



**Republic v Bett (Criminal Case 9 of 2016)
[2023] KEHC 22455 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 9 OF 2016
JK SERGON, J
SEPTEMBER 21, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

KIPRONO BETT 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 and his co-accused on 13th March, 2016 within Kericho County, murdered Paul Rugut.
2. Criminal Case No. 9 of 2016 *Republic v Kiprono Bett* and Criminal Case No Republic No. 11 of 2016 *Republic v Bernard Kipkurui Bii* were consolidated and in the court file in Criminal Case No. 9 of 2016, the 1st accused was Kiprono Bett and Bernard Kipkurui Bett the 2nd accused.
3. The Accused persons pleaded not guilty to the consolidated charge and the prosecution called fourteen (14) witnesses to prove its case.
4. Dalmas Kipkemoi Sigei (Pw. 1) testified that on 13th March, 2016 he was at his house around 8:00 - 9:00 PM when Benard Bii came to his house and informed him that there was a fight near his house and that the deceased had beaten a child who had tried to demolish his fence and also that he (Bernard Bii) and Barsa went to where the deceased's fence was and demolished it and the deceased came and asked why they had demolished the deceased's fence and a quarrel ensued, Bernard picked a stone and threw it at the deceased. After Bernard informed him, he went to his house and Pw.1 went to sleep. On the following day, he woke up to attend to his duties and while on the way he saw a large crowd of people, they were at the scene where the deceased had died. On the next day he wrote his statement. He confirmed that he knows the 1st and 2nd accused persons. On cross examination, he confirmed that he did not witness anything, it was Bernard who informed him that he was the one who demolished the



- fence of the deceased and that it was not the child who demolished the fence and that the first quarrel that ensued when the child was beaten was settled. He maintained that did not know the history of Bernard and the deceased. He also confirmed that he knows Bernard Bii the 2nd accused person, and that he had known him for a long time as he was his neighbour and did not hear of any quarrel between him and the deceased. He confirmed that the 2nd accused does not share a land boundary with the deceased.
5. Isaiah Kiprono Bii (Pw.2) he recalls that on 13th March, 2016 he was at home, Bernard came and cut a barbed wire belonging to Paul Rugut (the deceased) and a fight ensued. Pw.2 testified that he saw Bernard cutting the fence, Paul (now deceased) asked him to chase the person cutting the fence, he therefore chased Bernard and did not catch him so he went back to his house and slept, he did not witness anything else. He testified that on the following morning Paul's wife came to inform him that Paul had died and that Paul's house was not far from his, it was about 50 meters away, he maintains that he did not hear any scuffle that night. He testified that when they were informed that Paul had died he went to the scene, the deceased was lying down with a head injury and blood oozing from the deceased's mouth. He stated that Bernard threatened him soon thereafter, and that he knew both Bernard and the deceased and was not aware of the grudge between Bernard and the deceased. On cross examination he confirmed that he witnessed the quarrel between Bernard and the deceased and that Barsa was not there, he saw him on the following day where the body was. He confirmed that he came and found a scuffle between Bernard and the deceased, he does not know how the fight started, he brought a panga and chased Bernard with it. Mama Grace from nyumba kumi community policing came and told Bernard to cut the deceased's wire fence as they wanted to create an access road through the fence and had therefore instructed Bernard Bii to cut the fence. He confirmed that the two were fighting using their fists, they were not armed and that thereafter he chased Bernard Bii he went to sleep and could not tell afterwards who killed the deceased. On reexamination, he stated that he saw Barsa coming from the Shopping Center after he came back from chasing Bernard Bii.
 6. Joash Kipyegon Bii (Pw. 3) stated that on 13th March, 2016, he left home for Kapsiogit, returned him at 10:30 and slept. The following day at about 6:00 AM in the morning, he heard a cry, dressed up and went where the cry was and found the wife of the deceased saying that Paul had been killed. He saw the lifeless body of Paul on the ground. He stated that he borders Paul's farm and that he did not hear any scuffle in the night. He further stated that he knows both Paul and Barsa, they were his neighbours and had been living happily until the issue of the access road, which issue had been resolved by the chief. He further testified that he saw the body of the deceased, he was lying sideways on the ground, when the police came and turned over the body, there was an injury on the head where blood was oozing. On cross examination, he confirmed that he did not witness the killing of the deceased and that he recorded a statement with the police. He stated that the chief had resolved the access road dispute on terms that Paul Rugut is given more land.
 7. Phillip Cheruyoit Ruto (Pw.4) stated that on 13th March, 2023 he spent the whole day building a house for his son, Elias Kiprotich, at around 5:00 PM when he invited Barsa to come over and take tea with his friends and while at it Barsa discussed the dispute on the access road and stated that "I will do something and be prosecuted". They took tea and Benjamin and Barsa left, Benjamin advised Barsa to use another road, not the access road through Paul's land. He testified that at about 8:00 PM a scuffle ensued between Barsa, Paul and Koech, he spoke to them and they agreed to resolve the issue and left and went to sleep and the following day he went to work at about 10:00 AM he received a call from his wife, it was then he was informed that Paul had been murdered. He stated that Barsa and Paul were his neighbours and had bought land in the area and was not aware of any dispute between them. On cross examination, he confirmed that he did not know Barsa's full names and that he did not say what he would do to be prosecuted. He confirmed that on the material night after the dispute, he went home



- and slept, he did not hear any commotion after he went to sleep and therefore did not know who killed Paul Rugut. On reexamination he maintained that on the material night of the dispute he left Paul and Barsa and another person and went home with his child.
8. Grace Cheruiyot (Pw.5) she stated that on 13th March, 2016 at about 7:00 PM she received a call from Bernard who informed her that Paul; had restrained a child on his land and was strangling it, she requested Gideon her grandson to accompany her to the scene, as they were headed to the scene they were informed that the matter had been resolved. She testified that heard the commotion and heard the sound of a panga cutting a wire fence but did not turn back. She went to her home, she however saw Bernard at the fence and Barsa heading there. She further testified that on the next day Kiplangat was sent by his grandmother to request her to look for the chief as Paul had been killed, she did not get the chief so she called the assistant chief, police officers were called and they came to the scene. She confirmed that she saw the body of the deceased. On cross examination she stated that she did not give instructions for demolition of the barbed wire and that her home is far from Paul's, she did not know what happened after she left and did not know who killed Paul or why. She also stated that she was aware of the dispute concerning the access road and that pursuant to a resolution by a 25 member committee, it was resolved that Paul Langat would open the access road, the same was complied with and everyone left and as such the case of the access road had been resolved but soon thereafter the deceased came back and closed the road. She stated that on the material day she saw Bernard Bii cutting the fence, but did not injure the deceased herein, it was about 8:00 PM and there was moonlight, she then left for her home, she did not see the deceased, she was later told that he was in his shamba. She maintained that only Barsa had an access road dispute with the deceased. On reexamination she stated that she recorded her statement with the police.
 9. Benjamin Kibet Kirui (Pw.6) a business man stated that on 13th March, 2016 after purchasing fertilizer and maize seeds for Richard Sawe, he decided to visit his friend Barsa (Kiprono Bett) the 1st accused person herein, he who was not at his house but at Phillip' house (Pw.4) , he went there and found them taking tea and joined them for tea, while he was there he was informed that child had gone to where Paul was fencing and had come back crying, he enquired for more information on this and was told that Paul had blocked a road that had been open to the public. Pw. 6 maintains that he urged the Barsa to call the area chief and deliberate on the issue and he responded that he had done that and that they had deliberated over the issue and it was agreed that the road be open to the public. He further testified that shortly after they left to go to Barsa's home while on the way Barsa told him that he had decided to do something painful for once, upon hearing these sentiments it dawned on him that Barsa was not happy about the blocking of the road and advised him to go the formal way and inform the chief. When he got to Barsa's home he found him talking to two people Dalmas (Pw. 1) and Bernard, greeted them and went to check on Bursar's house, after his visit at the home Barsa escorted him to where he had packed his motorcycle and requested him for a lift and Pw. 6 dropped him at the school gate at 8:15 PM he then went home and slept. On the following day while talking to his customer, he was informed that someone had been killed near where Barsa resides and that it was Paul. Pw.6 stated that he did not visit the crime scene. He also stated that he knows the 2nd accused he is called Bernard and that he found Bernard outside Barsa's house, he was one of the fundis who were building Barsa's house and confirmed that he was not there when he left Bursa's house. He had left earlier.
 10. On cross examination he stated that he had previously been arrested by the police over this matter, he reiterated that he did not visit the scene because he was busy not because he was a suspect and furthermore he recorded his statement voluntarily and after that he was released. He confirmed that he knew Barsa, he had gone to visit Barsa and found him at Phillip's place and further that the child who had been beaten was Phillip's child, Phillip was a neighbour of Paul. The child went where Paul was fencing and came back crying. He also confirmed that it was getting dark when he went to Barsa's



and he had seen Paul fencing as he was going to Barsa's and that Barsa's house was not far from where Paul was fencing. He also maintained that Barsa did not quarrel with Paul about the fence, however, based on his sentiments he was not happy about the fence. Pw.6 reiterated that he had advised him to go to the chief, he told Pw.6 that he had gone to the chief and they had said that the road should be opened. Barsa did not inform Pw. 6 that he would resolve the issue outside the law. He could not confirm whether Barsa was the last person to be with Paul. He maintained that he did not witness the killing of Paul and did not know who killed Paul, rather that he was informed by one of his customers that Paul had died. He confirmed that he found Bernard Bii at Barsa's home and that he had known him for long and that he is a mason and that when he came outside Barsa's house Bernard and Dalmas had left.

11. Nicholas Bii (Pw.7) testified that he was in the company of Grace (Pw.5) when witnessed the scuffle between Paul and Barsa and that he had witnessed Bernard cutting the barbed wire of the deceased, he maintained that soon after the scuffle Barsa and Phillip (Pw.4) left the scene and Bernard left shortly after cutting down the fence. He and Grace Pw.5 left the scene, he further testified that they were at a nearby school when Bernard called Grace and informed her that someone had thrown an object at Paul. He testified that he went home, on the following day while he was milking cows his employer while on the way to the river informed him that Paul had been killed and his body was at a nearby farm. He testified that he went to the scene and saw the deceased's body and further that Dalmas, a friend of Bernard, came over and told him that Bernard had gone to his house and told him that he threw a stone and hit Paul who then fell. He confirmed that both Bernard and Barsa were not at the scene. On cross examination he confirmed that he did not witness Paul's killing.
12. CIP Peter Muthee (Pw.8) police force no 236130 stated that he was currently attached to the Special Service DCIO-Nairobi, he was previously attached to DCIO-Kericho. He testified that on 7th May, 2015 he was at the office when he was summoned by Mr. Emase who handed over a murder case file that had been investigated by the OCS Kericho Police Station, he was informed that there was a letter of complaint and the matter given to him for further investigations, Paul Rugut the deceased herein had been murdered within Kabloin Village, he therefore started his investigations at Kabloin Village, he visited the scene alongside PC Wambua and PC Biwott and tried to gather more evidence. During his investigations, he recorded statements of about seven (7) witnesses and his findings were that the deceased had a land dispute with the 1st accused Kiprono Bett, they had bought land from one person but had differences over a fence and the dispute had been reported to the Area Chief but no lasting solution had been found. One of the witnesses he had interviewed over the course of his investigations stated that he had overheard the 1st accused saying that he would do something that would resolve the matter once and for all, he therefore determined that the 1st accused had to be arrested in connection with the matter, the 1st accused was arrested and charged with the offence of murder. On cross examination he confirmed that he took over the investigation of the matter because the family of the deceased complained that the investigation was not done properly, he went through the file and found that crucial evidence was not taken. Pw. 8 stated that he visited the scene two (2) months later, this was the deceased's piece of land. He further confirmed that the scene was not visited at the time of the commission of the offence and that no photographs were taken at the crime scene. Pw.8 maintained that the deceased was killed on his own piece of land, however, he could not tell how the deceased was killed and further that no murder weapon was recovered at the crime scene. He confirmed that based on the statements he recorded there is no one who saw the 1st accused person killing the deceased, there was a witness who said that the deceased was with the 1st accused prior to the time of death. He confirmed that he had no documentary evidence of the land dispute between the deceased and the 1st accused person. Pw. 8 conceded that there was no scientific evidence linking the 1st accused to the murder. Pw. 8 maintained that he did not know anything about accused no 2.



13. Dr. Daisy Chepkoech (Pw.9) a medical doctor attached to Kericho County Referral Hospital, she produced a post mortem report, she testified that the said report was prepared by Dr. Favian Koskei Mutai who passed away in 2018. Dr. Favian Koskei Mutai conducted the post mortem on 14th March, 2016 at Kericho County Referral Hospital and formed the opinion that the cause of death was a skull fracture with subdural hematoma. Pw. 9 produced the post mortem as PExh. 1. On cross examination, she confirmed that she has never worked with Dr. Favian Mutai. Pw. 9 maintained that a blunt object was used to inflict injuries on the deceased; it could have been a rod or a stone; furthermore, the first page of the post mortem said that the deceased was found in his shamba suspected to have been hit by a blunt object. She explained that a subdural hematoma is bleeding between the skull and brain and further that there are layers of tissue that cover the brain there. She also stated that the injuries could have been sustained by a fall.
14. Janet Chepkoech Mutai (Pw.10) testified that on 13th March, 2016 she and her husband went to the shamba at Kabloin to fence it and while they were fencing the 1st and 2 accused persons came carrying crude weapons and a scuffle ensued, they fled the scene and that was the last time she saw her husband. She testified that on the following morning she went to the shamba and found her husband at the shamba, he was dead. She stated that they had bought the land but it had a dispute and further that the 1st accused person did not want them to be at the shamba. On cross examination, Pw.10 confirmed that on the material day, the 1st accused asked them why they were fencing the shamba and that he had threatened them severally. She further confirmed that on the material day they were near the house of the 1st accused, it was about 8:00 PM at night and it was not that dark, she was there when they were chased, she branched off and therefore did not know who killed her husband, however, she was able to identify accused 1 and 2 who were armed with crude weapons to wit a panga.
15. Samuel Kimutai Arap Rugut (Pw.11) stated that on 14th March, 2023 he received a call from his late brother's wife Pw. 10 who informed him that Paul had been killed, on receiving the news he came traveled to Kabloin to the crime scene, he witnessed the police from Brooke Police Post loading the body of the deceased and the deceased was taken to the mortuary. He testified that the deceased had visible injuries at the back of his head but maintained that he did not know who had killed his brother. He further testified that they learnt that he had a land dispute with the 1st accused, who he maintained was the mastermind of the offence. On cross examination, Pw. 11 he confirmed that he attended the post mortem and the doctor's finding was that the injuries were inflicted with a blunt object.
16. Roseline Langat (Pw. 12) testified that that on 13th March, 2016 in the evening at around 8:00 PM she heard a scuffle from the home of Kiprono Bett (the first accused herein), she went to the home of Kiprono Bett she learnt that Paul had strangled some children upon confirming that the children were not injured she went back home to sleep. She further testified that on the following morning she learnt that Paul had been killed at his shamba. On cross examination (Pw.12) stated that she did not witness the murder of Paul.
17. Kipkorir Arap Mutai (Pw. 13) identified both accused persons and that on 13th March, 2016 while returning from work he came across Paul fencing his shamba, they had a chat then he went to his house. He testified that on the following morning he found Paul dead at his shamba. He was at the scene when the police took the body away. The accused persons were not at the scene that evening rather he saw them coming from a school where they were working. On cross examination, Pw. 13 confirmed that he did not see who killed Paul and that he saw Paul and his wife at about 6:00 PM the previous day, they were fixing a broken fence. He testified that the following morning the Pw. 10 came to ask him if he had seen Paul and that he was still in his house when he heard her screaming, as his house is next to Paul's shamba. He confirmed that he did not hear any commotion during the night.



18. Joel Kiplangat Chebochok (Pw. 14) a neighbour to the deceased identified the two accused persons and testified that on 13th March, 2016 he met Paul going to the shamba, Paul informed him that some people had destroyed his fence and he was going to reconstruct the fence. He further testified that the last time he saw the deceased was at about 4:00 PM and that the following day at 8:00 AM he was told that the deceased was found dead lying at his shamba. Pw. 14 informed the chief who called the police, who came and took the deceased's body to the mortuary. He confirmed that there were many people at the crime scene and that he did not see the accused persons at the crime scene. On cross examination, Pw. 14 stated that he saw the deceased the day before he was found dead, he was with his wife and he did not ask him who had destroyed his fence. The witness also confirmed that he did not return to the shamba that night and therefore did not know who had killed Paul.
19. Section 211 of the *Criminal Procedure Code* was complied with and the accused persons put in their defence.
20. Kiprono Bett (Dw.1) opted to give an unsworn statement and not to call any witnesses. Dw.1 a school bursar at Highlands Kapsoit Primary School stated that on 13th March, 2016 he was at his home when Benjamin Kirui (Pw. 6) arrived to see how he had put up his house while they were talking Bernard and Dalmas came, he owed them some money, they had constructed his house, he paid them and they left. Shortly after he was called by his neighbour Phillip Ruto who invited him to take tea, they visited Phillip's house, took tea and they left with Benjamin using his boda boda. Benjamin dropped him at the school gate he went in and repaired the school computer at around 8:00 PM he heard screams, he rushed out to check what was happening on his way he met the deceased (Rugut) being chased by Phillip Ruto, he queried him and he alleged that Phillip Ruto wanted to kill him as Phillip's children had alleged that the deceased wanted to harm them near their fence. The deceased sought his protection since Phillip was chasing him whilst armed with a panga. Dw. 1 testified that he persuaded Phillip not to fight the deceased and the duo stopped fighting and the crowd that had gathered dispersed for their homes. He testified that he left for his home and went to sleep and that at 5:00 AM the next morning he heard screams not far from where he lives, he went out and heard the deceased's wife saying that her husband Paul had been murdered. The area chief came and found that the deceased had passed on. The chief informed the police who visited the scene. Dw. 1 maintained that he had no grudge with the deceased despite the fact that he was yet to be given title to the land he bought from the deceased's family. He maintained that he did not know who killed the deceased.
21. Bernard Kipkurui Bii (Dw.2) opted to give a sworn statement and not to call any witnesses in his defence, he stated that he is a mason and that he was aware of the gravity of the charge against him. He testified that on 13th March, 2016 he was working for Kiprono Bett. He testified that he and Dalmas went to see Kiprono Bett to demand for payment of Kshs. 2, 500/=, they were each given Kshs. 1, 000/= he left and went to nearby shops when he heard screams, there were allegations that Phillip's fence was cut. He saw Kiprono Bett separating Phillip and the deceased and there was a crowd that had gathered. He testified that the next day he received a phone call from the area chief, he came back to the scene and saw the police at the crime scene. He further testified that he was subsequently arrested and taken to Kericho Police Station and informed that he murdered the deceased. On cross examination Dw. 2 confirmed that he had no relationship with Kiprono Bett and the deceased, both of them had bought land in Kapsoit. He further confirmed that he was well acquainted with all the witnesses who testified in the case and that he was not armed with a panga on the material day.
22. The parties filed submissions which I have considered. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.



23. 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.”
24. The accused persons in this case were 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

25. In this case the death of the deceased is not disputed; the deceased was found dead in his shamba on 13th March, 2016 and a post mortem conducted on 14th March, 2016 at Kericho County Referral Hospital and Dr. Favian Mutai formed the opinion that the cause of death was a skull fracture with subdural hematoma. Pw. 9 produced the post mortem report as PExh. 1. On cross examination, she reiterated that a blunt object was used to inflict injuries on the deceased; it could have been a rod or a stone.

b. Whether the accused committed the unlawful act which caused the death of the deceased

26. Pw.1 testified that on the material day, Bernard visited him and confessed the 1st and 2nd accused persons went to where the deceased's fence was and demolished it and the deceased came and asked why they had demolished his fence and a quarrel ensued, Bernard picked a stone and threw it at the deceased. This was corroborated by Pw. 7 who testified that Dalmis (Pw.1) a friend of Bernard came over and told him that Bernard had gone to his house and told him that he threw a stone and hit Paul (the deceased) who then fell. I find that this is consistent with the findings on the cause of death, Dr. Daisy Chepkoech Pw. 9 produced the post mortem report and her findings were that a blunt object was used to inflict injuries on the deceased and that it could have been a rod or a stone. I find that the accused persons' defense amounted to a mere denial. Accordingly, I am satisfied that the prosecution proved beyond reasonable doubt that it was the accused persons who unlawfully caused the deceased's death.

c. Whether the Accused Person had Malice Aforethought.

27. 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)..."
28. Janet Chepkoech Mutai (Pw.10), the deceased's wife, testified that on the material day, she and her husband went to the shamba at Kabloin to fence it and while they were fencing it, the 1st and 2 accused persons came carrying crude weapons and a scuffle ensued, they fled the scene and that was the last



time she saw her husband. Having considered the facts of this case, there were several witness accounts that alluded to the fact that on the material day there was a scuffle between the accused persons and the deceased and that the same was fueled by a subsisting dispute regarding an access road claimed to be passing through the deceased's plot. Pw.4 testified that at about 5:00 PM on the material day, he hosted a few friends at his house for tea, Barsa was present and they had discussed the dispute on the access road at length and Barsa stated that "I will do something and be prosecuted", this is further corroborated by Pw. 6 who testified that on the material day as they were leaving Phillip's house (Pw. 4), Barsa told him that he had decided to do something painful for once, upon hearing these sentiments it dawned on him that Barsa was not happy about the blocking of the access road and advised him to resolve the issue through the formal way and inform the chief. From the foregoing, I find that the accused persons herein had motive to commit the said offence.

29. I do take cognizance of the fact that there are no eye witness accounts to the events leading to the demise of the deceased, however, I find that circumstantial evidence points to the culpability of the accused persons. In *Sawe v Rep* [2003] KLR 364, the Court of Appeal expressed itself as follows: "In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied upon. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence remains with the prosecution. It is a burden which never shifts to the party accused."
30. Accordingly, I find that the defence put forward by the accused person namely: Kiprono Bett and Bernard Kipkurui Bii 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 persons guilty for the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The accused person are hereby convicted.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 21ST DAY OF SEPTEMBER, 2023.

.....

J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Ruttoh

Prosecutor – Mr. Musyoki

Accused – Present in Person

Malel holding brief for Chelimo for the Accused

