



**Republic v Too (Criminal Case 42 of 2019) [2023] KEHC 21266 (KLR) (13 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21266 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE 42 OF 2019**

**JK SERGON, J**

**JULY 13, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DAISY CHEPKOROS TOO ..... 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 November 27, 2019 at Commercial Shopping Centre in Kericho East Sub-County within Kericho County, murdered Caren Cherotich Sigilai.
2. The Accused pleaded not guilty to the charge and the prosecution called eleven (11) witnesses to prove its case.
3. Joel Cheruiyot Langat (PW1) recalls that on November 25, 2017 at 6:00pm he was at his shop serving customers when Daisy Chepkoros Too (the accused herein) came with a jerrican of milk to his shop and asked him if he knew who it belonged to, he said he did not know and told her go to the nearby hotel and ask if the 3 liter jerrican was theirs, the hotel confirmed that the jerrican was theirs, Daisy's husband had taken milk with it. The next day she returned at about 11 am with a knife on her left arm, she accused the owner of the hotel of having an affair with her husband and stabbed her on the chest. The owner of the hotel was called Mercy. Mercy fell in a trench. He went to the trench and saw her bleeding on the left side of her chest. He identified the knife marked as MFI-1. He stated that people came to the scene and took Mercy to hospital and took Daisy to the police station. After a short while they learnt that Mercy had died, he identified the accused person on the dock and stated that he had no vendetta with her.
4. On cross examination, PW 1 confirmed that while inside his shop he could not see Mercy's hotel rather he overheard Daisy and Mercy quarrelling; Mercy was sleeping with Daisy's husband. Pw.1 confirmed



that he did not see Daisy stabbing Mercy. He confirmed that Mercy was stabbed two days after Daisy returned the jerrican. He stated that he was in his shop when he heard screams, he went to the hotel and found Mercy holding a knife on the left side of her chest and that he was at the scene and among the people who separated the two. He confirmed that he did not record a statement rather he signed the statement after the police recorded it.

5. On reexamination, he reiterated that he was not the one who recorded the statement rather he explained to the police what happened and the police recorded. He stated that he heard Mercy calling out for help, he went and saw Daisy and Mercy struggling for the knife, he saw Daisy holding the knife and the two fell into the trench. The people at the scene separated them, the knife was in Mercy's chest, she had been stabbed. PW 1 confirmed that the deceased was a neighbor at his place of business and at home, she was also known as Caren Cherotich Sigilai.
6. Linner Chepngetich (Pw.2) testified that on 27th November she was cultivating in her shamba when she heard screams from the Commercial Center, she went to the scene and saw Caren in a trench with blood on her chest and Daisy carrying a knife on her hand, Daniel Menjo took the knife from Daisy's hand while she ran and stopped a vehicle. Caren was taken to hospital, Caren succumbed to her wounds in hospital. She stated that she recorded a statement with the police on November 29, 2019.
7. On cross examination, (PW 2) confirmed that the shamba is near the Commercial Center, she heard screams and ran to the scene, she heard people saying that Caren had been stabbed, she did not see Daisy stabbing Caren. She stated that when she arrived at the scene, there were many people at the scene, she however was able to identify the accused person. When she arrived, the two had been separated, but Daisy wanted to stab Caren. Daisy still had the knife. She confirmed that whilst at the scene, she saw Geoffrey, Linet Caren's sister, Joel and other people that she did not know.
8. On reexamination, she maintained that she heard screams while she was still at the shamba and went to see what was happening, she saw Caren inside a trench and Daisy was standing nearby holding a knife, she wanted to stab Caren again.
9. Linet Chepngetich (PW 3) stated that she knew both the accused person and the deceased, the deceased was her elder sister. She testified that on November 27, 2019 she and Caren were at the hotel, she was helping her to wash dishes, when Daisy came with a knife and stabbed Caren. She screamed and people came, Caren fell inside the hotel, she was subsequently taken to hospital. She confirmed that she saw Daisy stabbing Caren, she did not flee rather she stood there until many people came, when people came, they arrested Daisy and she was taken to the police station. Caren succumbed while in hospital.
10. On cross examination, PW 3 stated that the incident occurred inside the hotel and that she did not know when the quarrel between Daisy and Caren started. She stated that Caren was stabbed four times, she saw a wound on the left side of her chest and that after the incident, Daisy left the hotel. She confirmed that she did not know what happened outside.
11. Daniel Kimeli Menjo (Pw.4) he stated that he knew both the accused and the deceased. He testified that on November 27, 2019 at around 1:30 pm he heard people screaming, he went to scene and saw Daisy and Caren fighting, Caren fell in a trench. He saw Daisy stab Caren once. He managed to hold Daisy with the knife, took the knife and gave it to Brian who took it to the police station. He maintained that he disarmed Daisy and she was subsequently taken to the police station whereas Caren was taken to hospital, he later learnt that Caren had succumbed.
12. On cross examination, Pw.4 stated that he stays at Brooke Commercial Center, the hotel is 20 meters away from his house when he heard people screaming, he ran to the crime scene and found that people had gathered. He conceded that he did not know what happened before Caren and Daisy



- started fighting. He saw Daisy trying to stab Caren but he held her, she had already stabbed Caren. He confirmed that after separating them, he disarmed Daisy. Brian took Daisy to the police station as well as the knife MFI-1 which was recovered from Daisy. He confirmed that there was blood in the hotel.
13. Geoffrey Kiplangat Rono (Pw.5) testified that on November 27, 2019 he was at Commercial Center having late lunch when he saw Caren going to the door, he heard her scream as she fell down. He saw Daisy carrying a knife and Caren was bleeding from the left side of the chest, she had been stabbed by Daisy. He stated that he was shocked and fled from the scene, he later learnt that Caren had succumbed.
  14. On cross examination, PW 5 confirmed that the incident occurred inside the hotel where he was having lunch and further that after Daisy stabbed Caren she fell down. He saw Daisy stab Caren twice on her chest, she was stabbed on the left side of the chest, he saw the knife that was used; a vegetable knife and further that when Caren was stabbed she screamed and people came to the scene.
  15. Brian Cheruiyot Bett (PW 6) testified that on November 27, 2019, at around 1:30 pm, he was in his house when he heard people screaming, he went outside, ran to the scene and found people beating Daisy. He assisted her and took her to Brooke Police Station as well as the knife recovered by Daniel from the scene.
  16. On cross examination, he confirmed that he did not know what happened when he arrived at the scene. He assisted Daisy by taking her to the police station. He did not see her stab Caren. He took the knife recovered at the scene to the police station. He confirmed that his house is 1 km from the Commercial Center.
  17. Dr. Wesley Rotich (Pw.7) a medical officer confirmed that on November 28, 2019 he conducted a post mortem on the body of the Caren Sigilai (deceased) and concluded that the cause of death was massive internal bleeding due to penetrative chest injury caused by a sharp object and produced the post mortem report as Pexh.2.
  18. On cross examination, Pw.7 stated that he did not identify any defensive wounds on the deceased, only stab wounds. He confirmed that he did not know what weapon was used rather that given the depth and width of the wound it was occasioned by a sharp object, which was used with great force because it penetrated the chest cavity, the lung was injured, blood vessels ruptured, lungs filled up with blood and thereafter collapsed resulting in haemathorax asphyxia.
  19. Polycarp Lutta (Pw.8) who works in Kisumu as a Principal Government Chemist, stated that he prepared a report in respect to items submitted by PC John Bwani DCIO Kericho, the items were submitted and he was requested to carry out DNA profiling to determine presence of blood stains in the following items; (1.) I kitchen knife, (2.) white blouse with long sleeves, (3.) a cotton swab, (4.) blood sample of Caren Sigilai and (5.) blood sample of Daisy Chepkoros Too. PW 8 stated that he carried out an analysis and came up with the following findings that the stains on the knife, blouse and cotton swab tested positive for human blood, he proceeded to do DNA profiling and the DNA profile generated by blood stains in the knife, blouse, cotton swab matched with blood sample of Caren Sigilai (deceased) he prepared a report dated January 21, 2021 and produced it as Pexhb.3. He confirmed that he received an exhibit memo Pexhb. 4 alongside the items that were submitted for analysis at the government chemist.
  20. On cross examination, PW 8 stated that science has helped resolve many murder trials. He further stated that DNA is unique to every human being and that a blood sample can derive a DNA profile. He confirmed that he was given blood samples of the accused person, which was not found on any of the items, however, that did not mean that the accused did not come into contact with the said items. He confirmed that he received samples for testing with an exhibit memo form, the items were in good



condition and in cases whereby the samples do not meet the criteria for profiling, they are rejected, in this case there were no samples rejected.

21. Emmanuel Simiyu (PW 9) No 5814655 testified that in November 27, 2019 at about 2:40 pm he was at Jakaik Police Patrol Base when members of the public came with Daisy Too the accused in this case. He stated that among them was Geoffrey Kipkemoi Bett who had a knife with blood stains and Brian Cheruiyot Bett, they handed over the suspect and the knife to him, he inquired what happened and they told him that they rescued the suspect from mob justice after she stabbed Caren Sigilai who was rushed to hospital by a good samaritan, while he was taking down the details, one of the witnesses was informed that Caren had succumbed while undergoing treatment. He informed OCS Kericho who informed DCIO officers from Kericho who rushed to the scene. They came over to Jakaika Police Base and he handed over the suspect and the knife.
22. On cross examination, PW 9 confirmed that he did not see blood stains on the suspects clothes nor injuries on her body and further that other than the knife he did not take anything from the suspect to be sent to the government chemist. He reiterated that he handed over the accused to DCIO officer and that he did not participate in the investigation of this case.
23. On reexamination, PW 9 stated that he was the arresting officer in the case, he arrested the accused and subsequently handed over the accused to DCIO officers.
24. Sgt. Mlongo Tali (PW 10) no 61384 currently based at Kericho Police Station in the scene of crime section, stated that he has been gazetted as a scene of crime officer and that his duties include visiting scenes of crime and taking photographs for prosecution purposes. He stated that on November 27, 2019 at about 2:00 pm he was informed by Deputy DCIO Ann Wanjira that he was required to attend to a scene of murder at Commercial Shopping Center within Kericho Town, whereby a woman had stabbed another woman at the shopping center and she had succumbed to the injuries while undergoing treatment at Kericho Referral Hospital. He further stated that he accompanied Cpl Wilfred Kiprono to the scene, passed by Jakaik Police Base and took a police officer who led them to scene of crime. On arrival at the scene, he was led to a shop where the deceased operated a hotel. He saw food stuff on the floor an indication that there was commotion, he spotted a trail of blood drops on the floor of the hotel towards outside, the trail of blood drops extended to the tarmac road across a water drainage, he stated that after a careful examination of the scene, he took several photographs before collecting blood stains for analysis. PW 10 stated that he proceeded to the accused person's home where the fight began with her husband, examined the home, took photographs and upon inquiring learnt that the husband of the accused person had been hospitalised at Kericho Referral Hospital after the fight. PW 10 testified that on the way back to the station they passed through Jakaik Police Post to collect the accused who was in custody, the officer in charge handed the murder weapon to the investigating officer. They escorted the accused to Kericho Police Station. Later on he accompanied his colleague the I/O to Kericho Referral Hospital where the body of the deceased was lying, the body had two stab wounds on the left shoulder and on the chest, he took several photographs. He proceeded to the casualty ward where the husband of the accused was hospitalized, he had a stab wound on the right cheek, he took photographs and went back to the police station. The investigation revealed that the whole issue revolved around a love affair. He stated that he went back to the police station, processed the photographs and marked as Pexhb. 6-13, he processed the certificate which he signed and wished to produce the same as Pexhb. 14.
25. On cross examination, he confirmed that they visited the crime scene after the incident had occurred and that the scene was not secured and further that there was a large crowd at the scene, however, he maintained that it was not possible the scene was tampered with as the citizens were not stepping on the scene. He confirmed that he did not take statements from the witnesses. He reiterated that arrived to



- the conclusion that it was a love affair based on what the I/O in this case had told him. He maintained that the photographs were taken for purposes of investigations and that the swabs were collected from the scene.
26. Cpl. Wilfred Kiprono (Pw.11) attached to DCIO Kericho testified that on 27th November he was at the station, when he was summoned by Deputy DCIO IP Ann Wanjira, she informed him that a murder incident had been reported at Jakaik Police Post now Brooke Police Station, he and his colleagues including scene of crime officer sgt. Mlongo, proceeded to Jakaik Police Station and found that the accused had been handed over the in-charge by members of the public. They proceeded to the scene of the alleged murder at Commercial Center within Brooke. On arrival they found many people gathered, he managed to talk to Joel Langat (Pw.1) who owns a shop, told him that the accused was well known to him, she went to the shopping center and attacked the deceased who was taken to hospital for treatment. His colleague sgt. Mlongo took photographs of the scene and they proceeded to Lelaka Village to the home of the accused, on arrival, they were told that she had attacked her husband Jackson Too and that he had been taken to hospital for medical treatment. They went back to Jakaik Police station to collect the suspect who wore a white blouse with blood stains and a blue skirt, he was also given a knife with blood stains. He stated that they proceeded to the hospital saw the body of the deceased with two stab wounds and proceeded to the male ward where Jackson Too husband of the accused had been admitted, they talked to him and he told them that his wife had attacked him. He further stated that on 28th November, 2019 he went to Siloam Hospital Mortuary and witnessed the post mortem done by Dr. Wesley Rotich of Kericho Referral Hospital, he took blood samples of the accused and deceased and formed an opinion on cause of death in the post mortem report. He confirmed that his colleague prepared an exhibit memo dated December 4, 2019 and he escorted the samples in the exhibit memo to wit; knife, blouse(white), cotton swabs and blood samples for analysis, he later picked the report from the government chemist which report was produced by PW 8 and the court adopted the said report. He subsequently charged the accused person with murder.
  27. On cross examination, PW 11 stated that he was the I/O in the case, he recorded the witness statements. He confirmed that his colleague had prepared the memo exhibit forms and that the blood swabs were taken from the hospital not the crime scene.
  28. section 211 of the *Criminal Procedure Code* was complied with, the accused opted to give unsworn statement and did not call any witnesses.
  29. Daisy Chepkoros Too (Dw.1) stated that she was cognisant of the fact that she was facing a charge of murder, she testified that on November 25, 2019 she had a quarrel with her husband, he chased her away with the children and they sought refuge at a neighbour's place, when they returned the next day the husband chased her away from their matrimonial home, her husband had gone to live in another woman's house, this, she conceded was the main reason for the disagreement. She went to see Caren in the hotel her husband had opened for her and told her that she was living in peace but her (Caren's) entry into their lives had caused chaos. She saw Caren pick a knife, to stab her, they fought over the knife, she stabbed herself on one side and she stabbed her on the other side. She stated that Caren was in possession of the knife. She stated that the public came to separate them, she does not know what happened afterwards, rather she found herself in the police station.
  30. The parties filed submissions which I have considered.
  31. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.



32. 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.”
33. 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.”
34. 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
35. In this case the death of the deceased is not disputed Dr. Wesley Rotich (Pw.7) a medical officer testified that on 28th November, 2019 he conducted a post mortem on the body of the Caren Sigilai (deceased) and concluded that the cause of death was massive internal bleeding due to penetrative chest injury caused by a sharp object and produced the post mortem report as Pexh.2. Pw.7 confirmed that upon examining the deceased he did not identify any defensive wounds on the deceased, only stab wounds which in my opinion are consistent with a knife MFI-1 which was recovered from the accused at the crime scene. The knife amongst other items forwarded to the government chemist for analysis tested positive for human blood. PW 8, the Principal Government Chemist proceeded to do DNA profiling on the said items and the DNA profile generated by blood stains in the knife, blouse, cotton swab matched with blood sample of Caren Sigilai (deceased). PW 8 prepared a report dated January 21, 2021 with his findings and produced it as Pexhb.3. The report was adopted by this court.

#### **Whether the accused committed the unlawful act which caused the death of the deceased**

36. PW 3 stated that she and the deceased were together at the hotel when the accused came with a knife and stabbed the deceased. Several prosecution witnesses at the scene of crime testified that soon after the accused had stabbed Caren Sigilai (deceased) on the chest, she was taken to hospital for treatment where she succumbed to her injuries and the accused was taken to the police station.
37. In the circumstances of this case, the accused’s defence failed to offer any explanation as to how the deceased might have met her death. Her defense amounted to a mere denial. Accordingly, I am satisfied that the prosecution proved beyond reasonable doubt that it was the accused who unlawfully caused the deceased’s death.

#### **(c) Whether the Accused Person had Malice Aforethought.**

38. 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 cause 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)..."

39. In this case I find that the accused had a motive to commit the offence, the accused attacked the deceased on account of the fact she was having an affair with her husband; Jackson Too, therefore, her actions were premeditated. Pw.1 testified that on the material day at about 11 am, the accused returned while armed with a knife on her left arm, she accused the owner of the hotel Caren Sigilia (deceased) of having an affair with her husband and stabbed her on the chest. Further to this, the accused in her defence admits to having disagreements with her husband, she further admitted that she confronted Caren regarding the affair and that an altercation ensued thereafter.
40. PW 10 the crime scene officer and PW.11 the investigating officer in this case testified that while conducting investigations, visited Lelaka Village home of the accused and upon arrival, they were told that she had attacked her husband Jackson Too and that he had been taken to hospital for medical treatment. The two officers, subsequently visited Jackson Too at the male ward of Kericho Referral Hospital, he confirmed that they had a disagreement with the wife and that his wife, the accused herein had attacked him.
41. Accordingly, I find that the defence put forward by the accused person namely: Daisy Chepkoros Too 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. She is hereby convicted.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 13TH DAY OF JULY, 2023.**

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**J.K. SERGON**

**JUDGE**

**IN THE PRESENCE OF:**

**C/ASSISTANT - RUTTOH**

**MR. KOKO FOR THE ACCUSED**

**MR. MUSYOKI FOR THE STATE**

**ACCUSED – PRESENT IN PRISON.**

