



Republic v Kibet (Criminal Case 82 of 2017) [2023] KEHC 21264 (KLR) (20 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21264 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 82 OF 2017
RB NGETICH, J
JULY 20, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

GEOFFREY KIPYEGON KIBET ACCUSED

RULING

1. The accused person has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars are that the accused on May 26, 2017 at Molo Sirwe sub-location in Mogotio sub-county within Baringo county, murdered Daniel Kipchirchir Komen.
2. The accused pleaded not guilty to the charge and the matter was set down for full trial with prosecution calling 4 witnesses in support of the charge preferred against the accused.

Prosecution Evidence

3. Pw 1 Peter Kibuigut Mengich testified that on May 26, 17 at around 12. 45p.m he was seated at a hotel at Molo Sirwe Centre drinking tea when he heard noises coming from the back of the door of the hotel; he stood up and looked out of the door and saw two people but he was not able to identify at the time. He moved close and saw a person lying on another holding something that looked like a knife; he confirmed that it was a knife when they rose. He said the person who had been stabbed ran for a short distance and fell down. He later learnt that one of the two people were Daniel Kipchirchir Komen and Geoffrey Kipyegon Kibet. He said they looked for a vehicle to take the injured person Daniel to hospital and that he had injury on the back and was bleeding. He said the person who stabbed the deceased passed by him as he went off while carrying a knife. He stated that he did not see where he went to and that he is able to identify him.
4. Pw 2 David Komen a brother to the deceased testified that on May 26, 17 at about 1. 30p.m, he was at Mogotio when he received a call from his father Henry Komen informing him that his brother had been injured at Molo Sirwe and had been taken to Hospital at Eldama Ravine. He went to Emining



police station where he saw his brother Daniel in the car lying facing down; that he had been covered and his shirt was blood stained on the back. He was asked to go to Eldama Ravine hospital, mercy mission hospital where on arrival he was informed by the doctor that his brother had died. He said he was shown the body which had two holes on the back, one on the lower side of the back and the other on the upper side at the shoulder.

5. He stated that the body was taken to Mercy Mission Hospital mortuary and they went with his brother Henry Komen to Mogotio Police Station to record statements. He stated that postmortem was conducted on the 30.05.17 at Mercy hospital mortuary in his presence and in the presence of his brother Henry Komen and other relatives and the doctor informed them that their brother had been stabbed with a knife.
6. PW 3 Corporal Richard Chelule testified that on May 27, 2017, he was at Mogotio DCIO office when he was directed to investigate a murder case at Molo Sirwe location. He said at the time the accused had been escorted by his father to surrender to police. He re-arrested the accused and on the same date together with PC Chege visited the scene at Molo Sirwe and on inquiry he learnt that the accused was playing the game operated by the deceased and when he was asked to pay the 20/= for the game, he was unable to pay and a fight ensued but were separated by Brian Kipyegon Kiplagat.
7. Pw3 testified that after accused and deceased being separated, the accused went to his room but the deceased followed him and Brian asked deceased to leave. He said the accused locked himself in and after about 5 minutes, accused came out of the room holding something like a knife in his hand and when Brian saw him with a knife, he asked the deceased to run but the deceased fell down and was caught up by the accused who attacked him with the knife and ran away with the knife leaving the deceased on the ground. Pw3 said the knife was not recovered.
8. Pw 4 Dr Titus Ngulungu performed postmortem on the deceased, Daniel Kipchirchir Komen on May 30, 2017 at Mercy Mission Hospital in Eldama Ravine. He concluded that the cause of the death was a stab with a sharp object through the chest causing blood loss and lung collapse.
9. Upon the closure of the prosecution case, by delivered on February 25, 2022 the court found that prima facie case had been established by the prosecution to warrant accused be placed on his defence in accordance with Section 306(2) of the [criminal procedure code](#).

Accused Evidence

10. The accused gave statement in his defence. He stated that he knew the deceased who came in April, 2017 looking business premises to rent in Molo Sirwe trading centre near Emining. He said the deceased got business premises to do gambling and came with two young men. The accused said he talked to his father called Wilson Yatich who had rental premises and the next day the deceased came with a Chinese driver and the accused's father opened for him the premises. He said the deceased started the business on May 24, 17.
11. Accused said that on May 27, 17 he went to his farm along Molo River to irrigate his crops upto late in the afternoon. That he later went to the trading centre where he learned that his friend(deceased) had been attacked and had passed on. He denied being involved in the incident stating that he had no reason to attack him.

Submissions By Accused

12. The accused filed submissions dated May 26, 2013. He submitted that he was not positively identified. He said only one witness testified that he was near the scene when the incident arose. He further stated



that it is only Pw 1 who was within Molo Sirwo when the incident arose and he said it was dark and that although he saw the assailant running away with a knife, he did not know who he was and it was only upon inquiring that he was told who he was and where he hailed from.

13. He submitted that in view of the above, there was need for Pw1's evidence but none of the witnesses gave consistent evidence and corroborated evidence of Pw 1 and further, the knife allegedly used as the assault weapon was not produced in court as an exhibit.
14. The accused submitted that the prosecution case was saddled with inconsistencies, lack of corroboration and doubt on identification and prosecution has not proved their case beyond reasonable doubt. on the other hand, the defence case was of high probative value because his evidence was not shaken by the rigorous cross examination by the prosecution; the accused urged the court to find that the defence case is cogent and that no evidence was led to proof that the accused was involved in the murder of the deceased and acquit the accused under section 214 of the Penal code.

Analysis And Determination

15. The issue for determination in this case is whether the prosecution have proved the case against the accused person beyond reasonable doubt to warrant a conviction.
16. In determining whether the prosecution proved its case beyond reasonable doubt, it is essential that the ingredients for murder as specified under section 203 as read with section 204 of the Penal Code are proved. To this end, the prosecution should demonstrate that the deceased died, that it was the accused's unlawful act that led to his death, and that the murder was carried out with malice aforethought.
17. That canon of beyond reasonable doubt is indispensable for the reason that an accused person's right to presumption of innocence is guaranteed under Article 50 (2) (a) of the Constitution. That burden of proof is well settled. That the state bears the task and responsibility at all times. It never shifts to the accused or the defence for that matter see the principles in *Woolmington v DPP* {1935} AC 462 and *Miller v Minister of Pensions* {1942} AC. The Supreme Court of Nigeria in *Bakare v State* {1985} 2 NWLR stated as follows:

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability.”

18. As to whether the deceased died, there is no question that he died on May 26, 17 as it was confirmed by all prosecution witnesses. Dr. Titus Ngulungu a pathologist testified that he conducted postmortem examination on the body of Daniel Kipchirchir Komen, on the 30.05.2017 at Mercy Mission Hospital at Eldama Ravine and concluded that the cause of the death was a stab with a sharp object through the chest causing blood loss in the chest lung collapse. He produced a copy of a postmortem report form which confirmed that indeed the deceased died on May 26, 17.
19. The next issue to determine is whether accused unlawfully caused the death of the victim herein.
20. In evidence adduced by (PW1) and (PW4) clearly shows that the accused chased the deceased while armed with a knife. When he finally caught up with him, he used the knife to inflict injuries by stabbing



the deceased on his back. The evidence by the doctor who performed the post-mortem examination, indicated multiple deep cuts to the back. The doctor opined that the cause of the death was a stab with a sharp object through the chest causing blood in the chest. There is therefore no doubt that it is the accused who unlawfully inflicted fatal injuries on the deceased.

21. The 3rd ingredient for the offence of murder is malice aforethought. Section 206 of the Penal Code defines malice aforethought as the intentional killing of the deceased or to do grievous harm to any person whether that person is the person actually killed or not or knowledge that the act or omission will result into the death of a human being. Among factors to consider in determining malice aforethought include the nature of the weapons used, the manner it was used to inflict the injuries, the parts of the body targeted whether vulnerable or not, the nature and gravity of the injuries, and the conduct of the accused before, during and after the incident.
22. Malice aforethought is proved by establishing by evidence that there was intention to cause the death of any person/victim whether that person is killed or not and two whether the accused has knowledge that the act or omission causing death will cause death. Whether the person is killed or not although such knowledge is accompanied by indifference whether death caused or not.
23. In evidence adduced by (PW1) and (PW4) established that the accused armed himself with a knife with intention to inflict serious injury to the back. The accused was in possession of a knife which he used to stab the deceased at his back. Those injuries from the pathologist opinion caused the death of the deceased. The prosecution evidence tendered satisfies the criteria indicative of malice aforethought on the part of the accused.
24. Finally, on the issue of identification, the accused in his submissions argues that he was not positively identified. (PW1) testified that he was within the scene of crime. The offence was committed at around lunch hour. He saw the accused lying on the deceased and stabbing him with a knife. He stated that after the incident, the accused passed holding the knife. The offence was committed in broad daylight. Evidence on identification was not controverted; the evidence squarely placed the accused at the scene of the murder. The accused was positively identified by the prosecution witnesses free from error or mistake.

Final Orders: -

1. I hereby find the accused guilty of the offence of murder contrary to section 203 as read with 204 of the penal code and convict him accordingly.
2. Right of appeal 14 days

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET

THIS 20TH DAY OF JULY 2023.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kemboi - Court Assistant.

Ms Ratemo for state.

Mr. Kipnyekwei for accused.



Accused present.

