



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. E036 OF 2023

REPUBLIC.....

PROSECUTION

VERSUS

ANTHONY KIMUTAI KEMEI.....

ACCUSED

JUDGMENT

1. The accused, **ANTHONY KIMUTAI KEMEI** was 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 on 30th March 2015 at Chetililik in Koibatek subcounty within Baringo county accused murdered Gladys Cherono Kimeli.
2. The accused denied the charge, and the matter proceeded to full trial with the prosecution availing 9 witnesses and on accused being placed on his defence, he gave sworn statement and availed one witness.

PROSECUTION'S CASE

3. PW1 Daisy Chepkemoui Kimeli testified that on the morning of 30/3/2015, when at around noon her daughter Gladys Cheronon who is the deceased herein went to graze cattle and fetch firewood. she delayed in returning prompting pw1 to send her son Kipkoech to go and return cattle for milking. Later at 5pm pw1 went to clebleb's farm where the deceased had gone to graze cattle to check on her but she did not find her. While looking for her, she saw a rope and a leso near Eming river. on looking around, she saw her daughter tied with a rope to a tree. With her legs touching down as the tree was not very tall and her mobile phone was on the ground. the dress was below her waist. She said the deceased had injury on the right side of the temple and both legs at the sheen area.
4. She run home screaming and called her husband. The deceased's father and the neighbors went to the scene. The next day police arrived and took the body and deceased's phone.
5. Pw1 said prior to the incident, the accused went to her home twice and said the deceased Cheronon was his friend. She

said the deceased told her he had come from soko area which is far from her home. Pw1 said when she asked accused why he had gone to her home, he responded that he had problems with the deceased.

6. On cross examination, pw1 said he had known the accused before the incident and that she knew he was in a relationship with her daughter the deceased herein.

7. Pw2 Silas Kipchirchir Kigen testified that on 30/3/2015, he had gone to the river when he heard screams from the house of Joseph Chepkilot. He went to the home and found his wife Grace creaming and on enquiring, he learnt that his child had been killed. He said they went to the river and found the deceased tied on a tree by the neck but her legs were touching down and her clothes were wet. He said the body was tied to a branch of a big tree. On cross examination, he said he had not seen accused before the incident.

8. Pw3 Joseph Meli Cheruiyot testified that on 30/3/2015 at 6 p.m, he was from the shopping centre when found a motor bike without a rider parked on the road side. He proceeded to Saket centre and while there his daughter called him to go home. He locked his shop and went home. On reaching home, he e found many people and his wife Grace crying. He learnt that his daughter Gladys Cheronno had been killed.

They went to the scene and found her hanging from a tree with her shoes on the ground. On lifting the body, they saw injuries all over her body. He said they stayed at the scene until the next day when police arrived and collected the body. He said he knew the accused as he used to visit the deceased and that he last saw him on 21/3/2015 at the centre as he was looking for the deceased. He said he had known him for about 3 months but he did not talk to him when he visited his home.

9. Pw4 Sarah Chepkotin testified that on 30/3/2015, she was etching water in the river when she heard a person screaming from his neighbor Chepkilot's home. She took water to her house which was nearby, informed her husband and they went to the home together where they found pw1 screaming while saying that her daughter had been killed at the river. She went to the scene the next day and saw the deceased's body with injuries.

10. Pw5 no.230543SSP Stephen Kemboi who is a scene of crime officer Gazetted by Kenya gazette no.5853 of 2/8/2001 produced deceased's photos in court as exhibit.

11. Pw6 Simon Tanui who is the area assistant chief testified that on 1/4/2015, he was with the senior chief when they received information that a suspect of murder had been

sighted at the gate of Mogotio girls secondary school. He said the accused with his father and another person and that they requested accused and the two people he was with to join them to the police station. He said the accused was a student and he knew him by the name Anthony.

12. Pw7 Dr. Arafa Sali a senior doctor in charge at Emining health center testified that she performed postmortem on the body of the deceased Gladys Cheron and found that she died as a result of strangulation and head injury and produced postmortem report as exhibit 8.

13. Pw8 Susan Wanjiru Ngugi a Government chemist produced report on behalf of Margaret Wahu. From the report, she found that:-

- a) Vaginal swab slightly stained with seminal stains however attempts to generate DNA profile from the stains were not successful.
- b) Rectal swab was also slightly stained with seminal stains but did generate DNA profile.
- c) Pubic hair of the deceased was not stained with any seminal stain.
- d) The T/shirt was stained with blood stains.
- e) Item H the pant of the deceased had seminal stain and was stained blood of human origin.
- f) Pubic hair from the accused person was not stained with blood.

- g) There were no hair fibres from the underpants (item H & L).
14. Pw8 arrived at the following conclusions: -
- a) the DNA profile of blood stains on the T-Shirt "G" matched DNA profile which was generated from the finger nails marked Gladys Cherono.
 - b) The seminal fraction from the under-pant item "H" from the deceased matched DNA PROFILE GENERATED FROM blood sample marked Anthony Kimutai Kemei.
15. Pw8 produced the report as exhibit 5.
16. Pw10 Wilkins Kirwa a deputy registrar of persons Koibatek testified that he received a letter from DCI Eldama Ravine requesting identity of 2 persons namely Gladys Cherono Kemei IDno.30100054 and Anthony Kimutai Kemei. He testified that they sent finger prints to headquarters and they confirmed via letter date d11.2/2021 that both are rightful owners of identity cards.
17. Pw11 Hassan Salado a liason officer from Safaricom testified that he extracted data from numbers 0716419991 and 0718982224 belonging to Anthony Kemei and Gladys Kimeli respectively. He produced the data in court.

18. Pw12 no.68925 Bonface Chebus testified that he was the Investigating Officer in this case testified that on 31/3/2015, he accompanied the OCS to the scene where they found the body of the deceased herein Gladys Cheron. He said the deceased had a mobile phone Techno 340 imei - 3575800 with simcard 0718982224 and on checking it, she had received a call from 0716419992 and a message from the number saying he had reached at Arusi's place which near where the incident occurred. He said on interrogating the deceased's mother, he learnt that the number which had called deceased's number was for Anthony Kimutai who was a friend to the deceased. He confirmed that they arrested the accused on 1/4/2015 and that he investigated mobile phone numbers 0718982224 and 0716419992 belonging to deceased and accused respectively by taking them to Safaricom. It was confirmed its accused who had communicated with deceased that day and government analyst found DNA of accused in DNA deceased confirming that it is accused who killed the deceased. He produced in court mobile call data for the two lines.

DEFENCE

19. Upon being placed on his defence, the accused opted to give sworn testimony and availed one witness DW2. He testified that he is 39 years old married with 4 children. He stated that on 30/3/2015 he sent a message to his

girlfriend Gladys Cheronno who is the deceased herein asking her if they could meet. He said the deceased informed her that she was going to school and she not going to make it and that her phone had low battery and it was going to switch off. He said he did not communicate with her until the deceased's sister valentine called him to ask if he was with her sister. He said he tried reaching her as he worked at home but her phone was off and at 6pm, the accused's father arrived and told him he had met the area chief and he had asked that they go to police station to clarify some issues. He said on reaching police station he was asked where his girlfriend Gladys was. He said he told police he did not know where she was and he was placed in cell.

20. On cross examination, the accused said the deceased had been his girl friend for one year prior to the incident. He said on 30/3/2015, he tried calling her at 9.30 pm but she was unreachable. He said the deceased told him they could not meet on 30/3/2015 because she was going to salon. He said he did not go to her home to visit her and that he had not visited her home but the deceased used to go to his home. He said he last met her in early march. He denied threatening to kill her if she left him and also denied having injury on his face.

21. DW2 Kipkurui Bett testified that on 30/3/2015 at around 4.15 p.m. the accused went to his home using his father's bicycle to grind maize and the next day he learnt that a girl had been killed.
22. The prosecution and defence counsel opted not to file submissions but rely on evidence on record.

ANALYSIS AND DETERMINATION

24. The charge against the accused is that of murder contrary to section 203 as read with section 204 of the Penal Code. To secure a conviction, the prosecution must prove beyond reasonable doubt the following four essential ingredients:-
 - a) The fact and cause of death of the deceased;
 - b) That the death resulted from an unlawful act or omission of the accused;
 - c) That the accused had malice aforethought as defined under section 206 of the Penal Code; and
 - d) The identity of the accused as the person who committed the unlawful act.
25. The above elements were elaborated in **Republic v Andrew Mueche Omwenga [2009] eKLR**, where the Court emphasized that the prosecution bears the burden of

proving both the actus reus and mens rea of murder. I have carefully considered the evidence on record, the exhibits produced, and the defence tendered by the accused and consider each element hereunder.

(a) Proof of death and cause thereof

26. PW1, PW2, PW3, and PW4 all testified that they saw the body of the deceased tied to a tree near Emining River with visible injuries on the head and limbs. PW7, Dr. Arafa Sali, produced the postmortem report which established that the cause of death was strangulation and head injury. This evidence was unchallenged. I therefore find that the fact and cause of death of **Gladys Cheron Kimeli** were proved beyond doubt.

(b) Whether the death was caused by an unlawful act of the accused

27. The second and third ingredients of the offence as to whether the death was caused by an unlawful act and whether it was the accused who committed it are closely connected and may conveniently be considered together.

28. The deceased was found tied to a tree with a rope around her neck, her feet touching the ground, her dress pulled down, and visible injuries on her body. The manner of death clearly rules out suicide and indicates a violent assault. PW7 confirmed the cause of death as

strangulation and head injury. Such acts amount to an unlawful act under the Penal Code.

29. The next issue is whether it was the accused who committed that unlawful act. The prosecution relied on circumstantial, forensic, and digital evidence to link him to the crime. **PW11**, a Safaricom Liaison Officer, and **PW12**, the Investigating Officer, testified that the deceased's phone number 0718982224 was in communication with the accused's number 0716419991 on **30th March 2015**, the day of the incident. A message from the accused's number to the deceased's handset stated, "*I have reached at Arusi's place,*" which is near the scene of the murder.
30. In addition, **PW8**, the Government Chemist, testified that the seminal stains recovered from the deceased's undergarment (Item H) matched the DNA profile generated from the accused's blood sample. This confirms recent sexual contact between the accused and the deceased immediately before her death.
31. **PW1** and **PW3** also knew the accused as the deceased's boyfriend, and the accused himself admitted in his defence that he had been in a relationship with the deceased and had contacted her that day to meet.

32. These facts form a consistent chain of circumstantial evidence. As stated in **Sawe v Republic [2003] KLR 364**, circumstantial evidence can ground a conviction where the inculpatory facts are incompatible with innocence and incapable of explanation upon any other reasonable hypothesis than guilt.

33. The totality of the call data, DNA results, and the accused's own admissions irresistibly point to him as the person who lured the deceased, sexually assaulted her, and caused her death. There is no evidence of any other person having been with her that day.

34. I therefore find that the deceased's death was unlawfully caused, and it was the accused, **Anthony Kimutai Kemei**, who committed that unlawful act which led to her demise.

(c) **Whether malice aforethought was established**

35. Section 206 of the Penal Code defines malice aforethought as the intention to cause death or grievous harm or knowledge that the act will probably cause death.

36. From the evidence, the accused lured the deceased to meet him on the day of the incident. The deceased was thereafter found brutally assaulted, partially undressed, and strangled. The act of tying her to a tree and inflicting head

injuries demonstrates deliberate intent to kill or cause grievous harm. The severity and manner of assault exclude any possibility of accident or provocation.

37. In **Republic v Lawrence Mukaria & Another [2014] eKLR**, the Court held that malice aforethought can be inferred from the nature of injuries inflicted and the circumstances of the attack. Similarly, in **Bonaya Tutu Ipu & Another v Republic [2015] eKLR**, the Court of Appeal observed that where the weapon used and the manner of attack show an intention to cause death, malice aforethought is proved.

38. The prosecution evidence, taken as a whole, demonstrates that the accused intentionally caused the deceased's death. I therefore find that malice aforethought was proved.

(d) evaluation of defence

39. The accused raised defence of alibi by asserting that he was at home grinding maize around 4.15 p.m. However, the defence was inconsistent with the independent evidence. The call data places his phone near the scene of the offence around the time of death, and the DNA results confirm sexual contact with the deceased.

40. As held in **Kiarie v Republic [1984] KLR 739**, an alibi does not cast doubt on the prosecution case unless it raises a reasonable doubt as to the accused's presence at the scene. In this case, the accused's alibi is contradicted by scientific and digital evidence and is therefore not credible.

38. From the foregoing, I am satisfied that the prosecution has proved the three ingredients for the offence of murder beyond reasonable doubt.

39. **FINAL ORDERS**

a) I hereby find the accused **guilty of the offence of murder** contrary to section 203 as read with section 204 of the Penal Code and **convict him accordingly**.

b) Right of appeal 14 days.

Judgment delivered, dated and signed Virtually at Kabarnet this **16th Day of October, 2025**.



.....
RACHEL NGETICH
JUDGE

In the presence of:

- Ms. Omari for state.
- Mr. Nyagaka counsel for Accused.
- CA, Momanyi.
- Accused present.

ORIGINAL