



**Republic v Rop (Criminal Case 30 of 2016)  
[2023] KEHC 19171 (KLR) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19171 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE 30 OF 2016**

**JK SERGON, J  
JUNE 15, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DENNIS KIPLANGAT ROP ..... ACCUSED**

**JUDGMENT**

1. The Accused is charged with the offence of Murder contrary to section 203 as read with section 204 of the [Penal Code](#). Particulars of the offence are that, the accused on September 5, 2016 at Kapsoit Centre within Kericho County murdered Ashleen Chepchumba.
2. The Accused pleaded not guilty to the charge and the prosecution called six (6) witnesses to prove its case.
3. Samwel Keter (PW 1) stated that he is a casual labourer and that he lives in Kapsoit. He further stated that on 4th September, 2016 at about 10:00 PM, he was at home, when the accused demanded that Chemtai, his daughter to give him custody of Chepchumba, who was four (4) months old, the accused and his daughter had a relationship. Pw1 confirmed that the accused person was given custody of the child and that on the following morning they found out that the child had died, the child was found abandoned at the rental house belonging to the accused. Pw 1 stated that he did not know what had happened to the child and that the child had an injury on the forehead. The matter was reported at Kapsoit Police Station. On cross examination he stated that he was in his room when the accused came to get the child, the child was sick and he heard the accused say that he wanted to give medicine to the child. Pw 1 confirmed that he witnessed the post mortem at Siloam Hospital.
4. Jeniffer Keter (PW2) stated she lives in Kapsoit. She testified that 5th September, 2016 at about 8:00 AM she received a phone call from Mercy Chemtai, summoning her to the scene. She testified that upon arrival, she found child lying on the accused person's bed, the child was dead. Mercy and the



- accused were neighbours. Pw 2 confirmed that the child was known as Ashleen Chepchumba, she was five (5) months old she belonged to her daughter Faith Chemutai who is her third child. She has seven children. Pw 2 testified that when she saw the child she started screaming and her daughter Faith Chemutai came with neighbours and they went to Kapsoit Police Station. On cross examination Pw 2 confirmed that she did not see what happened to the child rather that she was summoned to the scene via a phone call. She stated that the child had a cold prior to her demise.
5. Faith Chemutai (PW3) stated that on 4th September, 2016 she was at home when the accused came and demanded to have the child. She confirmed that she had been in a relationship with him for two years, but they were now estranged, they had parted ways for over 3 months. The child was Blessing Ashley Chepchumba and Dennis, the accused person herein was the father. She conceded that she had called the accused because the child was sick and needed medicine, however, the accused was adamant that he be given the child to treat her himself against Pw 3's wishes. She testified that on the next day, she got a call from her aunt informing her to go to Kapsoit and upon arrival she found that the child was dead, she was on a bed and had sustained injuries in the head, Dennis had escaped, she then reported the matter at the police post and recorded a statement. On cross-examination she stated that the accused was the child's father and that the child had a fever and further that she did not know whether the child's condition had deteriorated, according to her the child was on the mend, her condition had improved. She stated that she did not see the person who had inflicted injuries to the child. She confirmed that the child was found abandoned in a rental residential house. On re-examination she confirmed that the child did not have any injuries when the accused took her and that the house where the child was found belonged to Dennis, the accused person, he lived there.
  6. Victorine Chepchirchir (PW 4) stated that on September 4, 2016 at 10:00 PM she was at home with her sister Faith Chemtai when Dennis arrived, Dennis and her sister had lived together for two years, however, they were now estranged. Dennis knocked the door and he insisted that he had brought medicine for the child, two days earlier they had told him that the child was sick and he had promised to bring medicine. Pw 4 testified that Dennis was drunk, she therefore hesitated to open the door and told him to give her the medicine through the window, he refused, she therefore opened the door to enable him hand over the medicine to her but he forced the door open, came in and a scuffle ensued. Dennis proceeded to assault her sister while she had the child. Pw 4 informed their father who was drunk, their father ordered her to surrender the child to Dennis, they tried following them but they vanished into the night. The next morning they were informed that the child had died. Pw. 4 further testified that she went to the house where Dennis lived near Kapsoit market and confirmed that the child aged five months had died, she was on the bed and had injuries to her head, whereas, at the time she handed over the child to Dennis, she did not have any injuries. Pw. 4 reported the matter at Kapsoit Police Post. She confirmed that when Dennis came that night demanding to have the child, she was able to identify him because she flashed a D-light solar light. On cross examination, she stated that the child had been unwell but she had been given medicine, she had been taken to hospital the previous day. She also confirmed that when Dennis came demanding to have the child, he said he was taking her home, she further confirmed that the child was his daughter. She confirmed they found the child on a bed at a house near Kapsoit market, that the child had some injuries, she looked like she had been hit by something and also some scratches by finger nails. She also stated that at the house where they found the child there were other people, however, they did not see Dennis. On re-examination, she confirmed that when she handed the child over to Dennis, she was sick but without injuries.
  7. Sergeant Cleophas Okimasisi police force no. 56573 (PW 5) stated that he was the investigating officer in the case and that on 5th September, 2016 he was stationed at Kapsoit Police Post when the mother of the deceased came and reported the matter, she stated that the accused person had come demanding for their child the previous day at about 10:00 PM, she declined to hand over the child to him, however,



he was persistent, she and her sister decided to call their father, who ordered them to surrender the child to the accused person, he went away with the child, the next morning she was informed by a neighbour that the child had been killed, she then reported the matter to the police. Pw 5 testified that upon receiving the report, he and his colleague went to the scene and found the body of the child in the house, they took the body to the mortuary and proceeded to record witness statements. Pw 5 stated that while they were recording witness statements, he received a call from Chepseon Police Station and was informed that the accused person had lodged a report that his child had died in his house. PW. 5 stated that he told the in-charge at Chepseon Police Station to detain the accused person. Afterwards he went to Chepseon together with his colleagues, arrested the accused person and charged him with the instant offence. Pw. 5 further testified that when the post mortem report was done, it was discovered that the child had severe head injuries and severe trauma, according to the pathologist's report the injuries caused the death of the child herein. Pw. 5 confirmed that the body had bruises in the head. He stated that he was not aware if the accused and mother of the deceased had any differences. On cross examination Pw. 5 confirmed that the accused person told him that he was the biological father of the child and that the child was five months old and that on the material night the accused had taken medicine to the child. Pw. 5 also stated that the child was found in the house of the accused, however, the accused was not present. The said house was rented. Pw 5 learnt that the house belonged to the accused as he was recording statements. Pw 5 stated that he took photographs of the scene, however, as he was away on transfer his successor would produce them. He further stated that he did not know the motive for killing the child. On re-examination he stated that his testimony was based on the findings in his investigation.

8. Dr. Wesly Rotich (PW 6 ) a medical officer at Kericho Referral Hospital, he stated that he has been working at Kericho Referral Hospital for 4 years, he is a qualified medical practitioner and that part of his duties are to treat patients and attend to post mortems. Pw. 6 stated that he was in court to produce the post mortem report of Ashleen Chepchirchir which was conducted on September 8, 2016 by Dr. Gilbert Langat who went for further studies at Nairobi University. He further stated that he was familiar with his handwriting since he had worked with him for two years. Dr. Gilbert Langat made the following observations as regards to her external appearance she had grayish discoloration of the fingers and lips meaning that there was lack of circulation, scratch wounds on the right side of the forehead and a wound on the tip of her nose and internally in the head there was subdural hematoma and a dislocation of the spiral column at vertebrae C1 & C3. Dr. Gilbert Langat therefore concluded that the cause of death was severe head injury secondary to head trauma, spinal injury and asphyxiation (strangulation). Pw. 6 produced the post mortem report as PExh.1. On cross examination, he stated that the post mortem was conducted on 8th September, 2016, prior to which the body had been embalmed for preservation and therefore the estimated time of death was not indicated. He stated that the child was about five months old and infant. On further cross examination, he conceded that an infant is not more than 6 weeks old, and that even at six months a child's body is still delicate and therefore any kind of trauma can cause injury, however, he was adamant that there was bleeding and discoloration of the neck, there was head trauma and a blunt injury to the head which was inflicted with significant force. He confirmed that the Dr. who performed the post mortem was not a pathologist and that the doctor did not have the previous medical history of the deceased and rather that from the documentation provided, the baby was found dead and that the police brought the baby for the post mortem.
9. When the accused was placed on his defence, he elected to give an unsworn testimony with no witnesses to call. In his defence, the Accused stated that he received a call from Faith informing him that the child was sick and needed medication. He conceded that on the material night he was drunk and that he proceeded late that night to go and see the child, he requested that the take the baby for treatment at



home, he went to his house where he slept with the baby till morning, when he left for work and did not realize that the child was dead, when he learnt that the child had died he decided to go to Chepseon Police Station to report the matter.

10. At the close of the case, the defence counsel wished filed written submissions for the courts consideration. Mr. Nyadimo, learned defense counsel in his submissions contended that the prosecution had failed to prove the commission of the offence by the accused or malice aforethought. He contended that out of the three essential ingredients of the offence, the prosecution had only proven death of the deceased. Mr Nyadimo therefore argued that the prosecution failed to discharge its duty to secure a conviction, he therefore urged the court to find that the prosecution had failed to establish the guilt of the accused person for the offence of murder and consequently acquit him under section 215 of the *Criminal Procedure Code*.
11. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.
12. The offence of murder is provided for in section 203 of the *Penal Code* that provides as follows; “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
13. The offence of murder is provided for in section 203 of the *Penal Code* that provides as follows; “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.” In *Republic v Andrew Omwenga* [2009] eKLR the court held: “It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission – there are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) The death of the deceased and the cause of the death, (b) That the accused committed the unlawful act which caused the death of the deceased and (c) That the accused had the malice aforethought.”
14. The accused in this case was charged with the offence of murder contrary to section 203 of the *Penal Code* which defines murder as the unlawful killing of a person or persons with malice aforethought.
  - (a) Death and Cause of Death
15. In this case the death of the deceased is not disputed Pw 6 produced a post mortem report which indicated that the cause of the death was severe head injury due to trauma to the head caused by a blunt object. This was corroborated by several prosecution witnesses; Pw.1 stated that when they found the child the next morning, she had an injury on the forehead, Pw. 4 stated that the child had some injuries, she looked like she had been hit by something and Pw. 5 the investigating officer in this case stated that the body had bruises in the head.
16.
  - (b) Whether the Accused Caused the Death of the Deceased
17. In this case it is not clear that the death of the deceased was as result of the unlawful actions of the accused, there are no eye witness accounts of the incident that led to the demise of the deceased herein, the only nexus between the accused and the deceased being that he was the last person who saw her alive after he took her from her mother on the material night and that on the following morning, the deceased was found dead on a bed by neighbours of the accused in his rented house near Kapsoit market.
18. (c) Whether the Accused Person had Malice aforethought.



19. For the charge of murder to succeed, it must be proved that they acted with malice aforethought. Section 206 of the [Penal Code](#) provides circumstances from which malice aforethought may be inferred. They are: "(a) An intention to caused 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 cause; © An intention to commit a felony; (d)..."
20. In this case it is not clear whether the accused herein had malice aforethought, he had no motive to kill the deceased who was his child.
21. I have considered the prosecution's case, the accused person's defence and the evidence herein. I find the prosecution's case is founded on circumstantial evidence, the lack of direct evidence notwithstanding, I find that there is sufficient circumstantial evidence that points towards culpability of the accused person. In [Abamad Abolfathi Mohammed and another v Republic](#) [2018] eKLR, the Court of Appeal stated as follows on reliance on circumstantial evidence: "However, it is a truism that the guilt of an accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence."
22. Accordingly, I find that the defence put forward by the accused person namely: Dennis Kiplangat Rop does not displace the prosecution's case. The prosecution has proved its case against the accused beyond reasonable doubt and in the premises, I find the Accused the guilty for the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). He is hereby convicted.

Dated, Signed and Delivered at Kericho this 15th day of June, 2023

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**J.K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh

Prosecutor – Mr. Musyoki

No Appearance Nyadimo for the Accused

Accused – Present in Prison.

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