



**Republic v Okoth (Criminal Case E017 of 2023)  
[2024] KEHC 12822 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12822 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E017 OF 2023**

**DK KEMEL, J**

**OCTOBER 25, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**REAGAN STEPHEN OKOTH ..... ACCUSED**

**JUDGMENT**

1. The accused herein, Reagan Stephen Okoth is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the charge state that on 11/6/2023 at an unknown time in Oboch village, Komenya Kowalo sub location, in West Alego location, within Siaya County, he murdered one Crispine Oduor Okello. A total of six witnesses testified for the prosecution whose evidence was as follows: -

2. PW1, Lilian Atieno Okello, gave evidence that on 6/6/2023, at 9.00 pm, her grand child Reagan, came home while shouting that he had to kill her and put her in a coffin. She ran into the maize plantation out of fear of where she stayed. As she remained in the maize plantation, her son Crispine came home. She heard him ask why Reagan was shouting. She then heard something hit and drop down and Reagan’s voice say, “I have already beaten you.”

She waited till Reagan went to his house before going to call her daughter in- law everline Atieno and Victor from their homes to come and see what accused had done. They found Crispin on the ground, hurt on the head on the left side, ears and at the back. They took him to a nearby dispensary and were referred to Siaya Hospital where he died on 11/6/2023. Her evidence was that the accused had come home shouting and carrying a stick and that a rungu was later found next to the body of Crispine (MFI – 1)

On cross examination, she answered that from where she hid, she could see the deceased come into the home before she heard the sudden bang. She saw Reagan hit Crispin since there was electricity light



at her door. In her mind, Reagan must have thought it is her whom he had hit since he had earlier threatened to beat her and put her in a coffin.

3. Victor Adhiambo Soru was PW2. His evidence was that on 6/6/2023 at about 9.30 pm, as he approached home from work, he heard noises at the homestead of his grandfather. With his wife Merceline Adhiambo, they decided to just go to their home as Reagan always makes noise whenever he was drunk. Then about 30 minutes later, while in the house, his mother came and knocked on his door before yelling that Reagan had beaten Crispin. They proceeded to their grandmother's home where they found Crispin lying on the ground, bleeding profusely, next to the house of their grandmother. On his motor cycle, they took the victim to the nearby dispensary but were referred to Siaya Referral hospital where the deceased died on 11/6/2023.

He recalled that while at his home he could hear Reagan still shouting, "I have already beaten him." "He has been playing with me". He then ran away and stayed away for about five days only to reappear and declare to his grandmother that he did not intend to kill Crispin. He identified the accused as Reagan and also the rungu with which he used to hit Crispin (MFI 1).

4. PW3, Everlyne Atieno Som, also testified that on 6/6/2023, in the night, she was from work as she passed through the home of her mother in-law. She heard someone make noises, "I must kill you." "You are not better than my mother who was buried in this home". As she moved closer, the man hurled insults at her. She spotted him and saw it was the accused, who then retreated on hearing her voice. Her mother in-law later went to her house and informed her that Reagan had beaten Crispin. She proceeded to the scene with PW2 where they found the deceased on the ground in a pool of blood.
5. Dr. Eric Okongo, PW4, is the one who performed the post mortem on the body of the deceased. He noted that on examination, the body had a cut wound on the head, occipital region, and forehead and around the ear. It also had massive subdural hematoma collection on left temporal of the head with fracture of the skull. He formed the opinion that the cause of death of the deceased was head injury with skull fracture secondary to blunt head trauma. He produced the P3 form as exhibit (EXH- 1).
6. PW5, Lucas Onyango Oduo, helped carry the deceased to hospital.
7. The last witness for the prosecution was PC Peter Mutiri, the Investigating Officer. His evidence was on how he took witness statements and later re-arrested the accused from members of the public. He then produced the stick as exhibit (Exh-2).
8. This court later established that a prima facie case had been made out against the accused herein to warrant him being placed on his defence. Upon being placed on his own defence, he chose to give an unsworn evidence in which he testified that he knew the deceased. He denied drinking alcohol or drinking on the material date. That the deceased was his uncle with whom they would work, and that he had no differences with him, nor with his grandmother. He denied killing the deceased. He called no witness.
9. After close of the defence case, the parties filed written submissions. For the accused's side, it was submitted that direct evidence would be that which directly links a person to a crime ie he who saw how the deceased met his death (*PON v R*, (2019) eKLR. That PW1 did not see the accused hitting the deceased. Also that the circumstances of identification ought to be favourable and free from possibility of error (*Wamunga v R*).

It was also submitted that even the rungu produced in court did not have any traces of blood. It was further submitted that the circumstances of the case did not point to the accused as the assailant. The defence also submitted on the apparent gaps in the prosecution's case, which should be resolved in favor of the accused (*Pius arap Maina v Kehc* 2185 (KLR) and *Mugera v R* (2023) KEHC 2185 (KLR).



Counsel also submitted that the prosecution did not prove the existence of malice aforethought as required by Section 206 of the Penal Code. The court was urged to find that the prosecution's case had doubts and acquit the accused.

10. For the prosecution, it was submitted that the prosecution proved all the elements of the offence as required under Section 203 of the Penal Code. The case of Daniel Muthee v R, was relied on the issue of malice aforethought that;

“.....when the appellant set upon the deceased and cut her with a panga several times and proceeded to cut the young Allan in the similar manner, he must have known that the act of cutting the deceased on the head with the sharp instrument would cause death or harm to the victims. We are therefore satisfied that malice aforethought was established in terms of Section 206 of the Penal Code.”

11. I have considered the evidence on record, the submissions made by the parties and also the authorities relied on. The accused faces the charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The offence of murder is defined under Section 203 of the Penal Code in the following words: -

“Any person of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

The above definition gives the key elements of the offence of murder. The elements being: -

- i. Proof of death of the deceased.
- ii. Proof that the death was due to an unlawful act or omission.
- iii. Proof that the unlawful act or omission was activated by malice aforethought.
- iv. Identification of the accused as the perpetrator of the act or omission causing the death of the deceased.

It is these ingredients that the prosecution is under legal duty to prove in discharging their burden of proving the guilt of the accused. The burden of proof is one of beyond any reasonable doubt.

12. With respect to the first element, ie proof of death of the deceased, the prosecution summoned several witnesses. In fact, all the six prosecution witnesses testified as to how the deceased sustained bodily injuries after being attacked on the night of 6/6/2023 before succumbing to the injuries on 11/6/2023 while undergoing treatment at Siaya County Referral Hospital. PW1, PW2, PW3 and PW5 were present at the scene where the deceased still alive, lay in a pool of blood injured. And it was PW3 and PW5 who rushed him to hospital on a motor cycle ridden by PW3. Again, the evidence of PW4 Dr. Eric Okongo, who conducted post mortem on the body of the deceased was conclusive on the issue of the fact of death of the deceased and that the deceased died as a result of head injury with skull fracture secondary to blunt head trauma. This witness duly produced the relevant post mortem form as exhibit. With this evidence, it is clear beyond any doubt that the prosecution proved that the deceased, Crispine Oduor Okello died.
13. The second element subject of proof in this case is proof of the fact that the death of the deceased was a result of an unlawful act or omission on the part of the perpetrator. On this score, it was unchallenged evidence of PW1 that the accused appeared at home shouting and making noises and saying he would kill her. That she ran into the maize plantation to seek refuge. That as she watched



from maize plantation, the deceased an uncle to the accused, appeared at home. That the moment the deceased asked the accused as to why he was shouting, he was hit by the accused and that he fell down. PW2, Victor Adhiambo Som, PW3 Everline Atieno Som and PW5, Lucas Onyango Oduo, all corroborated the evidence of PW1 that the accused was in fact shouting that he was going to kill and after hitting the deceased, the accused was heard saying that he had now beaten the deceased and that the accused had not been provoked. All the prosecution witnesses were unanimous in their evidence that the accused would always make such noises whenever he was drunk. And that on this particular night, he was all alone making his usual noises. The act of hitting the deceased as unprovoked as it was clearly unlawful. The use of the weapon ie rungu was also relevant in that the accused intended that the same would occasion bodily injury upon the deceased. It was clear that the accused was placed at the scene of crime and that he was the assailant. His defence evidence did not shake that of the prosecution which is quite overwhelming against him.

14. The next issue for determination relates to the question whether the act of killing the deceased was actuated by malice aforethought. Malice aforethought is defined under Section 206 of the [Penal Code](#) in the following words: -

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances: -

- i. An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- ii. Knowledge that the act or omission causing death will probably cause the death 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 harm is caused or not, or by a wish that it may not be caused.
- iii. An intent to commit a felony.
- iv. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

In the Court of Appeal case of [Nzuki v R](#) (1993) KLR 171 it was held that malice aforethought would imply that the act was committed with the following intentions: -

- a. An intention to cause death.
- b. An intention to cause grievous harm.
- c. Where the accused knows that there is a risk that death or grievous bodily harm will ensue from his acts and commits them without lawful excuse.”

I am guided by the above authority of the superior court. In the instant case, it was the uncontroverted evidence of PW1 that the accused had threatened to kill her severally in the past. And that on this material night the accused came home while repeating the same threats making her run into a maize plantation. PW2, PW3 and PW5 all corroborated the evidence of PW1 that they heard the accused make the threats. In fact, the accused even aimed at hitting PW3 and only retreated on hearing Pw3 shout after spotting him.

It is clear that in hitting the deceased, he used a rungu stick. He aimed at and hit the deceased on the head. This evidence taken together convinces this court that the accused in fact had an intention to



kill and or cause grievous harm. He ended up killing the deceased. I am therefore convinced that the prosecution sufficiently proved the element of malice aforethought in the killing of the deceased.

15. Lastly on the issue of identification of the perpetrator, it is note that the accused and the prosecution witnesses and the deceased are close relatives. PW1 is accused's grandmother. The deceased, PW2 and PW5 are accused's uncles, while PW3 is accused's aunt. They know accused well. In the testimony of PW1, she watched from the maize plantation next to the home. PW2 heard and recognized accused by his voice as he made noises of how he would kill someone. PW3 came face to face with accused who even aimed at hitting her only to retreat after the witness made noises and spotted him. All this time, it was only the accused who was at the home where the deceased was hit. His grandmother, PW1 had escaped into the maize plantation and even when PW1 summoned PW2 and PW3 to the scene, it was only the accused at the home, with the deceased lying in a pool of blood. There is therefore absolutely no doubt that the circumstances were such that they pointed to the accused and no one else as the one who hit the deceased leading to his death. (In Sawe v R (2003) KLR 364) the Court of Appeal held;

“ ..... 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....”

I accordingly find that both the direct evidence and the circumstantial evidence produced by the prosecution points to the accused, and the accused alone, as the one who occasioned the fatal blow on the deceased.

16. I have otherwise also considered the defence of accused in which he denies killing the deceased. With respect, the defence of the accused fell short in challenging the well corroborated evidence of the prosecution. Same was not made on oath and so was not tested by way of cross examination. He also called no witness leaving his defence totally lacking in any form of corroboration. The same did not in any way cast doubt upon the evidence of the prosecution. I find no merit in the defence. I dismiss it.
17. The prosecution is under responsibility of proving the guilt of the accused in criminal cases. And the standard is that of proof beyond any reasonable doubt. In this case, I am convinced that the prosecution discharged this burden. I accordingly find the accused herein Reagan Stephen Okoth guilty as charged and convict him for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

**DATED AND DELIVERED AT SIAYA THIS 25<sup>TH</sup> DAY OF OCTOBER, 2024.**

**D. KEMEI**

**JUDGE**

In the presence of:

.....Accused

.....for Accused

.....for Prosecution

.....Court Assistant

