



**Republic v Saulo & another (Criminal Case E002 of 2021)
[2023] KEHC 20603 (KLR) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20603 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E002 OF 2021
WM MUSYOKA, J
JULY 21, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

AYUB SAULO 1ST ACCUSED

PETER TINDI LUTA 2ND ACCUSED

JUDGMENT

1. The accused herein, Ayub Saulo and Peter Tindi Luta, are charged with murder, contrary to section 203, as read with section 204, of the *Penal Code*, cap 63, Laws of Kenya, the particulars being that on December 27, 2020, at Muhonje village, Muhonje sub-location, Mahira Location, Kakamega North sub-county, within Kakamega county, they murdered Phelix Ngala Shayo.
2. 9 witnesses testified. PW1, Andrew Amondo, testified that he was within the vicinity of the stabbing incident, but he did not see the deceased being stabbed. PW2, Julius Lucheli Isaya, testified that the 1st accused confessed to him and his own father that he had stabbed someone. He gave them the knife used, which was presented as an exhibit in court. The person allegedly stabbed was not identified. PW3, Evans Shayo Ong'ayo, was with the deceased at a matanga, when they were attacked on the way home. He had seen the 1st accused with a knife, but he did not see him stab the deceased with it. He said that he was hit with a metal rod on his head and lost consciousness, and when he came to, he heard that the deceased had been stabbed with a knife. He said that he saw the 2 accused persons for the first time in court. he said there was no moonlight. He said that he did not know the accused prior to the incident. PW4, Shadrack Tindi Luta, said that the 1st accused was a child of his brother, while the 2nd accused was his own son. He heard that they had fought with other youths, and one of them was badly hurt, and was in hospital. He said he spoke to the 2nd accused, who confirmed that, but he did not tell him who was responsible for the boy who got hurt. When the injured youth died, his family came and burned the houses of PW4, and those of his brother, the father of the 1st accused. PW5, Patrick Opiani



Chetu, the father of the 1st accused, and uncle of the 2nd accused, was informed of the incident, but when he went to the scene, he did not find the deceased, nor the accused. PW4 reported the matter to the Assistant Chief, after he heard that his son might have been involved. He said that he spoke with the 1st accused, who said that they fought with the deceased and other boys over a local girl, and the deceased got hurt. The 1st accused allegedly claimed to have acted in self-defence. The 1st accused said that he had no knife. When he advised him to surrender his weapon to him he brought out a knife, that was placed in court as an exhibit. He stated that it was he and his brother who handed over the accused persons to the police. He also surrendered the knife to the police.

3. PW6, Laban Shayo Tesio, was the father of the deceased. He did not know the accused prior. He said that when they got information of the incident, the deceased was in hospital, and they rushed there, and found him bleeding from the stomach and abdomen. He was the one who got the ambulance that rushed the deceased to Mukumu Mission Hospital. He was taken to surgery, but died, and his body was moved to the mortuary. He reported the death to the police. He was present when post-mortem was conducted. PW7, Ezekiel Lufonge, was among those who assisted take the deceased to hospital. His son was also charged with the murder, but escaped. PW8, Dr Mchana Dixon, a pathologist, did autopsy on the body of the deceased. He noted 4 stab wounds on the chest and abdomen, and a fracture of the 7th rib. He opined that the deceased bled to death. PW9, Pius Namai Luvonga, responded to noise outside his house, and when he got out, he ran into several youths. One ran up to him asking for assistance. He had been stabbed, and his intestines were pouring out. Ayub Saulo, the 1st accused, then came to him holding a knife, telling him not to fear, as such things were normal. He said that before the 1st accused was arrested he sent to him a mobile phone message threatening him. He identified the 1st accused as his brother. He said that he saw the 1st accused clearly, and that the 2nd accused showed up shortly thereafter. He said that the deceased told him that it was the 1st accused who stabbed him. PW10, No 236881 Police Constable Charles Ogada, was the investigating officer.
4. I put the accused on their defence. They opted to remain silent.
5. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, it was with malice aforethought.
6. On whether the deceased died, I have the evidence of PW6. He was the father of the deceased. He took him to hospital, where he died. He identified the body, to PW8, for post mortem purposes. PW8 conducted autopsy on the body of the deceased, and produced the post-mortem report. The cause of death was said to be severe blood loss, on account of multiple stab wounds, following assault. What is in contention is who stabbed the deceased; and whether that person acted with malice aforethought.
7. None of the witnesses presented witnessed the stabbing. However, PW9 stated that when he responded to some commotion near his house, the deceased was among the youths who showed up. He was badly injured. Then the accused persons showed up shortly, thereafter. The 1st accused had a knife, and he told PW9 that what he was seeing was a normal thing. PW9 testified in a straightforward manner, and was not shaken on cross-examination. He impressed me as truthful, and nothing was presented which sowed doubt about him to me. His testimony was supported by PW2 and PW5, to the extent that the 1st accused confessed to them that he was involved in the altercation, where the deceased died, and that he had the knife used, which he surrendered to them, and it was handed over to the police. It is notable that the knife was not subjected to forensics, but the testimonies by the 3 witnesses pointed to the involvement of the accused persons in the act.
8. Did the accused have malice aforethought? A person who stabs another 3 times on the chest and on the abdomen, where vital body organs are housed, so much so that the intestines pour out, would intend no other consequence than the death or grievous injury of his victim.



9. The stabbing act was attributed to the 1st accused, was the 2nd accused complicit? The evidence discloses that 3 individuals were involved, the 2 accused persons and a third person, who escaped. That third person was identified as Mohamoud. The deceased was said to have been with another 2 persons when they were attacked and dispersed. One of them was attacked with a metal rod, PW3; while the deceased was stabbed with a knife. The twin attacks suggest that the 3 assailants had a common intention on the other 3 youths, to either kill them or to cause them grievous harm. So, I find the 2nd accused equally liable.
10. In view of everything stated above, I do hereby, find the accused herein, Ayub Saulo and Peter Tindi Luta, guilty of the offence of the murder of Phelix Ngala Shayo, contrary to section 203 of the [Penal Code](#), as read with section 204 thereof, and I convict them accordingly, under section 322 of the [Criminal Procedure Code](#), cap 75, Laws of Kenya.
11. For the purpose of sentencing, I direct the Kakamega County Director of Probation and Aftercare Services to look into the antecedents of the accused persons, interview the family of the victim and the community, and file a report thereafter, within 30 days. The matter shall be mentioned thereafter, for compliance. The sentencing shall be done by my successor or successors at Kakamega.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA
THIS.....21ST.....DAY OF.....JULY.....2023**

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Indimuli, Advocate for the accused person.

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