



**Republic v Wanjala (Criminal Case E032 of 2022)
[2024] KEHC 16027 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 16027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E032 OF 2022
REA OUGO, J
NOVEMBER 21, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ROBIN WAFULA WANJALA ACCUSED

JUDGMENT

1. The accused herein, Robin Wafula Wanjala, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are that on 31/10/2022 at Chesamisi village in Kimilili Sub-County within Bungoma County, the accused murdered Renson Okimaru Makelo (the deceased).
2. The prosecution called 8 witnesses and the accused gave sworn testimony in his defence.
3. Violet Nanjala Khisa (Pw2) testified that her husband Aineah Khisa Wanjala (Pw1) is her husband. On 31/10/2022 she recalled that the accused came to her house and asked her to assist him as there was a problem that he could not resolve. Pw2 woke up her husband and they went to where the accused lived and found the deceased lying down. He was dead so Pw1 went home. Pw1 was woken with the wife who told him that the accused had told her that a person tried to break into his house and he pushed him outside. Pw1 went to the accused home and found the deceased lying dead. Pw1 called the chief and left.
4. George Okumaru Makelo (Pw3) testified that the deceased is his son. On the morning of 31/10/2022, his wife received a call and was informed to go to the market. An in-law also called and they went to the market where he found his son had been killed. The deceased was in the accused person's boma but was outside the house. The deceased had injuries on the head and fingers and was bleeding in the nose. The accused was at the scene. Pw3 noted that the window was broken and the grass was not disturbed. Pw3 called the officers of Chesamisi. Pw3 entered the house and saw spots of blood and the house had



- been cleaned. Pw3 asked the accused about the blood in the house and he told him he let the deceased in the house. The body of the deceased was taken to Lugulu mortuary. On cross-examination, Pw3 testified that he stays with his son and that on that Monday his son had gone to collect his mattress to go with to school.
5. Isaac Solomon Kiptoo CPL NO 215127 (Pw4) testified that he is stationed at Chesamisi Police Post. The accused person reported that he woke up on the material morning and found the deceased's body outside his house. Pw4 called the OCS who then instructed him to go to the scene. They found the deceased's body in the compound and asked the accused to open the door to his house. Pw4 noted that the house had been swept and it was wet. The floor is rough and made of mud. They went to the kitchen and found a stick with a nail with fresh blood. They also found another stick in the sitting room with fresh blood. They recovered the pieces of timber.
 6. No. 237384 PC Evans Chesebe (Pw5) testified that on 31/10/2022 she was informed by the DCIO Kimilili that there was an incident at Chesamisi Market. They proceeded to the scene and were led to a compound with a semi-permanent house and they saw the body of the deceased in the compound. The deceased had slight injuries on the head and the hands. They asked the accused to open his house and noted that the house had been sprinkled with water and recently cleaned. They found two sticks under the sofa set which had traces of blood stains. The window in the bedroom was broken. There was also a makeshift kitchen in the bedroom and at the fireplace, they found a piece of rungu with a nail which also had traces of blood. They tried to interrogate the accused at the scene and he explained that the window was broken by Simba and that Simba might have thrown the rungu with the nail at the fireplace. However, the accused did not explain the rungu found in the sitting room. They took the accused to Kimilili police station to assist with the investigations. Pw5 then sent the rungu to the government analyst on 24/11/2022 after the post-mortem. He prepared the exhibit memo which he produced as Pexh2. On cross-examination he testified that the accused mentioned a person called 'Simba' and they pursued that line of investigation. They went to Simba's house but he had moved out and to date, they haven't traced Simba. They concluded that the accused could not explain the 2 sticks found in the house. He also claimed that the house had been broken into and they could not ascertain if the accused killed the deceased. On re-exam, he testified that they went to Simba's house and were told that he moved out the morning the body was found.
 7. Salvine Cheruto Katukoi (Pw7) testified that he is a senior government analyst working at the Kisumu Government Analyst Chemist Department. He holds a degree in BSc. Science in Chemistry and has worked for 4 years. On 24/11/2022 he received exhibits which were fingernails of the deceased marked 'A' and 3 wooden sticks that had blood marked 'B'. He examined them and found that they had human blood. He found that the DNA profile generated from the blood stains on the 3 wooden sticks matched the DNA profile generated from the fingernails of the deceased.
 8. Dr Graham Masika Makokha (Pw6) testified that he studied a Bachelor of Medicine and Bachelor of Surgery (MBChB). He testified that he filed the post-mortem form. The deceased was 17 years old. He produced the post-mortem as evidence in court. On the head, he noted that the deceased sustained a right temporal-parietal skull fracture with scalp hematoma. On the nervous system, he noted a subdural hematoma temporal region. He was of the opinion that the cause of death was severe head injury secondary to blunt trauma.
 9. No. 119093 PC Geoffrey Onyancha (Pw8) testified that on the morning of 31/10/2022, he was informed by the DCI that a murder occurred at Chesamisi village. He went to the scene and found the deceased's body. The accused person had made a report at the Chesamisi Police Post. The mud floor had been watered and swept indicating that there had been a struggle. Three pieces of blood-stained wood were found in the house. They wrote an inventory signed by the accused using his right-hand



thumbprint. Pw8 attended to the deceased's post-mortem. The accused was thereafter charged. On cross-examination, he testified that the window was lying inside the house. The window and its frames were all inside the house. It had been destroyed and was inside the house.

10. The accused was placed on his defence and testified as Dw1. He recalled that on 30/10/2022 he was at home and went to sleep at around 10:30 p.m. After a short while, he heard a voice saying, "Deno Simba you are killing me". Dw1 explained that he lived close to the road. Dw1 woke up. He knew Deno Simba who was known in the market area. Dw1 was afraid to open the door as he was a minor, all alone in the house. There was a fight outside and he called out to the neighbours but none of them responded. Deno Simba then broke his window to get into the house and stop him from raising the alarm. Dw1 had a torch which he shorn and saw Deno Simba. He did not see the person that was being attacked. He ran and hid under the bed. The fight stopped and Deno left. He slept underneath the bed shaking. In the morning, he went outside the house for a short call and saw the deceased lying next to the walls of the house. He went to Pw1's house to report what transpired and Pw1 told him to go to the police station. He reported the matter to the police. He denied that the house was locked as alleged by the police. He testified that he left the door open when he went to Pw1. He also testified that he was coerced to sign a piece of paper despite there being no adult present at the time of signing. They pressed his fingers to sign the document and when he refused Pw5 and Onyando beat him. He denied killing the deceased.

Submissions

11. The prosecution submitted that it proved its case as the accused was placed at the scene of the crime as the deceased's body was found outside his house and the blood-stained timber retrieved from his house was a perfect match with that of the deceased's DNA. It was submitted that the deceased was killed with the timber found in the accused person's house. His actions after the incident cast him in a bad light as he went to the village elder instead of his grandmother's house which was nearer. He also failed to check on the deceased suggesting that he knew the deceased was dead. He also sprinkled water and swept his house before going to the village elder which drives the final nail on his guilt for murder. They contend that motive doesn't need to be proved in a crime of murder.
12. It was submitted that the prosecution has circumstantially accurately connected the accused with the offence.
13. The accused person in his defence submits that there was no direct evidence linking him to the deceased. Pw8 testified that the only reason for charging the accused as he could not explain the sticks found in the house. Therefore, the decision to charge the accused was purely based on suspicion. It was submitted that suspicion cannot infer guilt (see *Joan Chebichi Sawe v Republic Criminal Appeal No 2 of 2002*).
14. On circumstantial evidence, the accused in his submissions cited the case of *Ahamad Anolfath Mohammed & Another v Republic (2018) eKLR*. The evidence adduced does not cogently and consistently show that the accused is the perpetrator of the offence. It was pointed out that Pw6 could not truly confirm that the accused murdered the deceased. Pw6 testified that he followed up on the mentioned suspect, Simba whom he found moved out while Pw8 had never heard of the name. The accused submits that such contradiction ought to be determined in his favour.
15. Finally, the prosecution did not prove any motive on the part of the accused. They were neither friends nor acquaintances and they had nothing in common.



Analysis and Determination

16. I have considered the evidence on record and the submissions by the parties. In any case of murder, the prosecution is required to prove the following elements beyond reasonable doubt:
- a. Proof of the fact and the cause of death of the deceased.
 - b. That the cause of the deceased's death was a result of the direct consequence of the accused/accused's unlawful act or omission.
 - c. Proof that the unlawful act or omission was committed with malice aforethought as defined by section 206 of the Penal Code.
17. The fact that the deceased died was not contested. Pw6 who conducted the post-mortem testified that the cause of death was severe head injury secondary to blunt trauma. The deceased's lifeless body was found outside the accused's house and taken to Lugulu mortuary.
18. On whether the accused caused the unlawful death of the deceased, the prosecution case was purely based on circumstantial evidence as no witness saw the accused person do any act or omission that led to the death of the deceased. For the court to consider the circumstantial evidence, the prosecution must ensure that it meets certain conditions so that it unequivocally implicates the accused as the sole perpetrator of the offence. In *Abanga alias Onyango v Republic*, Cr. App No. 32 of 1990 the Court of Appeal set out the conditions as follows:
- “It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:
- i. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
 - ii. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
 - iii. the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
19. The prosecution case was that the accused killed the deceased by hitting his head with a blunt object. Pw1 and Pw2 both testified that they went where the deceased lived and found the deceased's lifeless body in the compound. Pw3 upon receiving information requiring him to go to the scene arrived and saw that the deceased was dead with injuries on his head and fingers. It is clear that the deceased was found dead outside the accused person's house and this has not been challenged by the accused.
20. The prosecution has however linked the accused to the killing as Pw4 and Pw5 who were the police officers who went to the scene testified that they recovered three sticks from the accused person's house and the same were blood-stained. The government analyst, Pw7, compared the DNA profile of the blood on the stick to the DNA profile of the deceased and found that they matched. The prosecution linked the accused to the offence based on DNA evidence. I note that there was no DNA report on the samples taken from the deceased's fingernails.
21. However, the accused person in his defence testified that he heard people fighting outside and heard a voice cry out, “Deno Simba you are killing me”. The accused raised an alarm and said Deno Simba broke his window so that he could stop calling on his neighbours. The accused then hid under the bed



and the said Deno Simba left. He slept and when he woke up in the morning and left the house, he saw the body of the deceased next to his house. He went to Pw1's house to inform him what transpired and reported the case at the police station.

22. The accused consistently mentioned to Pw3, Pw4 and Pw5 that Deno Simba was responsible for the injuries inflicted on the deceased. Pw3 and Pw5 testified that a window in the kitchen was broken. Pw8 explained that the destroyed window frames were lying inside the house. This indicates that the window was broken by someone outside the house, consistent with the accused's testimony.
23. The accused person's defence is that he never locked his house when he went to Pw1 and reported the case to the police. From the accused person's testimony, he left the body of the deceased in the compound and his house open before the crime scene was secured and he alleged a possibility of tampering. There was a possibility that the person involved in the deceased's murder planted the sticks in the accused person's house when he went to report the matter.
24. Pw5 testified that they went to Deno Simba's house but the neighbours informed him that he moved out the morning the deceased died. The said Deno Simba is yet to be apprehended. Pw5 testified on cross-examination that they could not ascertain if the accused killed the deceased.
25. I have considered the prosecution case and the accused's account of events and find each plausible. The prosecution case has not displaced the accused person's defence. The prosecution was required to prove its case beyond any reasonable doubt and failed to discharge this duty.
26. In conclusion, I come to the inevitable conclusion that the prosecution has not proved its case beyond a reasonable doubt, that the accused Robin Wafula Wanjala murdered or killed the deceased. Accordingly, the prosecution's case is dismissed and I acquit the accused. He is to be set at liberty forthwith unless otherwise lawfully held

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 21ST DAY OF NOVEMBER 2024.

R.E. OUGO

JUDGE

In the presence of:

Robin W. Wanjala/Accused - Present

Miss Kibet -For ODPP

Mr. Wekesa For the Accused Person- Present

Wilkister -C/A

