



**Republic v Sang alias Gilbert (Criminal Case 12 of 2020)
[2025] KEHC 13660 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13660 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 12 OF 2020
JK SERGON, J
OCTOBER 2, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

ROBERT KIPKURUI SANG ALIAS GILBERT ACCUSED

JUDGMENT

1. The accused person herein is charged with murder contrary to section 203 as read with Section 204 of the Penal Code.
2. Particulars of the offence are that, the accused person on 28th day of May, 2020 at Kipranye Village in Soin/Sigowet Sub County within Kericho County murdered Festus Kipkurui Korir.
3. The accused person pleaded not guilty to the charge and the prosecution called seven (7) witnesses to prove its case.
4. PW.1 who owns a changaa den testified that on the material day there were eight people at her house consuming changaa, when the accused abruptly peeped into her house and then disappeared, soon thereafter she heard a bang, a stone was thrown and the said stone hit the deceased accused and a scuffle ensued after the accused person came in and further accosted the deceased by pushing him against a wall. Pw. 1 testified that while the scuffle ensued the accused menacingly threatened to kill her. Pw. 1 stated that soon after, the deceased went and slept under a cypress tree and that she informed the deceased's brother who took him to the nearby Roret Health Center and that she later learnt that the deceased succumbed while receiving medical treatment.
5. PW.2 who was at PW.1's house corroborated the same version of events, he narrated how the accused person threw a stone into the house and the stone hit the deceased on the head and he bled profusely and soon thereafter the accused person fled. PW.2 testified that the deceased was taken by his brother to a nearby health center for medical treatment and that he succumbed to his injuries. PW.2 testified



that when they went to record their statements they were informed that the accused had been arrested at Kabuchon in Nandi County. PW.2 stated that he did not get along with the accused, who was a perpetual trouble maker and had assaulted him with an axe on a previous occasion. On cross examination and re-examination PW.2 maintained that on the material day, the accused had thrown a stone in PW.1's homestead and that stone hit the deceased, a scuffle ensued and the accused had pinned the deceased against a wall.

6. PW.3 who was assisting PW.1 to prepare changaa, recounted the events on the material day in her evidence in chief, she confirmed that the accused had fleetingly peeped into the house and soon after a stone was thrown into the house and the stone had hit Festus. PW.3 testified that the accused came into the house and a scuffle ensued and he had pinned the deceased against a wall. PW.3 testified that the deceased went to lie down under a tree, they informed his brother who came and took him to hospital. PW.3 further testified that on the following day, they learnt that the deceased had succumbed to his injuries. On cross examination, she confirmed that she did not know who threw the stone, however, soon afterwards, the accused came into the house, a scuffle had ensued and the accused demanded for his phone and menacingly threatened to kill PW.1 and her husband.
7. PW.4 testified and gave a similar version of events similar to that of PW.1, PW.2 and PW.3
8. PW.5 testified that he was in Pw. 1's homestead consuming changaa when a stone was thrown into the house and that the stone hit Festus on the head and that as they begun to tend to the injury on Festus, the accused came in and a brawl ensued, the accused stated he had lost his phone. PW.5 further testified that the accused left with the deceased and he also left PW.1's homestead. PW.5 testified that on the following day, as soon as he learnt that the deceased had died, he went to PW.1's homestead and was informed that the deceased had been taken to hospital where he had succumbed to his injuries. PW.5 testified that the police came and recorded their statements while they were at the homestead. On cross examination, PW.5 confirmed that he did not see who had thrown the stone, rather, the accused came into the house soon after while they were administering first aid to the deceased, a scuffle had ensued with the accused demanding to know who had hit Festus the deceased. Pw. 5 confirmed that those present, the accused included, were inebriated.
9. PW.6 the I.O testified he conducted a thorough investigation of the events that led to the demise of the deceased. He testified that the investigations and interrogation of witnesses revealed that the accused and PW.1 had a feud over a protracted land dispute. He testified that on the material day, the accused was at PW.1s homestead, she operated a changaa den, he broke a lantern and he was chased away, a customer saw him peep indiscreetly and immediately a stone was thrown into the house and that the stone hit the deceased. He further testified that a commotion ensued when the accused entered the room. He testified that the accused was overpowered but nevertheless fled the crime scene. He testified that the deceased was taken to the nearby Roret Health Center by his relatives and succumbed while undergoing treatment. PW.6 testified that when he got to the scene of crime alongside his colleagues, they found that the accused had fled and that two days later they received information that the accused had surrendered himself at Kabudo Police Station in Nandi County. On cross examination, PW.6 confirmed that the accused had surrendered himself to police custody as he feared for his life after the incident. PW.6 confirmed that Pw.1's homestead was a changaa den and therefore on the material day, there were many customers and the stone could have been thrown by anyone else other than the accused. PW.6 maintained that he linked the accused with stone throwing because according to eye witness accounts he had been spotted peeping into the house and that he came into the house after the stone was thrown and a melee ensued. PW.6 confirmed that whereas he did not recover the stone which was used to hit the deceased, he maintained that it was a blunt object.



10. PW.7 medical officer testified that he conducted an autopsy on the deceased and formed the opinion that the cause of death was severe head injury leading to cardiopulmonary arrest secondary to the assault and produced the post mortem report as PExh.1 which report was adopted by this court. On cross examination, PW.7 confirmed that the head of the deceased had a compound fracture and that there was stitch on the cut wound.
11. Section 211 of the Criminal Procedure Code was complied with, the accused person opted to give a sworn statement.
12. DW.1 stated that he and the deceased were friends who consumed changaa brew together. DW.1 testified that on the material day, the deceased went ahead of him to PW.1's homestead which was a changaa den. DW.1 testified that he went to Pw. 1s homestead later and found that the deceased had already been stoned. DW.1 maintained that he did not peep rather he went straight into the house. DW.1 testified that there was a tussle and he was attacked and that the deceased left the house to stay outside. DW.1 testified that he wanted to take the deceased to hospital, however, Pw. 1 restrained him telling everyone that he had assaulted the deceased. DW.1 fearing for his safety fled and reported the matter to law enforcement officers. On cross examination, DW.1 confirmed that he and PW.1 having resolved a protracted land dispute had a feud over an outstanding personal debt. On re-examination DW.1 maintained that when he came into the house, he found that a stone had already been thrown and that there were several people in the house.
13. At the close of the defence case, the Learned Counsel representing the accused stated that she had written submissions on behalf of the accused person. She filed her submissions and maintained that there was no positive identification of the accused as the perpetrator and it was presumed that it was the accused who threw the stone into the house on that fateful night and that the circumstantial evidence did not meet the threshold required to sustain a conviction.
14. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.
15. The offence of murder is provided for in section 203 of the Penal Code that provides as follows; "Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder." In Republic v Andrew Omwenga [2009] eKLR the court held: "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."
16. The accused person in this case was charged with the offence of murder contrary to section 203 of the penal code which defines murder as the unlawful killing of a person or persons with malice aforethought.

Death and Cause of Death

17. In this case the death of the deceased person is not disputed, several prosecution witnesses testified that on the material day, the deceased was consuming changaa in PW.1's homestead when he was hit by a stone on his head, got caught up in scuffle and soon after went to rest under a nearby cypress tree. The deceased was taken to the nearby Roret Health Center by his relatives and that he succumbed while undergoing medical treatment. PW.7 a medical doctor conducted an autopsy on the deceased and



formed the opinion that the cause of death was severe head injury leading to cardiopulmonary arrest secondary to the assault and produced the post mortem report as PExh.1 which report was adopted by this court. On cross examination, PW.7 confirmed that the head of the deceased had a compound fracture and that there was stitch on the cut wound.

Whether the accused committed the unlawful act which caused the death of the deceased

18. This court is cognisant of the fact that whereas the accused was placed at crime scene on the material day, none of the prosecution witnesses can positively identify him as the perpetrator, none of the prosecution witnesses saw the accused throw the stone which landed on the head deceased, occasioning him a fatal injury based on the findings of PW.7 a medical doctor, who conducted the autopsy on the deceased.
19. The prosecution case is seemingly founded on circumstantial evidence as the accused came into the house immediately after the stone throwing and based on this it was presumed that it was the accused who threw the stone into the house in that fateful night.
20. It is the finding of this court that there is therefore no direct evidence linking the accused to the unlawful act that caused the death of the deceased. The changaa den is a public place frequented by all and sundry. Those adamant about the culpability of the accused were inside the house preparing and/or consuming the changaa brew perhaps already inebriated and the stone was thrown from outside.
21. The Court of Appeal set out the test to be applied in considering whether circumstantial evidence placed before a court can support a conviction in the case of *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR where it stated as follows: “Before circumstantial evidence can form the basis of a conviction however, it must satisfy several conditions, which are designed to ensure that it unerringly points to the Subject person, and to no other person, as the perpetrator of the offence. In *Abanga alias Onyango v R Cr. App. No 32 of 1990*, this court 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 the guilt of the Subject; (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.”
22. Accordingly, I find that the prosecution did not prove its case against the accused beyond reasonable doubt and on the premise, I find the accused not guilty for the offence of murder. He is hereby acquitted. The Accused Person namely Robert Kipkirui Sang alias Gilbert is hereby set free forthwith.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 2ND DAY OF OCTOBER, 2025.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor - Maundu

Accused – Present in Prison.

Morata holding brief for Miss Koech for the Accused

