evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty...the term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy you of the guilty of the accused beyond a reasonable doubt.....” (Underline mine)
43. In *Nzuki v Republic*, criminal appeal No 70 of 1991 (1993) eKLR, the Court of Appeal stated thus: -
- “In an appeal such as the present one, any one of the intentions set out above is a necessary constituent of the offence of murder contrary to section 204 of the Penal Code and the burden of proving any such intention is throughout on the prosecution. No doubt, if the prosecution prove an act the natural consequence of which should be a certain result and no evidence or explanation is given, then the court may, on a proper direction, find that the accused is guilty of doing the act with the necessary intent, but if on the totality of evidence there is room for more than one view as to the intent of the accused, the court should direct itself that it is for the prosecution to prove the necessary intent to its satisfaction, and if, on a review of the whole evidence, it either thinks that that intent did not exist or it is left in doubt in respect thereof, the accused should be given the benefit of that doubt. Thus, where on a charge of murder the evidence does not exclude the reasonable possibility that



an accused person killed the deceased by an unlawful act but without the intent necessary to constitute legal malice requisite to the proof of that offence, that killing would only amount to manslaughter. See *Rex v Steane* [1947] 1 KB 997; and *Sharmal Singh s/o Pritam Singh v R* [1960] EA 762” (underline mine).

44. It is my finding, upon review of the evidence and guided by the authorities above, that the evidence on the whole does not prove beyond reasonable doubt that the accused possessed the requisite malice aforethought when he stabbed the deceased. I grant him the benefit of doubt on this last ingredient which means that he can only be convicted of the lesser offence.
45. I therefore apply the provisions of section 179 of the *Criminal Procedure Code* and substitute the charge of murder with one of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. He is accordingly convicted under section 215 of the *Criminal Procedure Code*.

Orders accordingly.

**Judgment delivered, dated and signed at Bomet this 15<sup>th</sup> day of June, 2023.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Judgment delivered in the presence of Accused, Mr. Njeru for the State, Mr. Kenduiwo for the Accused and Siele (Court Assistant)**

**CRIMINAL CASE NO. 24 OF 2019 JUDGMENT**

