



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL CASE NO. E044 OF 2023

REPUBLIC..... PROSECUTION
VERSUS
WILSON TOROITICH.....
ACCUSED

JUDGMENT

1. The accused, **WILSON TOROITICH** 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 [the 25th/26th day of December 2020 at Timsales company servants quarters in Sabatia forest, in Koibatek subcounty within Baringo county within Baringo county, murdered one Daniel Kipkorir Kipngok.
2. The accused pleaded **not guilty**, and the matter proceeded to full trial with prosecution calling 9 witnesses and upon close of prosecution case, the court found that prima facie case was established to warrant accused be placed on his defence. The accused chose to give sworn evidence and did not call any witness.

Prosecution's Case

3. PW1 Kemboi Chetalam a nyumba kumi chairman testified that he received a call from Mariko Kimosop informing him that a person had been killed at Timesales camp. He informed Assistant chief Roy. He went to the scene and confirmed that Dan the deceased herein had died. He said his body lay flat facing up and there was blood on the floor. He said the watchman who is accused herein arrived then pw1 left before the chief arrived.
4. Pw2 Kiplangat Toroitich who was a watchman at Timesales testified that on 25.12.2020 he was on duty up to 4p.m when he left and the accused reported to work at night. He said when he went to report to work in the morning, he found the accused and there was a person who had died. He said he went back to call neighbors and accused 3 thugs attacked him at night.
5. Pw3 Marikao Chelimo who lived in the neighborhood of Time sales testified that on 26.12.2020, Okello who worked at Tim esales as a watchman went to wake him at 6.00 a,m and informed him that a person had been killed at time sales his place of work. Okello asked him to go with him to the scene. He said at the scene they found a person lying dead. He said they called pw1.He said he lived 200m from the scene but

he did not hear screams. He said they found accused at the scene.

6. Pw4 Roy Kibet who is the chief Sabatia location testified that on 26.12.2024 at around 7.30 a.m. He received a call from pw1 who informed him that a person had been killed at time sales servants' quarters. He said he called CPL Kanyaga of Sabatia police station and they arrived before him. On arrival at the scene, he saw the body then he called the OCS Eldama Ravine who visited the scene and took the body to Eldama Ravine Mortuary. He said the suspect Wilson Toroitich who is accused herein was arrested at Time sales staff quarters. He said the deceased had injuries on the chest.

7. Pw5 No.212127 CPL Gideon Karango testified that on 26.12.2025 he was at Sabatia police station when he received a call from area chief who informed him that a person had been killed at Timsales. He said they went to the scene and found accused who said he fought with the deceased and he stabbed the deceased with a knife. He handcuffed him and informed ocs Eldama Ravine. He said arrived with his team and interrogated the accused who showed them where he had kept the knife in a mattress in his house at Time sales servants' quarters. He identified in court the knife which looks like Somali sword.

8. PW6 Dr. Wangare wambugu conducted postmortem and found that the deceased died due to penetrating abdominal injury to the liver due to stab wound following assault. He produced in court postmortem report dated 31st December 2020.
9. Pw7 Polycap Lutta Kweyu a government chemist testified that on 14.6.2023 he analyzed 6 samples submitted on 9.12.2021 being
 - a) Knife with green/yellow handle in an orange cover marked "A"
 - b) Multicoloured long sleeved shirt for Daniel Kipkorir Kipngok(deceased) marked "B"
 - c) Cream T/shirt with short sleeves marked "C"
 - d) A pair of brown leather shoes no.245 marked "E"
 - e) Blood sample of Wilson Toroitich Marked "G"
10. He further stated that on 12.4.2021 blood sample for Daniel Kipkorir Kipngok (Deceased) was received. That it was requested for him to carry on DNA analysis on the items to identify genetic relationship between the items.
11. Upon analysis, he found that the knife item "A", the shoes item "E", the T/shirt item "D" were moderately stained and the T/shirt item "C" and the shirt item "B" were heavily stained with blood of a human being.

12. He generated DNA profile from the blood stains to identify the source which he produced at the back of the report and comparing the DNA profiles he came up with the following opinion:-
 - i. Based on the findings, the DNA profiles generated from the knife item "A" shirt item "B", T/shirt item C & D, shoes item "E" are identical and match the DNA profile of Daniel Kipkorir Kipngok (Deceased)
 - ii. The DNA profile of Wilson Toroitich did not match profile generated from the listed items. He prepared and produced report dated 14.6.2023 marked exhibit p.7 and memo p.8.
13. On cross examination, he said the DNA profiles of accused did not match any DNA profile of items submitted.
14. Pw8 no.80316 who is the investigating officer herein testified that on 26.12.2020, he was assigned to investigate this case. He said they visited the scene and they established that the one Daniel Kipkorir Kipngok had been murdered. He said the weapon used had been hidden by the suspect in one of the houses in the servants' quarters. He said they documented the scene and took photos, postmortem was done and blood samples taken for DNA analysis and after compiling the file, they forwarded to ODPP who found tat the accused be charged for murder. He

produced the knife recovered, deceased's clothes in court as exhibits.

15. Pw9 Titus Kipchicir Kipngok who is the elder brother of the deceased identified the deceased's body to the doctor for postmortem

Defence Case

6. Upon being placed on his defence, the accused opted to give sworn statement. He denied killing the deceased. He said he was on duty as security officer in the forest on the night of 26.12.2025. He said at 8 p.m., he slept in the store and at 10 p.m, he heard a kick on the door and ongoing out, a person tried to stab him on the eye with a burning stick which was removed from the fire in the kitchen. He said he kicked the burning stick because it was like the person wanted to burn the house using fire on the stick. He said the person also had a knife. He said after kicking the burning stick, he was the person and realized he was armed. He said he struggled with him so as to take the knife from him. He said they were 3 people and while they were struggling, one of the 3 people stabbed the deceased. He said it is not him who stabbed the deceased. He said may be the 3 people thought the power saw and generators were still in the store though he had transferred them. He said the 3 had gone to attack him and that the deceased died while he was still at the scene. He

said if they had not gone to the store, death would not have occurred. He blames them for the death of deceased herein. He said he was sacked after arrest.

7. On cross examination accused said he did not know the deceased; that he did not know if he had worked for Tim sales. He said nothing was stolen and that he did not sustain any injury. He said the attackers were not known to him.

ANALYSIS AND DETERMINATION

8. The accused, **Wilson Toroitich**, was charged with the offence of **murder contrary to Section 203 as read with Section 204 of the Penal Code**. The prosecution had the burden to prove beyond reasonable doubt the following ingredients of the offence:

- a) Proof that Daniel **Kipkorir Kipngok** died.
- b) That the death was caused by an **unlawful act or omission** of the accused; and
- c) That the accused acted with **malice aforethought**, as defined under Section 206 of the Penal Code.

(a) Proof of Death and Cause of Death

9. The death of Daniel Kipkorir Kipngok was not in dispute. PW9, Titus Kipchirchir Kipngok, identified the body to Dr. Wangare Wambugu (PW6) who performed the postmortem.

The doctor concluded that the deceased died of penetrating abdominal injury to the liver caused by a stab wound. The cause of death was therefore proved beyond reasonable doubt to have resulted from a fatal stab wound.

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

10. The prosecution evidence shows that on the morning of 26th December 2020, the deceased's body was discovered at the Timsales servants' quarters, where the accused was on duty as a watchman. PW5, CPL Gideon Karango, testified that upon arrival, the accused admitted having fought with the deceased and stabbed him with a knife. He further led the officers to his house, where the knife used in the attack was recovered from under a mattress.
11. The Government Chemist (PW7) confirmed that the **knife, deceased's shirt, T-shirt and shoes** bore blood stains that matched the **DNA profile of the deceased**, thereby linking the recovered weapon directly to the fatal injury.
12. The accused in his defence denied having stabbed the deceased and instead claimed that he was attacked by three men, including the deceased, during which the deceased was accidentally stabbed by one of his companions. However, this version was uncorroborated, and there was no

evidence that the accused sustained any injury or made a report of being attacked.

13. The totality of evidence points to the accused as the person who inflicted the stab wound that caused the death of the deceased. The unlawful act is therefore attributable to him.

(c) Whether malice aforethought was established

14. The key issue is whether the accused acted with **malice aforethought**, the mental element that distinguishes murder from manslaughter. Section 206 of the Penal Code provides that malice aforethought may be inferred from, among others, the nature of the weapon used, the manner in which it was used, the part of the body targeted, and the conduct of the accused before, during, and after the attack.
15. From the evidence, there is no indication of a prior grudge or premeditated intention to kill. The incident appears to have arisen spontaneously during a confrontation between the accused and the deceased.

16. The accused admitted to having struggled with the deceased, and while his account of being attacked by three persons was not convincing, it raises a reasonable possibility that the fatal stabbing occurred in the heat of the moment, during a scuffle, without a formed intention to kill.
17. The recovery of the knife from his quarters demonstrates his involvement, but not necessarily malice aforethought. The fact that there was only one stab wound, and the absence of evidence of preplanning or provocation, suggests a sudden fight or excessive reaction rather than a deliberate killing.
18. The prosecution did not lead evidence showing motive or previous hostility between the accused and the deceased. In the circumstances, the requisite malice aforethought was not established beyond reasonable doubt.

(d) Defence Consideration

19. The accused's defence of self-defence does not fully hold, as there is no proof of unlawful aggression from the deceased or that the accused's life was in imminent danger. However, the evidence supports a finding that the deceased met his death in the course of a struggle between him and the accused. In the circumstances, the offence disclosed is manslaughter under Section 202 as read with Section 205 of the Penal Code. The prosecution therefore proved beyond

reasonable doubt that the accused unlawfully caused the death of **Daniel Kipkorir Kipngok**, but malice aforethought was not proved beyond reasonable doubt.

20. **FINAL ORDERS: -**

- a) The accused is hereby found guilty of the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code, and convicted him under Section 215 of the Criminal Procedure Code.
- b) Right of appeal within 14 days explained.

Judgment delivered, dated and signed Virtually at Kabarnet this **13th** of **November** 2025.



.....
RACHEL NGETICH
JUDGE

In the presence of:

- CA Elvis.
- Ms. Omari for state.
- Accused present.
- Mr. Kiptoo for accused.