



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE

(SUB-REGISTRY)

CRIMINAL CASE NO. E052 OF 2023

REPUBLIC.....PROSECUTION
VERSUS
CHEPKWONY ALFAYO KIPKURUI.....
ACCUSED

JUDGMENT

1. The accused, **CHEPKWONY ALFAYO KIPKURUI** 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 9th January 2017 at Tolmo village in Koibatek Sub-County within Baringo County accused murdered Pamela Anna Ingoshe.
2. The accused pleaded not guilty, and the matter proceeded to full trial with the prosecution availing 7 witnesses and on accused being placed on his defence, he gave sworn statement and availed one witness DW2.

PROSECUTION'S CASE

3. PW1 Stella Kipkerio Chelagat a form 3 student aged 18 years at the time of testifying in 2019 stated that on 8/1/2017 she was at home with her 3 siblings when accused who was their neighbor arrived at their home with his wife. she said he went to the back of the kitchen while carrying a panga and said he was going to kill her mother before end of the next day. She said accused's wife said her mother could be killed before the next day. She said her mother called the chief and her father after which the accused and his wife left.
4. She said her mother told her she feared she may be killed as the accused had been threatening to kill her. She gave pw1 birth certificates for all her children and title deeds. She said the following day she went to school leaving her mother with her siblings and on returning from school in the evening, she found a crowd of people at her home. On enquiring what happened, she was told her mother and her brother Nicholas had been stopped by the accused Alfayo from going through their land to the river to fetch water yet accused's family had sold land to them; and in the process, the accused's wife hit her mother after which the accused cut her with a panga killing her. she said police later arrived and collected her mother's body.

5. Pw2 Esther Musyimi a minor aged 16 years old testified that 9/1/2017, she was at her late Aunt Pamela's house in Baringo when at 4 p.m. the deceased sent her and her cousin Nicholas to the river and while on the way, the accused Kipkurui who quarreled and while throwing a stone at Nicholas but Nicholas evaded the stone and they went back home. she said on reaching home and telling the deceased what happened, the deceased asked her son Nicholas to get another jerrycan and they went together to the river. She said the accused blocked them from going to the river and the deceased told accused that he is the one who sold her them land and he should give right her right of way. She said as they were walking, accused's wife threw a stone at the deceased then the accused approached her with a panga and cut her all over her body while saying she could do nothing and even reporting to police will not help her. She said she was standing there then accused's wife approached her and she run away screaming and 2 neighbors went to their rescue. She identified the stick accused's wife used to hit the deceased. She said accused and wife went away when they saw neighbors.
6. Pw3 Samson Rotich a prison officer testified that the deceased was his wife having married her in the year 2000.

He testified that he purchased land from the accused at Kshs 225,000 through an Advocate. He produced Land sale agreement in court marked exhibit 4. He said he moved into the land in the year 2014 and in the year 2016, accused would leave his cattle to graze in their land and pw1 asked his wife the deceased to report to the chief and the chief promised to visit the land as when they were summoned by the chief, accused without his wife. He said there is time neighbors tried to resolve their conflict but after he left, accused would leave the cattle to graze on his land again. He said on 7.1/2017, his wife called him informing him that accused had gone to quarrel at his home.

7. And the next day he learnt that the accused had killed her. He said they went to accused's house and they found two whips big and 2 small stained with blood and a blood-stained shirt and Navy-blue skirt for accused's wife also stained with blood.
8. Pw4 Dr. Philip Kamau a medical doctor at Eldama Ravine subcounty hospital performed postmortem on the body of the deceased and formed opinion that the cause of death was severance of the mid brain and hemorrhage due to sharp cut injuries. He produced postmortem report in court as exhibit.

9. Pw5 number IPOA 00273 principal investigating officer James Magondu Njuru testified that he was mandated to investigate this matter while he was working with DCI Eldama ravine. He said they were taken to the scene by the area chief where they found lifeless body of a female adult which was bleeding profusely and had visible injuries on the shoulder and head. He said they interviewed a few people at the scene who told him that the deceased had been murdered by the accused Alfayo Kipkurui who had escaped from the scene.

10. Pw5 said they documented the scene and collected the deceased's body. He said he later received information that the suspect Alfayo had been spotted at Mogotio. They went to accused's cousin in Mogotio and arrested him. They took him to Eldama Ravine police station to apply for custodial orders and he was given 8 days to investigate. He said he recorded statements from several witnesses who said they saw accused assault the deceased on 13/2017. They went to accused's house and recovered a shirt with blood stains and 3 sticks with blood stains. He said postmortem was done on 16/1/2017 and samples from deceased which included blood, nail clippings and skin were taken and handed over to him. They took the exhibits to Eldama Ravine police station for onward transmission to Government analyst. He said the same day 16/1/2017, accused was taken to hospital for DNA

extraction which was done after accused signing consent. The consent was marked for identification. He said after collecting all exhibits and recording witness statements, the accused was charged with the offence of murder. He said from investigations, he learnt that the accused and deceased were neighbors and, on several occasions, the deceased had threatened to kill the deceased.

11. Pw6 Johana Kiptalam who is the area retired chief testified that on 9/1/2017 at around 11.20p., he received a call that a woman had been murdered at Kipkenda village by one Alfayo Chepkwony. He called OCS Eldama Ravine who joined him and went to the scene where they found the deceased's body with cuts on the head neck and hands. He said accused and his wife had run away and later one Kiplangat called to inform him that accused was in his house and they went for him. He said on 13/1/2017 DCI and his officers went to accused's house and found blood-stained clothes which were taken by police. He said they did not find the panga which accused had used.

12. Pw7 Elizabeth Waithira Oyiengo who is Government chemist testified that on 3/2/2017 he received the following items from pc James Magondo marked as from Alfayo Chepkwony's house as follows: -

1. Item labelled "A" 3 sticks wrapped with Kaki envelop

2. White red and black long stripped shirt in an envelope marked "B"
 3. Navy blue skirt in a Kaki envelope labelled "C"
13. And also, items indicated as for accused labelled
1. "d" blod sem
 2. "e" buccal swap both indicated as of accused Alfayo Kipkuri
 3. "f,g & h was blood sample in test tube(f), nail chippings(g), and skin sample(h)
14. He said it was desired for him to examine the items and determine the origin of blood.
15. Pw7 found that sticks item A were lightly stained with human blood, item "b" shirt was moderately stained with human blood and skirt item "C" was not stained with blood. On doing DNA profiles, he found that DNA generated from blood stains on the stick item A and the shirt item B matched DNA profile generated from nail chippings item "g" indicated as for deceased it was 100% match. He compiled and produced report dated 21/2/2019.
16. Pw8 George Walucho Masai a retired police officer testified that he was attached to DCI office Koibatek before he retired and that he filled the form for DNA sampling. He

said accused consented to extraction of DNA and produced the consent form as exhibit 8.

DEFENCE

17. Upon being placed on his defence, the accused opted to give sworn testimony and availed one witness DW2. He denied the offence testified that on 8/1/2017 he was at Kakayo taking cattle Mogotio. He said he was with Kiptanui Chepkwony who used to help him take cattle to Emining. He said they did not reach home as they were trekking. He said he was not in Tolmo as Stella said. He denied saying tomorrow will not pass before he killed Stella's mother. He said on 9/1/2017, he was at Emining market marking the cattle to be slaughtered and the ones to be taken to Nairobi. He said he was not at home as pw2 said. He said blood was extracted from him in hospital before the consent form was given to him to sign and that pw8 was not present as only pw7 was present.

18. On cross examination, accused said he signed consent form for extraction of blood but he did not see pw8 that day but he heard him being called as he was being escorted to Kabarnet High court and that he saw him at DCI office before blood was extracted from him. He admitted that he knew the deceased as his immediate neighbor and said they had no land dispute. He said he left home on 8/1/2017 at 5 a.m and

returned on 9/1/2017 at 8 p.m. He denied being at home during the day on 9/1/2017. He said he was not at home at the time he is said to have injured the deceased. He admitted that the shirt produced in court as exhibit 3 was his and that it was found in his house. In reexamination by his counsel, he admitted that the shirt marked exhibit 3 was his but he denied that the shirt was stained with blood. He said he was not present when the shirt was removed from his house. He said he filed notice of alibi defence on 23/3/2023.

19. DW2 Kiptonui Chepkieng testified that on 8/1/2017, the accused arrived at his home at 7 p.m. and slept at his house. He said on 9/1/2017, he purchased a cow at Kakayo and took to Emining. He said accused purchased 4 heads of cattle from his neighbor and they went to the market where he purchased more. He said he was with accused from 8/1/2017 at 7 pm up to 9/1/2017 at 6pm. On cross examination, he said he had not worked for accused before and that he came to know at Kakayo market and that his role is to drive cattle for cattle dealers.

20. 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.

21. The prosecution and defence counsel opted not to file submissions but rely on evidence on record.

ANALYSIS AND DETERMINATION

22. The accused, Chepkwony Alfano Kirui, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The prosecution must establish beyond reasonable doubt that: -
- (a) Whether the deceased died;
 - (b) whether the death was caused by an unlawful act or omission of the accused; and
 - (c) whether the accused committed the act with malice aforethought as defined under section 206 of the Penal Code.

(a) Proof of death

23. The fact of death is not disputed. PW4, **Dr. Philip Kamau**, conducted a post-mortem on the body of the deceased, **Pamela Anna Ingoshe**, and formed the opinion that the cause of death was **severance of the midbrain and hemorrhage due to sharp cut injuries**. This evidence was consistent with the observations of PW5 and PW6 who saw the body at the scene. The first ingredient of the offence is therefore proved.

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

24. On whether the death was unlawfully caused, the evidence is clear that the deceased sustained multiple severe cuts on the head, neck and hands inflicted by a panga. There is no evidence suggesting accident or lawful justification. The nature of injuries and the weapon used point to deliberate human action. The second ingredient is therefore satisfied.
25. The key issue for determination is whether it was the accused who inflicted the fatal injuries upon the deceased. The prosecution relies on **direct evidence** from PW1 and PW2, who were both present before and during the incident, and **scientific evidence** linking the accused to the offence.
26. PW1, the daughter of the deceased, testified that the accused, who was their neighbor, visited their home the previous day armed with a panga and threatened that he would kill her mother before the next day. That threat was uttered in the presence of his wife and the deceased. PW1's account is material because the deceased was killed the very next day, thus providing strong evidence of **prior intent and motive**.

27. PW2, a 16-year-old minor who was present at the scene, gave a clear and detailed account of how the accused, together with his wife, confronted the deceased and her son Nicholas as they attempted to fetch water through a disputed path. PW2 saw the accused's wife throw a stone at the deceased, followed by the accused advancing towards the deceased with a panga and cutting her several times while declaring that reporting to the police would not help her. This witness fled screaming and neighbors responded, but the accused and his wife escaped. PW2's testimony was consistent, credible, and was not shaken on cross-examination. It constitutes **direct eye-witness evidence** placing the accused at the scene and identifying him as the perpetrator.
28. The testimony of PW3, the deceased's husband, corroborated the existence of a long-standing **land dispute** between the accused and the deceased following a sale transaction. His evidence provided motive for the offence and linked the accused to prior threats and hostility.
29. The forensic evidence presented by PW7, **Elizabeth Waithira Oyiengo**, the Government Chemist, established that the blood stains found on the three sticks (item A) and the striped shirt (item B) recovered from the accused's house produced a DNA profile that matched the deceased's DNA extracted from nail clippings (item G). The probability of

a random match was negligible. This scientific finding objectively connects the accused to the deceased and the scene of murder. The shirt was admitted by the accused to be his.

30. The accused in his defence denied the offence and raised an **alibi**, claiming that he was away from home at Kakayo and Emining on the dates in question. He called DW2 to support that assertion. The burden of disproving an alibi remains with the prosecution, but once the prosecution adduces cogent evidence placing the accused at the scene, the alibi may be displaced. The Court of Appeal in **Kiarie v Republic [1984] KLR 739** held that an alibi defence must be tested against the totality of the prosecution evidence, and where the evidence irresistibly points to the accused's presence at the scene, the alibi fails. Similarly, in **Victor Mwendwa Mulinge v Republic [2014] eKLR**, the court observed that even if an alibi is raised late, the court must consider it but may reject it if the prosecution evidence clearly places the accused at the scene.

31. In the present case, PW1 and PW2 placed the accused at the scene, and their accounts were credible and consistent. Their testimony was further corroborated by the **recovery of the blood-stained shirt and sticks** from the

accused's house, which, upon forensic analysis, matched the deceased's DNA. The accused's alibi is therefore untenable. His claim that the blood was extracted before signing consent does not diminish the evidential value of the DNA results, especially in light of PW8's evidence confirming proper sampling and documentation.

32. I find persuasive the observation in **Republic v Silas Magongo Onzere alias Fredrick Namema [2017] eKLR**, that an alibi which is displaced by credible prosecution evidence must fail. The evidence before this court overwhelmingly disproves the accused's claim that he was elsewhere.

(c) Proof of malice aforethought

33. The question of **malice aforethought** arises next. Under section 206 of the Penal Code, malice aforethought may be inferred from:

- the nature of the weapon used;
- the part of the body targeted;
- the degree of force applied; and
- the conduct of the accused before, during and after the attack.

34. In **Republic v Tubere s/o Ochen (1945) 12 EACA 63**, the court held that the above factors guide determination of intent.

35. In the instant case, the accused, armed with a panga, struck the deceased several times on the head and neck—vital parts of the body. The injuries were deep and fatal, demonstrating a clear intention to cause death or grievous harm. The threats made the previous day and his conduct in fleeing the scene reinforce that he acted with malice aforethought.

36. I am therefore satisfied that the prosecution has proved beyond reasonable doubt that the accused, **Chepkwony Alfayo Kipkurui**, unlawfully caused the death of **Pamela Anna Ingoshe** with malice aforethought. From the foregoing, the defence of alibi is displaced by the strong, credible and corroborated prosecution evidence.

37. **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 accordingly.
- b) Right of appeal 14 days.

Judgment delivered, dated and signed Virtually at Kabarnet
this **12th** of **November** 2025.



.....
RACHEL NGETICH
JUDGE

In the presence of:

- Ms. Bartilol for state
- Accused present
- CA, Karanja.

ORIGINAL