



**Republic v Kipngok (Criminal Case 47 of 2023)  
[2024] KEHC 14428 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14428 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL CASE 47 OF 2023  
RB NGETICH, J  
NOVEMBER 14, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAMUEL YATICH KIPNGOK ..... ACCUSED**

**JUDGMENT**

1. The accused Samuel Yatich Kipngok has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that the accused person on the 8<sup>th</sup> day of May, 2019 at Bulioke village, Molo Sirwe Location in Mogotio Sub- County within Baringo County murdered Edwin Cheruiyot.
2. The accused denied the charge and the matter was set down for full trial with the prosecution availing a total of 5 witnesses in support of the charge preferred against the accused.

**Prosecution Evidence**

3. PW 1 Salina Cherop testified that on 8<sup>th</sup> May, 2019 at about 8:00 a.m, she was at home when the deceased informed her that he wanted to visit his uncle. She said the accused went to inquire about the deceased saying he wanted to speak to him. She said shortly thereafter, the deceased arrived but did not alight and he informed her that there was relief food that was being given out at Molo Sirwe.
4. She said later, the accused arrived and informed them that he had killed their child and they should go and check if he was alive. She said that she ran to the scene which was about 300 metres away and found the deceased Edwin on the ground besides a motor bike. She said the deceased had been hit on the mouth knocking out his teeth; and had also been hit on the head and the face. She said she called the deceased but he did not respond. She tried to make him sit but he could not sit. She raised alarm



- and neighbors Elijah and Hosea arrived. She said they tried to place the deceased on a motorbike but he could not sit. They called for a vehicle and took him to Mogotio Hospital where he was pronounced dead. They reported to police and the body was taken to Nakuru.
5. Pw1 said she did not find any weapon at the scene. She identified the accused as Yatich. She said the accused took a motorbike and disappeared when he saw the car coming and that he did not tell her why he had attacked the deceased. The next time he saw the accused was in court.
  6. PW2 Hosea Kipkemoi Kipkei testified that on 8<sup>th</sup> May, 2019, at about 8:00 a.m, he was at home with pw1 who is his wife and the deceased who was his son had gone to his uncle's place. He said after a short while, the accused Yatich went to inquire about the deceased Edwin Cheruiyot and they informed him that he had gone to his uncle's place. He said Yatich who he had known from childhood informed them that he wanted to speak to the deceased and left and after a short while, the deceased arrived but did not alight from the motor bike. The deceased informed them that relief food was being distributed at Sirwe and he then left and after a short while, accused arrived riding a motor bike but he did not alight. He said that accused informed them that he had killed their son at the road and they should go and check if he had died or they could take him to Hospital.
  7. He testified that PW1 ran to the road while he interrogated accused as to why he had killed Edwin and he showed him a knife which accused pocket inside the coat and accused then took off. He said accused said he did not use the knife but had used a rungu to smash the head.
  8. He testified that he also started going towards the road where he heard PW1 scream and run towards her and found the deceased on the ground. He said the deceased had been hit on the face, the head and his teeth were smashed and he could not talk. He stated that he found Elijah had already arrived and that he did not know where accused went after the incident and he did not go to accused's home on that day. He said that they tried to carry the deceased on his motorbike but they did not succeed.
  9. He confirmed that they called for a vehicle and took the deceased to Mogotio hospital and later learnt that he had died. They reported at police station and attended postmortem conducted by Dr. Ngulungu on 14<sup>th</sup> May,2019 at Nakuru County Hospital and report was produced in court by consent and marked as Pexhibit 1.
  10. PW 3 Nicholas Kipruto testified that the deceased was his sister's son and on 14<sup>th</sup> May,2019, he attended postmortem done on the deceased's body and learnt from the doctor that the deceased had been hit with a blunt object and sustained injury above the ear on the left side.
  11. PW 4 David Cheruiyot testified that on 14<sup>th</sup> May,2019, he was at home when he heard noises from people saying that someone had been killed by Yatich the accused herein. He said that he went to the scene but he did not see the killer. He he saw the deceased, teeth, blood and a rungu at the scene. He said the deceased was still breathing and a member of the public took him to Mogotio Hospital and then to the mortuary. He later went with Pw3 to Nakuru General Hospital for postmortem. He said the deceased's body had injury on the head and on the mouth. He said the accused is the one who killed the deceased and that he knew the accused well.
  12. PW 5 No.52149 Corporal Japheth Mulimo formerly of DCI Mogotio testified that on the 8<sup>th</sup> May,2019, at about 12:00noon, he was at Mogotio police station together with his colleagues when he received a death report from Mr. Daniel Mbushi chief Molo Sirwe Location.He booked the report in the occurrence book and checked the condition of the deceased and found that he had injury on the forehead and there was blood oozing from his mouth and the right ear. He escorted the deceased to Nakuru Municipal mortuary and later accompanied his colleague P.C Sarah Mkokosh to the scene and on arrival at the crime scene, they found the scene was disturbed and there was blood.



13. He recorded statements of relevant witnesses and confirmed that there was a fight between the deceased and the accused over the wife of the deceased; He confirmed accused went to the deceased's house to ask for deceased's whereabouts and promised to do harm to him; and on 8<sup>th</sup> May, 2019, the accused went to the home of the deceased and informed his parents that he had done harm to the deceased and accused also informed PW1 that the deceased was still at the scene. That on 9<sup>th</sup> May, 2019, the accused surrendered himself to the area chief who escorted him to Mogotio police station where he was charged with the offence of murder.
14. Upon the closure of the prosecution case, this court found that the prosecution had established prima facie case to warrant the accused be placed on his defence in accordance with Section 306(2) of the criminal procedure code.

#### DIVISION - Accused's Defence

15. The accused in his defence gave sworn statement. He said that he is a motor rider and on 8<sup>th</sup> December, 2019, he woke up in the morning and went to the stage where he worked and carried one customer for 25 kilometers and then took another one to Mogotio and while going back at around noon, he found a person had been killed and was told that it was him who had killed him. He said he went to his house and found many people who were annoyed and he decided to go back with the motor bike and after one hour his house was torched. He went to his relative who lives about 12 kilometers away. He said the deceased's home was about 3 ½ kilometers from his home.
16. He testified that he knew the deceased as a motor rider though they were not working in one stage and there was no conflict between them. He denied reaching the deceased's home nor meeting Elijah and Henry Cheruiyot. He said he knew Elija but he did not know if he is related to the deceased. He confirmed that he went to the chief the next morning at 5.00 a.m. and that he went to the Chief the next morning at 5:00 p.m. and he took him to the police station at Mogotio. He further stated that he did not have any conflict with the deceased and they had no friendship/relationship. He said that the deceased was a young man who was not married. The deceased said he is married and denied killing Edwin Cheruiyot.

#### DIVISION - Analysis and Determination

17. Section 203 defines the offence of murder and the ingredients are as hereunder: -
  - a. proof of death
  - b. the cause of that death and proof that the death was due to an unlawful act or omission on the part of the suspect and
  - c. that the unlawful killing was with malice aforethought.
18. In the case of Anthony Ndegwa Ngari vs Republic [2014] eKLR, the elements of the offence of murder were listed as follows:
  - i. The death of the deceased occurred;
  - ii. That the Accused committed the unlawful act which caused the death of the deceased; and
  - iii. That the Accused had malice aforethought.
19. In Republic vs Ismail Husseni Ibrahim (2016) eKLR the court stated as hereunder in respect to burden of proof:-



To give meaning to this concept of burden of proof of beyond reasonable doubt in criminal cases the Federal Court of United States in the case of United States V Smith, 267 F. 3d 1154, 1 161 (D. C. Cir. 2001) (Citing In re Winship, 397 U. S. 358, 370, 90 S. Ct. 1068, 1076 (1970) (Harlan, J., concurring) the court stated:

“The burden is upon the state to prove beyond reasonable doubt that the defendant is guilty of the crime charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the defendant’s guilt, but it does not mean that a defendant’s guilt must be proved beyond all possible doubt. A reasonable doubt is a fair, actual and logical doubt based upon reason and common sense. A reasonable doubt may arise either from the evidence or from a lack of evidence. Reasonable doubt exists when you are not firmly convinced of the defendant’s guilt, after you weighed and considered all the evidence. A defendant must not be convicted on suspicion or speculation. It is not enough for the state to show that the defendant is probably guilty. On the other hand, there are very few things in this world that we know with absolute certainty. The state does not have to overcome every possible doubt. The state does not have to overcome every possible doubt. The state must prove each element of the crime by evidence that firmly convinces each of you and leaves no reasonable doubt. The proof must be so convincing that you can rely and act upon it in this matter of the highest importance. If you find there’s a reasonable doubt that the defendant is guilty of the crime, you must give the defendant the benefit of that doubt and find the defendant not guilty of the crime under consideration.”

#### **(a)The death of the deceased**

20. In the present case, the death of the deceased is not in doubt. Pw1 and PW2 testified that on the 8<sup>th</sup> day of May,2019, the accused herein informed them that he had injured the deceased and that they should go and find out if he was still alive. They testified that they rushed to the scene which was about 300 meters from their home and found the deceased still breathing though bleeding from the injuries he had sustained. They stated that they took him to hospital where he was pronounced dead on arrival. They took the body to the mortuary for preservation. They post mortem report was produced by consent in court as Exhibit 1. The report confirmed that the cause of death of the deceased was severe head injury attended by skull fracture with massive subdural hematoma due to blunt object trauma in keeping with homicide. The time of death of is indicated in the postmortem report as 8<sup>th</sup> May,2019.

#### **(b)That the Accused committed the unlawful act which caused the death of the deceased**

21. PW 1 testified that on the 8<sup>th</sup> May,2019 she was at home when his son the deceased herein notified him that he wanted to visit his uncle who lived nearby their home. She stated that he left and shortly, the accused herein came to inquire where the deceased was as he wanted to speak to him. She stated that she informed him that he was not around and then he left and returned but did not alight from the motor bike. He left accused and after a short while, he returned and informed them that he had injured the deceased and they should go to check on him whether he was alive. She stated that she rushed to the scene and on arrival, she found the deceased lying on the ground with wounds. She screamed which attracted the villagers who came and assisted them take the deceased to Hospital.
22. Pw 2 a husband to pw1 and the father to the deceased corroborated the evidence of PW 1 by confirming that the accused went to inform them that he had injured the deceased and was lying at the road. He interrogated the accused who showed him a knife but said he had attacked the deceased using a rungu. Their evidence was corroborated by postmortem examination which confirmed that the injuries were caused by a blunt object.



23. PW3 the investigations officer testified that the accused surrendered himself to the police after the incident further corroborating the evidence of PW1 and PW2. From the foregoing, I am convinced that the accused was the person who unlawfully caused the death of the deceased herein.

**(c) That the Accused had malice aforethought**

24. Section 206 of the Penal Code on Malice aforethought states that: -

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

- (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 caused;
- (c) an intent to commit a felony;
- (d) 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.”

25. Similarly, in the case of Republic Versus Andrew Omwenga (2009) eKLR the court held that:

“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”.

26. Accordingly, this being a murder charge the prosecution must prove mens rea and actus reus. Moreover, it is trite law that the burden of proof in criminal cases rests on the prosecution and the burden never shifts. The Accused has no burden to prove his innocence. In the case of Joseph Kimani Njau V Republic [2014] eKLR the Court of Appeal stated:

“In all criminal trials, both the actus reus and the mens rea are required for the offence charged; they must be proved by the prosecution beyond reasonable doubt. The trial court is under a duty to ensure that before any conviction is entered, both the actus reus and mens rea have been proved to the required standard. In the instant case, the trial court erred in failing to evaluate the evidence on record and to determine if the specific mens rea required for murder had been proved by the prosecution”

27. I am persuaded by the evidence adduced that the Accused person's purpose of hitting the deceased severally was intended to cause the deceased's death or grievous harm and there is no doubt that he had knowledge that his actions would probably cause his death or grievous harm confirmation that there was malice aforethought in his actions. The fact that the accused went to deceased's home looking for him and later went back to the home to inform his parents PW 1 and PW 2 that he had injured the



deceased, clear show that the accused's action was premeditated. Even if he was angered by the deceased, he had time to cool down his temper and abstain from inflicting injury on the deceased.

28. From the foregoing, the three ingredients for the offence of murder have been proved beyond reasonable doubt. I proceed to find accused guilty of the offence of murder contrary to section 203 as read with section 204 of the penal code and convict him accordingly.

29. Final Orders: -

- i. Accused is hereby convicted of the offence of murder contrary to section 203 as read with section 204 of the penal code.
- ii. Right of appeal 14 days.

**JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:

Karanja, Court Assistant.

Mr. Mwangi for State.

Accused Present.

No appearance for Accused.

