



**Republic v Langat (Criminal Case E018 of 2020)  
[2023] KEHC 22481 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22481 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL CASE E018 OF 2020  
JK SERGON, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**RACHAEL CHEMUTAI LANGAT ..... ACCUSED**

**JUDGMENT**

1. The Accused persons herein were 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, on December 11, 2020, at Koisoet Village in Kebenet in Kipkelion Sub-County within Kericho County, murdered James Kipkorir Langat.
2. The 2<sup>nd</sup> accused person pleaded guilty to a lesser charge of Manslaughter following a plea bargain agreement and was sentenced to 20 years' imprisonment.
3. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused pleaded not guilty to the charge and the prosecution called seven (7) witnesses to prove its case.
4. Ezekiel Rotich (PW1) stated that on December 11, 2020 at around 7pm going to 8pm, he was at his home when the 1<sup>st</sup> Accused called him outside his house and told him that the 2<sup>nd</sup> accused was at her home fighting her husband (the deceased herein) and that the deceased had troubled her for many years. That the chief called him and told him to run to the 1<sup>st</sup> accused's home but when he was about to reach the said home, he saw the deceased lying down with a cut on his head exposing the brain and that there were many people at the scene. He stated that none of the accused persons were present at the scene and that the 1<sup>st</sup> accused went to call him because he was the chairman of Nyumba Kumi. That the 1<sup>st</sup> accused told him that she had suffered for a long time as the deceased had taken another wife and the 1<sup>st</sup> accused had even gone to report the deceased to the chief. He stated that he did not hold any grudge



- with the accused persons. On cross-examination he confirmed that he did not see the 2<sup>nd</sup> accused injure the deceased and that it was the 1<sup>st</sup> accused who went to call him while the fight was ongoing.
5. Elizabeth Tonui (PW2) stated that on December 11, 2020, she was at home taking supper when she overheard the deceased and the 2<sup>nd</sup> accused exchanging words. That she stood up and heard a sound of someone being beaten and stones being thrown on the roof after which she screamed prompting the neighbors to come. That together with the neighbors they went to the deceased's home and found the deceased lying down on his stomach with the head cut and the brain all out. That she only heard the 2<sup>nd</sup> accused voice saying in Kiswahili 'kwanini unatesa mama' meaning why you are troubling our mother but she did not find any of the accused persons at the scene. She also stated that she did not hold any grudge towards the accused persons. On cross-examination she confirmed that she only heard the 2<sup>nd</sup> accused's voice from her home but she did not see any of the accused persons.
  6. Sharon Chemutai Kitur (PW3) stated that on December 11, 2020 when she got to her home, there was a scuffle at the deceased's home whereby she started screaming. That the 1<sup>st</sup> accused went and told her to continue screaming while saying in Kiswahili that 'leo tutaua mtu' meaning today we will kill someone. That the 1<sup>st</sup> accused told her that the deceased was causing trouble and that she wanted the 3<sup>rd</sup> accused to go and look after her. She stated that she was with the 3<sup>rd</sup> accused and saw stones being thrown at their house though she did not see the person who was throwing the stones. That peter came to her home to and took her husband so that they could take the deceased to the hospital. That when her husband returned, he told her that the deceased had died and they continue screaming but she did not go to the deceased's home to see his body and that it was the accused persons who assaulted the deceased. She stated that she did not hold grudge against the accused persons. On cross-examination she confirmed that she did not go to the scene and that the said scene was 1km away from her home. That the 1<sup>st</sup> accused told her that someone had died. That the 1<sup>st</sup> and the 3<sup>rd</sup> accused came while the fight was ongoing and the 1<sup>st</sup> accused was going to call the village elder. She further confirmed that she did not see who killed the deceased.
  7. Peter Kigen (PW4) testified that on December 11, 2020, he was at home when he heard PW3 screaming in Kiswhili saying Saidia! Saidia! meaning help! Help! That when he went to the deceased's home to find out was going on, he saw the deceased lying down with a head injury. That at the deceased's home, he met the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused and asked them what the matter was but they told him to go and see for himself. He stated that he did not see anyone else. That he went to PW3's home in a bid to help the deceased but PW3's husband told him that they were afraid to go to the scene. That he informed the other neighbours and went back to his home and was called the following day to write his statement. That he did not see who killed the deceased as he arrived at the scene when the deceased had already been cut. On cross-examination he confirmed that the deceased was already injured when he arrived at the scene. That he did not know if anyone had been there and that he did not see the 1<sup>st</sup> accused.
  8. Dr Wesley Rotich (PW5) stated that he worked as Medical Officer at Kericho County Referral Hospital and he graduated from Kampala International University. He testified that he did the post-mortem on the body of the deceased on December 16, 2020 at Siloam Hospital. That the post mortem examination was done approximately one week after the deceased's death. That there was a deep cut wound on the right parietal region 7cm by 3cm with open skull fracture cut around with rough edges. That there was a deep cut wound on the right parietal-occipital region 8cm by 4cm with open skull fracture cut wound with rough edges. He further testified that there was cut wound on the left eye 3cm by 2cm, bruises on the left side of the face and bruises on the chest. That on the head he noted a comminute skull fractures, there was bleeding in the skull and the brain was exposed (evisceration of the brain). He formed the opinion that the cause of death was severe head injury due to trauma to the head by a blunt object. He produced the Post-mortem report as PExht-1. On cross examination he stated that he



was not a pathologist and could not recall how long it took to perform the post-mortem examination. He stated that the fractures were different but edges were rough and that it could be that one object was used to hit the deceased.

9. Joseph Arap Langat (PW6) testified that the deceased was his twin brother. That the 1<sup>st</sup> accused was married to the deceased while the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused are their children. That he got a call from one of his brothers, one Wesley Langat that his brother (the deceased herein) had died. That the following day when he went to the deceased's home, he was told that the deceased's body had been taken to the mortuary after which he went to view the deceased body at the said mortar. He testified that the body had injury on the head. That on December 16, 2020 he identified the deceased's body for post-mortem. That the left leg and the left hand had injuries while the right leg and the right hand had not been injured. On cross-examination he confirmed that he went to the mortuary to see the deceased's body but he did not witness the incident that led to his death.
10. Pc Wesley Korir NO 59xxx (PW7) stated that he was attached to the DCI performing general investigations. He testified that on December 11, 2020 a case of murder was reported at Kipkelion Police Station after which the officers from the said police station rushed to the scene and did preliminary investigations and took the body to Siloam Hospital. That afterwards the case was given to the DCI to investigate and on December 12, 2020 he was accompanied by PC Edwin Mukholi, Kenedy Njoroge and Corporal Otieno whereby they proceeded to Koisaget Village in Kebeneti sub-location to the deceased's home. That the village elder one Mr Rotich led them to the deceased's home and upon reaching the said home, they found that it was deserted. That there were two houses in the said home, one big house and a kitchen both made of timber and that there were several stones which appeared to have been thrown. That there were stains of blood about 3 meters from the kitchen door. That upon entering the houses, since the said houses were not locked, they found that the floor of the kitchen had been smeared with fresh mud and everything in the said kitchen was disorganised. He stated that the neighbours saw their vehicle and went to the deceased's home some of whom were present during the incident and that they interviewed them and recorded their statements. That the said neighbours present during the incidence and whose statements were recorded were the ones who testified in court. That they found the accused persons at the office of the assistant chief at Mutaragoni since the ground was not conducive for them. He stated that they re-arrested them and took them to Kipkelion Police Station after which they brought them to court the following day and sought for time to carry out further investigations.
11. That on December 16, 2020 the post-mortem examination was conducted on the deceased's body by PW5 who filed a post-mortem report. That in the course of their investigations, they established that the deceased and the 1<sup>st</sup> accused were husband and wife and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons were their children. That the 1<sup>st</sup> accused and the deceased were not living in harmony for the last 30 years, that their relationship had become so bad that the deceased sought refuge in another woman's home since he was not being recognized as the father of the house. That on the fateful day, the 1<sup>st</sup> accused was preparing supper but the deceased told them that nobody was going to eat. That the 1<sup>st</sup> accused got annoyed and went and called her children to come and assist, that the 3<sup>rd</sup> accused was working at the forest when the 1<sup>st</sup> accused called him to come and assist her to stop the deceased from disturbing her. That the 1<sup>st</sup> accused also passed by PW3's home while shouting that somebody was going to die that day. That the 1<sup>st</sup> accused returned with the 3<sup>rd</sup> accused and upon reaching home the 3<sup>rd</sup> accused met the 4<sup>th</sup> accused and they discussed a bit after which the 3<sup>rd</sup> accused went to look for the 2<sup>nd</sup> accused who also went home.
12. That upon reaching their parent's home, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused in anger started throwing stones in the kitchen where the deceased was, that the stones were thrown by the 3<sup>rd</sup> and 4<sup>th</sup> accused. That the



deceased realized that he was in danger and tried to run away but he fell down and that is when the 2<sup>nd</sup> accused hit him with a big stick on the head and the deceased never woke up again. That after the investigations, he charged the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused with murder. He also stated that he was present during the post-mortem and took 3 photographs to confirm that indeed the deceased was injured on the head. He produced the said photographs s PExh 2 (a), (b) and (c). He also produced the Certificate as PExh 3. He identified the accused persons in court.

13. On cross-examination he stated that he received a telephone call in the evening but he visited the scene of crime the following day and that he did not take photographs of the scene. That from the time of the incident until he went to the scene the floor was not smeared and that the incident took place at 7pm in the evening. That he was aware that the roles of each of the accused person was not identified and that PW2 said that a stick was used to commit murder. He testified that he did not recover the stick but it was the 2<sup>nd</sup> accused who hit the deceased on the head with the said stick. He confirmed that the kitchen was smeared with fresh mud, that the last born daughter was present when water was poured though she was not a witness. He confirmed that he was not a gazetted scene of crime exhibit.
14. When the accused persons were placed on their defence, the elected to give an unsworn testimony with no witnesses to call. The 3<sup>rd</sup> accused testified as DW1 and stated that he was now aged 20 years old but was 18 years old at the time of the offence. That he was a student at Lilach High School and on the material day he went to school and returned home at 8:30pm and found that a crowd had gathered. That upon inquiring from their neighbors what had happened, he was told by a neighbor that the 2<sup>nd</sup> accused had a quarrel with the deceased leading to a fight. That he went to sleep and in the morning he had a cup of tea prepared by his mother (1<sup>st</sup> accused) and that a village elder called Ezekiel instructed him to get ready to go and record a statement with the police. That they were arrested, handcuffed and taken to custody at the police station. He reiterated that the 2<sup>nd</sup> accused is the one who killed the deceased.
15. The 4<sup>th</sup> Accused testified as DW2 and stated that he was born in the year 2006 and was 15 years old when the offence was committed. That on the material day he took the cows for grazing and came back home at 7.00pm. That the area chief directed him to visit the police station and record statement. That the 2<sup>nd</sup> accused was the one who killed the deceased.
16. The 1<sup>st</sup> Accused testified as DW3 and stated that the deceased was her husband. That on the material day at around 4.00pm the deceased went home and found her at home. That she had put water on the fire and had left to go and milk the cow but the deceased came and put of the fire. That upon questioning him on the reason why he put of the fire, the deceased told her that there was no need of lighting the fire because the said deceased was going to kill her. That she went to get help from her neighbors but the deceased did not allow her to light the fire. That the deceased used to fight with the 2<sup>nd</sup> accused and that she reported to the police to resolve the dispute. That they were later arrested on suspicion. That the 2<sup>nd</sup> accused was the one who murdered the deceased
17. At the close of the defence counsel put in submissions the prosecution did not put in any submissions.
18. On whether the accused persons act caused the death of the deceased, the Defence Counsel submitted that there was no eye witness who testified as seeing the accused persons commit the offence as most of them gave conflicting evidence as to whom might have caused the death of the deceased and that it was clear from the evidence on record, testimonies of the witnesses and the confession by the 2<sup>nd</sup> accused person that it was solely him that killed the deceased and there was nothing at all that suggested that the other 3 took part in any way leading to the death of the accused.



The only issue for consideration is whether the Prosecution Proved its' Case against the accused persons beyond reasonable doubt.

19. The offence of murder is provided for in Section 203 of the Penal Code that provides that:

' Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.'
20. The Court of Appeal in [\*Joseph Gitbua Njuguna v Republic \[2016\] eKLR\*](#) outlined the ingredients of the offence of murder and stated that:

' Under section 203 of the Penal Code, any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder. It is clear from this section that there are three elements which the prosecution must prove beyond reasonable doubt to secure a conviction for the offence of murder. These are; (a) the death of the deceased and the cause of that death; (b) that the appellant committed the unlawful act which caused the death of the deceased; (c) and that the appellant had harboured malice aforethought. See [\*Milton Kabulit & 4 others v Republic \[2015\] eKLR\*](#).'

#### **a.Death and Cause of Death**

21. On this issue PW2 testified that he heard the sound of someone being beaten and stones being thrown on the roof. PW5 testified that the deceased died from severe head injury due to trauma to the head caused by a blunt object. PW6 testified that the 2<sup>nd</sup> accused hit the deceased on the head with a big stick and the deceased never worked up again. To that end, the Prosecution has proved beyond reasonable doubt that the deceased died due to an unlawful act of assault.
22. Assault is an offence provided for in the Penal Code and is therefore an unlawful act that is punishable in law. Indeed, the cause of death of a person is an unlawful act except in circumstance authorized in law as was held in [\*Republic -vs- Boniface Isawa Makiod \[2016\] eKLR\*](#) that referred to the case of *Gusambizi Wesonga -vs- Republic [1948] 15 EACA 65* where it was held: 'Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable it must have been caused under justifiable circumstances for example in self-defence of property.'

#### **b.Whether the Accused Persons Caused the Death of the Deceased**

23. PW1 testified that the 2<sup>nd</sup> accused hit the deceased on the head with a big stick and the deceased never woke up again. PW5 confirmed that the deceased died due to severe head injury due to trauma to the head by a blunt object. DW1, DW2 and DW3 all testified that the 2<sup>nd</sup> Accused was the one who killed the deceased. The 2<sup>nd</sup> accused through a plea bargain agreement pleaded to a lesser charge of manslaughter and was sentenced to 20 years' imprisonment. From the foregoing, it is clear that it is the 2<sup>nd</sup> Accused who caused the deceased's death.

#### **c.Whether the Accused Persons had Malice Aforethought.**

24. Having established that it was actually the 2<sup>nd</sup> accused person that caused the deceased's death, the issue of malice aforethought does not arise with regard to the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons since they did not cause the deceased's death.



25. I form the opinion that the prosecution witness's testimony and the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused person's defence have created reasonable doubt and displaced the prosecution's case. The prosecution has not proved its case against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons beyond reasonable doubt by failing to prove that the death of the deceased was caused by the unlawful act on the part of the said accused persons and I accordingly find the 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Accused Persons not guilty. They are hereby acquitted.
26. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons namely Rachel Chemutai Langat, Joshua Kipchirchir Korir and Ezra Kiplangat Korir should be set free forthwith unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED THIS 21<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

.....

**J.K. SERGON**

**JUDGE**

