



**Director of Public Prosecution v Kiburi (Criminal Case
106 of 2018) [2023] KEHC 20648 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 106 OF 2018
TW CHERERE, J
JULY 20, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION PROSECUTOR

AND

CHARLES MUTWIRI KIBURI ACCUSED

RULING

1. Jeremiah Kirimi M'Mbirithi (Kirimi) suffered an injury on October 27, 2018 and subsequently died on October 30, 2018.
2. Silas Muthuri and Stephen Mungathia stated they were in company of Julius Kiunga, Accused and Kirimi on the material night and that they had seen Accused stab Kirimi with a metal rod. Julius Kiunga Kanamba heard Kirimi scream that he had been stabbed but did not see Accused stab him.
3. Kirimi reported to police on October 28, 2018 that Accused had assaulted him the previous night. He was referred to hospital where he subsequently died on October 30, 2018 while undergoing treatment.
4. A postmortem conducted by Dr Njeri Nderitu on November 8, 2018 revealed Kirimi suffered severe head injury to the right side of head and died of intracerebral hemorrhage. Accused was arrested and charged with the murder of Kirimi.
5. In his sworn defence, Accused denied the offence. Whereas he conceded that he was drinking alcohol with Kirimi on the material night, he explained that Kirimi who was drunk stood to go to the washroom but slipped and fell injuring his head.

Analysis and Determination

6. Section 203 and 204 of the *Penal Code* under which the accused is charged provide for the offence of murder and the punishment for it. They require that the prosecution prove beyond reasonable



- doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought.
7. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the deceased; that Accused caused the said death and that he was actuated by malice.
 8. That Kirimi suffered severe head injury and died of intracerebral hemorrhage was confirmed by the doctor that conducted the post-mortem.
 9. Whereas Silas Muthuri and Stephen Mungathia stated that they saw Accused stab Kirimi with a metal rod below the right eye, medical evidence reveals that Kirimi died of an injury to the upper back side of his head. Kirimi's body did not have any penetrating injury below the right eye. Evidently, the prosecution evidence that Kirimi was stabbed is not corroborated by medical evidence and this leaves no doubt in the kind of the court that the witnesses who claimed to have seen Accused stab Kirimi were being untruthful and therefore unreliable.
 10. I have considered the injury suffered by Kirimi and I find that the explanation by Accused that Kirimi fell and injured his head more probable than the prosecution case that he had been stabbed with a metal rod.
 11. Throughout a criminal trial, an accused person bears no duty to prove his innocence. The burden is on the prosecution to prove their case beyond reasonable doubt. In *Stephen Nguli Mulili v Republic* [2014] eKLR this is what the court had to say;

“...it is not in doubt that the burden of proof lies with the prosecution. The *locus classicus* on this is the case of *DPP v Woolmington*, [1935] UKHL 1 where the court eloquently stated that the “golden thread” in the “web of English common law” is that it is the duty of the prosecution to prove its case. The Kenyan Courts have upheld this position in numerous cases. See *Festus Mukati Murwa v R*, [2013] eKLR”
 12. The totality of the evidence on record reveals that the Prosecution has not proved its case beyond any reasonable doubt and this court therefore finds Accused Not guilty and he is accordingly acquitted of the of the offence murder.

DATED AT MERU THIS 20TH DAY OF JULY 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

Applicant - Present

For Accused - Mr. Otieno C. Advocate

For DPP - Ms. Rita (PC-1)

