



**Republic v Njoroge (Criminal Case 2 of 2018)
[2023] KEHC 19494 (KLR) (5 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 2 OF 2018
HK CHEMITEI, J
JULY 5, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

HUMPHREY MWANGI NJOROGE ACCUSED

JUDGMENT

1. The accused herein was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal code*. The particulars of the offence were that on the 14th day of January 2018 at Naka estate Nakuru town in Nakuru east sub county within Nakuru county murdered Paul Abduba Boru.
2. The accused denied the charge and the prosecution called several witnesses to establish its case and their evidence can be summarised as hereunder.
3. PW1 Dr George Biketi carried out the post-mortem exercise and concluded that the cause of death was massive bleeding from the stab wounds. He produced the post mortem report
4. PW2 Abdul Wako who was the cousin of the deceased witnessed the post mortem exercise.
5. PW3 John Adan Abduba as well witnessed the post mortem which was carried out on January 15, 2018.
6. PW4 Rose Abduba the sister to the deceased testified on how she received the sad news concerning the deceased death from Naomi the mother to the accused. She said on cross examination that she did not witness the incident.
7. PW5 Naomi Wangui the accused mother and the lover of the deceased testified that she was called by the accused who told her about the quarrel he had with the deceased. She said that when she arrived home the accused had locked himself in his bedroom. The accused told her what had transpired and



- showed her the injuries he had sustained. She went on to state that she saw some broken glasses from the window.
8. She said that she decided to seek assistance from her neighbour and as she went to the house she stood between the accused and the deceased and tried to mediate but the deceased pushed her away. She went to the kitchen and the two fought and she saw the accused walking away. She rushed to the scene and found the deceased lying down injured and bleeding.
 9. She then sought some assistance from a tuk tuk person who took the deceased to the hospital but was pronounced dead on arrival. She said that she saw the injuries on the accused arms and he was taken for treatment as well.
 10. When cross examined she said that she was called by the accused person who told her that the deceased had become violent. She said that the deceased appeared drunk but was stable.
 11. PW6 Prof Onek Leonizo Angole who was a neighbour to the deceased and the accused testified that the deceased told him about a misunderstanding he had with the deceased and that he had threatened him with a knife. The deceased showed him an injury he had sustained in his palm which was oozing blood. He however declined to intervene in the quarrel.
 12. Subsequently and after some time he heard pw5 asking for help although he did not go there. He called other neighbours to come and help. On cross examination he said that he did not witness the fight.
 13. PW7 Richard Kimutai Langat a government analyst produced a DNA report which he had undertaken on the blood contained in the two trousers of the accused and concluded that it matched that of the accused.
 14. PW8 C I Grace Otieno carried investigations and thereafter preferred charges against the accused. She said that the accused reported the matter at the police station. She said that the accused told the police of the fight between him and the deceased who was a boyfriend to his mother.
 15. She said that they rushed to the scene and found bloodstains on the veranda and pieces of broken glasses. They were informed that the deceased had already died by the time they arrived at the hospital.
 16. They thereafter organised for the post mortem to be carried out and collected the deceased clothes which she produced. They also took photos of the scene and she produced them as well as exhibits on behalf of scenes of crime officer. She also produced the broken knife which was allegedly used to fatally injure the deceased.
 17. According to her the accused was not happy with the relationship between his mother and the deceased.
 18. When cross examined she said that the deceased had locked himself in the room and that the accused mother was at a cross road between the two men.
 19. When placed on his defence the accused gave sworn evidence and did not call any witness. He denied that he stabbed the deceased but that it was the deceased who had attacked him. The genesis of the problem was that the deceased wanted him to do house chores and that he told him to go to where his father was.
 20. He said that his mother tried to intervene but the deceased was violent. While he locked himself in the bedroom the deceased banged it using a panga and told him to face him like a man.
 21. On cross examination he said that it was the deceased who had knocked him down and he was trying to save himself. He said that the deceased stabbed him several times.



22. He said that the deceased was very commanding and he used to drink a lot. He said that he acted on self-defence.
23. The court directed the parties to file written submissions which they have complied.
24. The learned state counsel submitted that they had proved the case against the accused beyond any shadow of doubt. They established that it was the accused who had provoked the deceased and eventually stabbed him severally. He said that the accused in any case had his own house and there was no reason for him to have come back to his mother's house.
25. He went on to submit that the accused was not comfortable with the relationship between his mother and the deceased. He said that the accused was never remorseful at all.
26. The defence on its part was of the view that the case was not proved beyond a reasonable doubt. That all the evidence points out to the fact that the accused was acting in self-defence after being provoked by the deceased. This was exemplified by the DNA evidence which concluded that the blood stains found in the trousers of the accused was his since he had been injured as well.
27. The defence strongly submitted that the accused had acted in self-defence. He relied on section 207 of the Penal code among many other authorities.

Analysis and Determination.

28. Having heard the parties and read their submissions it is evident that the deceased died from the injuries sustained while having altercation with the accused. The weapon used was the broken kitchen knife which belonged to accused mother. The incident occurred at the house of Pw 6 where the deceased apparently had a love relationship with.
29. Although there was no direct eye witness in terms of actual fight and stabbing, it is clear that the quarrel had begun earlier in the day. Pw7 testified of the same and he said that he had been informed by the deceased.
30. There was evidence as well that the deceased was drunk although the level of the drunkenness was not well explained. Despite the accused admitting that he usually takes alcohol there was nothing to show that he was drunk on the said date.
31. PW 6 attempted to separate the two. In her own words she was torn between her son and the boyfriend. It appears that when she went to seek for help the two fought and the deceased was overpowered. The accused after injuring the deceased went to report the matter at the police station.
32. Was the accused provoked by the deceased? Was he acting in self-defence.?
33. Those are the lines he raised in his submission. The learned state counsel however submitted that there was no evidence of provocation and that he should not have been there as he had his own house.
34. On the other hand, it seems that the deceased was bullying the accused when he told him that he should do household chores including washing the dishes. He further threatened him for a fight if he was a man.
35. Taking the totality of the above scenarios and the fact that the altercation took place between 11am and 5.30 pm i find that the two persons were generally sizing each other. In other words, the two were fighting over space at the home. The deceased was not happy with the fact that the accused although he had his home was still coming into the house of the mother. This is exemplified by the challenges pw6 had in separating the two.



36. The other indication that the deceased contributed to the whole scenario was the fact that at some point the accused had to lock himself in the bedroom where he was able to call his mother. She confirmed that the accused was in the bedroom when she arrived.
37. From the fight, the accused sustained injuries which he went to seek treatment later and this was confirmed by the production of the p3 form.
38. Taking the totality of the evidence above i find that the accused however used excessive force against the deceased despite the whole day provocation. There was no reason for instance why the accused did not heed the counsel of his mother to leave the fight. Despite the state of the deceased the accused who had his own home should have cooled down and leave the scene.
39. As indicated there was contribution by the deceased in the whole unfortunate incident. The banging of the door and provoking the accused to fight him if he was a man to say the least was provocative.
40. In the premises I find that the offence herein and the proper charges that ought to have been brought against the accused ought to have been manslaughter and not murder. In *Tei s/o Kabaya v Republic* (1961) EA the court held that;

“In consideration whether the defence of provocation was sufficient to reduce the offence to manslaughter it is material to consider the degree of retaliation as represented by the number of blows and the lethal nature of the weapon used.”
41. The nature of the injuries sustained by the deceased was too much as per the post mortem report which showed multiple stabbings. The same to say the least was excessive in the circumstances despite the nature of the provocation.
42. Consequently, the charge of murder against the accused is hereby reduced to manslaughter and this court proceeds to convict him accordingly under the provisions of Section 202 of the [Penal code](#).

DATED SIGNED AND DELIVERED AT NAKURU THIS 5TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

