



**Republic v Nyongesa (Criminal Case 20 of 2019)
[2023] KEHC 19536 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE 20 OF 2019**

AC MRIMA, J

JULY 6, 2023

BETWEEN

REPUBLIC STATE

AND

LEONARD NATO NYONGESA ACCUSED

JUDGMENT

Introduction

1. Leonard Nato Nyongesa, the accused herein, was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*, Cap 63 of the Laws of Kenya. The particulars of the offence were that on July 20, 2019 at Mowlem area in Chepchoina Location within Endebes Sub-County of Trans Nzoia County, the accused murdered Beatrice Injete.
2. The deceased was the mother to the accused.
3. When arraigned before Court, the accused pleaded not guilty to the offence. He was tried. After the close of the prosecution's case, this Court found that a *prima facie* case had been established and the accused was placed on his defence.
4. The accused tendered a sworn defence and called no witness thereby leading to this judgment.

The Trial:

5. The prosecution called 6 witnesses with a view to proving that the accused murdered the deceased.
6. The deceased was a sister to one John Chemwa Kituyi who testified as PW1. On the fateful day, the prosecution had it, that PW1 was called by the deceased to mediate on an issue between the accused and a neighbour. The accused was blamed for assaulting the neighbour's son. The neighbour was called



- Schola. However, during the negotiations, the accused was absent. The discussions resolved that the accused would meet the treatment charges for Schola's son at Kshs 500/=.
7. The accused later came home in a drunken stupor at around 9:00 p.m. He was then briefed on what had transpired. This angered the accused who then had an altercation with his mother and PW1.
 8. Since the accused was raged, the deceased asked him to leave the house and come back the following morning when he would be calm. Instead of heeding to that request, the accused grabbed the deceased by hand and escorted her out of the house. He then locked PW1 inside the house.
 9. For a period of around 20 minutes, PW1 could hear the deceased making some noise before she went quiet. Thereafter, the accused hit the window to gain access to the house forcefully. He was holding a panga saying that he wanted to kill PW1. Before that could happen, PW1 was rescued by someone who opened the door from outside. He found that the deceased had injuries on her body. She was rushed to Hospital.
 10. PW2 was one Lilian Nabwire Wandera. On her part, she recalled that the accused and deceased sold her a piece of land sometime back. On the fateful night, PW2 heard some commotion emanating from the deceased's house. She went to the home and found that PW1 was assaulting the accused inside the house of the deceased. PW2 asked PW1 not to beat the accused. The deceased informed PW2 that PW1 and the accused were fighting over a land dispute.
 11. The deceased then grabbed the accused and successfully took him outside. However, PW1 and PW2 remained inside the house.
 12. As the deceased was returning to her house, she suddenly fell down just outside the door. PW2 gave the deceased water. Thereafter, the deceased's eldest son was called to take her to Hospital.
 13. PW3, Lydia Naswa, a neighbour, also heard the commotion. She joined PW2. She saw the accused seated on the chair while PW1 beat him. The accused was then taken outside the house by the deceased. The deceased then came back to the house and fell next to the door on her back.
 14. PW3 did not see any injuries on the deceased. The deceased's relatives were called to assist and take her to Hospital.
 15. Catherine Nasambu testified as PW4. She was the deceased's daughter-in-law. She was also at the scene. She accompanied the deceased to hospital where she was pronounced dead.
 16. The body was taken to the mortuary where an autopsy was carried out. PW5, Michael Simiyu, the deceased's nephew identified the body in the company of her son Joseph Nyange. The post mortem took place on September 25, 2019. PW5 saw some bruises on the deceased's forehead and chest.
 17. The autopsy was conducted by Dr Okumu at Kitale County Referral Hospital mortuary. It was observed that the deceased was elderly but in good nutrition and physique. She had bruises on the face and anterior chest.
 18. Internally, she suffered anterior chest hematoma. She had a compressed chest bilaterally due to push up by the abdominal organs. She had a compressed heart and lungs. She suffered spleen laceration and liver hematoma.
 19. The cause of death was opined to be damage to the spleen and liver due to trauma. The Autopsy Report was produced in evidence.



20. The matter was reported at Endebes Police Station where PW6 No 88xxxx Pc Ongaga Nyariaro was assigned to conduct investigations. He proceeded to the deceased's home in the company of his colleagues 6 days later. The scene had been interfered with.
21. He collected evidence that formed his opinion to charge the accused with the present offence.
22. After close of the prosecution's case, this Court found that the accused had a case to answer. He was placed on her defence. He opted to, and gave a sworn defence.
23. The accused stated that on the morning of July 20, 2019 he had been asked, together with his brother Benard, to accompany their uncle, PW1, to a certain place. PW1 had visited them on July 18, 2019. He recounted that since he never got along with PW1 over a land dispute, he declined to travel with him.
24. The accused instead reported to his usual work at the quarry. He would return home later in the evening. He headed to his mother's house. As he took tea and read a message from the deceased's phone, there was a loud bang on the door. It was PW1 who was drunk.
25. The accused explained to his mother why he didn't accompany his uncle to the trip. PW1 entered inside the house and was outrightly hostile on him. PW1 hit the accused on his nose. The accused fell on the sofa. This prompted PW1 to land on him and hit him further more to the extent that he started bleeding.
26. The deceased raised alarm. PW2 and PW3 came to the rescue. They managed to pull PW1 away from him. The deceased then asked the accused to leave since PW1 was intent on killing him. As he was walking away, the accused heard the deceased lamenting that it was better for her to die than to live in such conditions. She then heard a loud thud. He saw that the deceased had fallen down and that PW1 ran away.
27. The deceased was then rushed to Hospital but was pronounced dead while receiving treatment. The following day, the accused reported the matter and returned home. Police officers came to the homestead on July 24, 2019 where they conducted their investigations. He was then arrested on July 27, 2019. He accused PW1 of wanting to dispossess them of their late father's land. It is for this reason that the PW1 framed him with the present charges.
28. He denied committing the offence and the narration set out by the prosecution countermanding that he enjoyed a peaceful relationship with his deceased mother during her lifetime.
29. After close of the defence case, parties filed written submissions.
30. The accused's submissions dated November 11, 2022 were filed on November 13, 2022. He argued that the prosecution failed to discharge its burden of proof to the required standard. Consequently, he ought to be acquitted.
31. The prosecution's submissions were dated December 9, 2022 and filed on December 13, 2022. It urged that the prosecution had discharged its burden of proof to the required standard to establish that the accused murdered the deceased.

Analysis:

32. In criminal cases, for the prosecution to secure a conviction on the charge of murder, it has to prove three ingredients against an accused. The Court of Appeal at Nyeri in Criminal Appeal No 352 of 2012 *Anthony Ndegwa Ngari vs Republic* [2014] eKLR, summed up the elements of the offence of murder as follows: -



- (a) the death of the deceased occurred;
- (b) that the accused committed the unlawful act which caused the death of the deceased; and
- (c) that the accused had malice aforethought.

33. This discussion shall now endeavor to interrogate the above ingredients against the evidence on record.

The death of the deceased:

- 34. There are several ways in which the death of a person may be proved. In some instances, deaths may be presumed. (See Section 118A of the *Evidence Act*, Cap 80 of the Laws of Kenya).
- 35. In this case, the death of the deceased is not in doubt. It was proved through the evidence of Dr Okumu, a Medical Doctor, as contained in the Post Mortem Report after conducting an autopsy on the body of the deceased.
- 36. The cause of death was deduced as internal organ (spleen and liver) due to trauma.
- 37. There are also witnesses who confirmed that the deceased died and was eventually buried.
- 38. This Court, therefore, finds and hold that the death of the deceased in this case was proved to the required standard.

Whether the accused committed the unlawful act which caused the death of the deceased:

- 39. The prosecution relied on the evidence of four witnesses to place the accused at the crime scene on the fateful night. They were PW1, PW2, PW3 and PW4. Their respective evidences have been captured above in detail.
- 40. A careful analysis of the evidence of the said witnesses depicts that the trail of the prosecution evidence is not consistent. The evidence of PW1 is at variance with that of PW2 and PW3. PW4 only confirmed that the accused was at the scene when she was called by PW2 to assist the deceased.
- 41. Whereas PW1 stated that it was the accused who was angry and abusive and held the deceased by her hand and pushed her outside the house and then locked the door behind thereby locking him inside, PW2 and PW3 who were inside the house had a different narration. They both confirmed that the accused was neither quarrelsome nor abusive and that it was instead PW1 who beat up the accused. However, PW1 vehemently denied beating up the accused. They also confirmed that it was the deceased who whisked the accused outside the house away from the angry PW1.
- 42. None of PW2 and PW3 testified to the accused locking the door as he left the house or in any way roughing up PW1 or the deceased. Further, both PW2 and PW3 disproved the PW1's allegation that the accused was armed with a panga, demolished the window and attempted to enter the house through the window in order to attack PW1. According to the two, when the deceased took the accused outside, she immediately returned and on reaching at the door, she collapsed. No one ever saw the accused accosting the deceased.
- 43. On further discounting the evidence of PW1, one would wonder if it was true the accused locked the door from outside and went to arm himself with a panga so as to attack PW1, then why wouldn't the accused have simply opened the door from outside and gained entry instead of breaking a window and attempting to jump inside. The PW1's version, as tendered, beats logic.



44. There was a further observation made by PW2 and PW3 which ran contra that of PW1. The two testified that when the deceased fell, she had no visible injuries. PW1, however, testified to seeing injuries on the body of the deceased as she fell.
45. The evidence of PW2 was, therefore, corroborated by that of PW3. No one corroborated the evidence of PW1.
46. There is still another issue. During investigations, PW6 did not testify as to a window being hit as recalled by PW1. It appears that there was no evidence of such at the scene. Although the scene had been interfered with, it was not impossible for PW6 to establish whether the window was broken into, cracked or suffered some damage in the first place.
47. In fact, the evidence of PW2 and PW3 further corroborated the accused's defence. The accused blamed PW1 of framing him because he wanted to dispossess them of their late father's property. PW2 and PW3 confirmed that the deceased said as much; that PW1 was quarrelling the accused on account of a land dispute. Also, the narration of the accused in respect of the events of that night were in tandem with those of PW2 and PW3.
48. It can, therefore, be safely summed up there was a land dispute in issue between the accused and PW1. No investigations were, however, undertaken to that end. It is also the case that, on the fateful day, it was instead PW1 who attacked and beat up the accused. Further, no one testified of the accused assaulting the deceased.
49. Deriving from the foregoing, by placing the evidence of PW1 on one hand, and that of PW2, PW3 and the accused on the other hand, it comes out that the possibility of the accused assaulting the deceased on the fateful night can only be very far-fetched. Had the accused done so, at least PW2 and/or PW3 would have witnessed as much.
50. To this Court, it is possible that the deceased may have been injured by PW1 as she rescued her son, the accused, from the angry jaws of his uncle. Further, the failure by the police to carry out investigations to ascertain whether the accused was truly framed by PW1 as a result of the land dispute raises serious doubt on the totality of the prosecution's evidence. By and large, PW1 has been portrayed as an untruthful witness. His evidence is of no probative value or at all and is for rejection.
51. The accused put up a candid defence. That was aptly corroborated by PW2 and PW3. It is, therefore, the finding and holding of this Court that the accused did not cause any of the injuries that led to the death of the deceased. Instead, it was the accused who was framed in furtherance of the prevailing land dispute.
52. The upshot is that the prosecution has failed to prove that the accused committed the unlawful act which caused the death of the deceased.
53. In the premises, this Court finds and hold that the prosecution failed prove the charge of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) as against the accused.
54. In the end, the accused is hereby found not guilty of the murder of his mother Beatrice Injete and he is accordingly acquitted pursuant to Section 322(1) of the [Criminal Procedure Code](#), Cap 75 of the Laws of Kenya.
55. The accused is set-free forthwith unless otherwise lawfully held.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KITALE THIS 6TH DAY OF JULY, 2023.



A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Mr. Bikundo, Learned Counsel for the Accused.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the State.

Regina/Chemutai – Court Assistants.

