



**Republic v Libuyi (Criminal Case E044 of 2022)
[2024] KEHC 15787 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15787 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE E044 OF 2022
AC BETT, J
DECEMBER 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

HUSSEIN RASHID LIBUYI ACCUSED

RULING

1. The Accused, Hussein Rashid Libuyi was arraigned in court and charged with the offence of murder contrary to Section 204 of the Penal Code on 28th November 2022. The particulars of the offence were that on the 11th day of November 2022 at Shimuli Sub-Location within Kakamega North Sub-County within Kakamega County, the Accused murdered Hassan Rashid Libuyi.
2. During mental assessment, the Accused was found to be mentally unfit to take plea and consequently he was referred to Mathare Mental hospital for treatment where he stayed until 4th October 2023 when upon the court receiving a positive mental assessment report, the Accused pleaded not guilty to the charges and was granted bond of Kshs. 300,000/= with one surety of similar amount.
3. The Accused was released on bond on 1st November 2022 and was fixed for hearing on two subsequent occasions when the matter did not take off.
4. On 28th October 2024, Mr. Biketi, who is watching brief for the complainant informed the court that the Accused passed away on 23rd October 2024 whereby the Prosecution asked for time to establish the veracity of the claims that the Accused was a victim of mob justice.
5. On 25th November 2024 when the matter came up for Mention, Mr. Biketi submitted that the Accused, who was a brother to the murder victim was deceased and proceeded to tender Burial Permit No. 1089675 in proof of the assertion that the Accused is deceased. On perusing the Burial Permit, I established that the deceased named therein is Hussein Rashid ChemakotI. This discrepancy in the



names prompted the court to place the Investigating Officer on the witness stand in the hope that he would provide some clarification.

6. The Investigating Officer, who testified under oath, stated that they had an incident report wherein one Hussein Rashid Libuyi was alleged to have died of mob justice on 3rd October 2024. The report was entry number 05/03/10/2024 at Kabras Police Station. The witness produced the extract of the OB which bore the names of the mob justice victim as Chris Livuyi. He stated that the name was at variance with the name in the burial permit which was issued by the Area Chief.
7. In turn, the Senior Assistant Chief, Sawawa Sub-Location testified that he issued the burial permit on the basis of an affidavit sworn by Joseph Chemakoti Libuyi, the Accused's father and that he knew the family well. Post mortem was not done as the family opted not to have it done.
8. The prosecution questioned the fact that the affidavit in support of the averment by the father to the Accused was sworn in Eldoret and in view of the discrepancies and gaps in the information, the prosecution requested for an order that an Inquest be conducted.
9. I have carefully considered the prosecution's application. Indeed, there are glaring discrepancies in the entries made in the OB, which refer to the lynching of one Chris Livuyi, the Body Admission Form No. 522 from Kakamega Orthopaedic Hospital referring to the deceased as Hussein Rashid, and the Burial Permit No. 1089675 referring to the deceased as Hussein Rashid Chemakoti. This creates uncertainty as to whether it is truly the Accused who was lynched. The uncertainty is compounded by the affidavit sworn by Joseph Chemakoti Libuyi which affidavit is said to have been drawn in Nairobi and sworn at Eldoret.
10. The question as to whether to discontinue criminal proceedings against a murder suspect is not a matter that should be left to conjecture. It is in the public interest that the court is convinced, beyond reasonable doubt, that the Accused is deceased. In the present case, the evidence led to prove that the Accused was lynched is tenuous. It is therefore unreliable.
11. In order to ascertain the true position, I find that an inquiry is necessary. I therefore order that an inquest file be opened in the lower court and that the court do conduct an inquiry within the next ninety (90) days, to establish whether or not the Accused is dead and if so, the cause of the said death.
12. To facilitate the inquest, the Area Senior Assistant Chief, Sawawa Sub-Location, namely David Sifuna Namiri, Joseph Chemakoti Libuyi And Asman Rashid shall record their respective statements.
13. This matter shall be mentioned on 7th April 2025 for further directions.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF DECEMBER 2024.

A. C. BETT

JUDGE

In the presence of:-

Ms. Chala for the Prosecution

Ms. Biketi holding watching brief for victim's family

Court Assistant: Polycap

